MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SYLVIA NORMAN,
APPELLANT

vs.

PROGRESSIVE PREFERRED INSURANCE COMPANY,
RESPONDENT

AMBER RALSTON,
APPELLANT

DOCKET NUMBER WD83345 (Consolidated with WD83378)

DATE: MARCH 2, 2021

Appeal from:

The Circuit Court of Cass County, Missouri
The Honorable William B. Collins, Judge

Appellate Judges:

Division Three: Edward R. Ardini, Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

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Attorneys:

Dirk Vandever, for Appellant Norman

Mark Chuning, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SYLVIA NORMAN, APPELLANT,
v.
PROGRESSIVE PREFERRED INSURANCE COMPANY, RESPONDENT.

AMBER RALSTON, APPELLANT

WD83345 Cass County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge, and Gary D. Witt, Judge

On the morning of April 9, 2014, Robert Norman was driving on Highway 7 in Cass County when he stopped or slowed to allow law enforcement officers to remove a dead deer from the roadway. Amber Ralston ("Ralston") violently rear-ended Robert Norman's vehicle resulting in his death. Sylvia Norman ("Norman") brought a wrongful death action against Ralston who was insured under an automobile insurance policy issued by Progressive Preferred Insurance Company ("Progressive"). The relevant limits of liability under the policy was $100,000.00 per person for bodily injury and $50,000.00 for property damage.

Soon after the accident, Progressive offered the bodily injury limit of liability ($100,000.00) in exchange for a full release from Norman. That offer was rejected. Norman later made a settlement demand under section 408.040, RSMo, for $950,000.00 which was not accepted.

Following a bench trial, judgment was entered in Norman's favor for $6,476,976.24 in actual damages and $1,079,494.48 in aggravated circumstantial damages. The court further found that Norman had complied with the requirements of section 408.040, RSMo, and awarded prejudgment interest in the amount of $556,470.96. Norman was also entitled to post-judgment interest. Progressive paid Norman with three checks - $100,000.00 (bodily injury limit); $3,118.95 (Statutory costs) and $8,600.00 (post-judgment interest).

Norman initiated this equitable garnishment action arguing that Progressive owed prejudgment interest as well as additional statutory costs and post-judgment interest. Summary judgment was entered in favor of Progressive.

On appeal, Norman argues that Progressive's pretrial offers to settle were not sufficient to trigger a policy provision that would have terminated coverage for prejudgment interest. Norman additionally argues that Progressive failed to fully pay all statutory costs covered under the policy. Finally, Norman asserts that because Progressive has failed to satisfy its aforementioned policy obligations, it continues to be responsible for post-judgment interest.

REVERSED AND REMANDED.

Division Three Majority holds:

1. Progressive's pretrial offers to pay the bodily injury policy limits in exchange for a full release from Norman did not satisfy the policy provision that stated that "[i]f we make an offer to pay our limit of liability, we will not pay any prejudgment interest accruing after our offer to pay our limit of liability." This policy provision, drafted by Progressive, requires an unconditional offer to pay the policy limits and Progressive's requirement that Norman execute a release transformed it into an offer to settle. As a result, Progressive's obligation under the policy to pay prejudgment interest "on that part of the judgment that does not exceed" the policy limits of liability was not extinguished.

2. Progressive paid all statutory costs covered under the policy.

3. Under the policy, Progressive agreed to pay "interest accruing after entry of judgment, until we have paid, offered to pay, or deposited in court, that portion of the judgment which does not exceed our limit of liability." Progressive's obligation under the policy to pay prejudgment interest is distinct from its "limit of liability" which was established on the declarations page. Progressive's payment to Norman of the $100,000.00 limit of liability for bodily injury was sufficient to extinguish its obligation under the policy related to post-judgment interest.

Judge Ahuja's Concurring Opinion States:

Judge Ahuja concurs in the court's opinion. In a separate concurring opinion, he explains that in his view the 'offer to pay' provision terminating Progressive's liability for pre-judgment interest is ambiguous, and must therefore be interpreted in favor of the insured and the injured party. Accordingly, the provision must be read to terminate Progressive's liability for pre-judgment interest only after the insurer has made an unconditional offer to pay its policy limits to the injured party. Such an unconditional offer would be consistent with the insurer's fiduciary duties to its insured, so long as the insurer had first attempted in good faith to employ its policy limits to obtain a complete release for the insured.

Majority Opinion by: Edward R. Ardini, Jr., Judge Date: March 2, 2021
Concurring Opinion by: Alok Ahuja, Judge

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