1981

Barbara Lima v. Earl Chambers v. Prudential Property & Casualty Insurance Company : Brief of Plaintiff-Respondent

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

BARBARA LIMA,

Plaintiff-Respondent,

vs.

EARL CHAMBERS,

Defendant-Respondent, Case No. 17622

vs.

PRUDENTIAL PROPERTY &
CASUALTY INSURANCE COMPANY,

Intervenor-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

Appeal from an Order of the
Second Judicial District Court,
Honorable Ronald Hyde

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NATURE OF THE CASE

This is an action by Plaintiff to recover for personal injuries suffered in an automobile collision with Defendant, an uninsured motorist, in July, 1977. Appellant, Plaintiff's insurance carrier, appeals from the denial of its Motion to Intervene as a party defendant.

DISPOSITION IN LOWER COURT

This action was commenced in April, 1979, in the Second Judicial District Court of Weber County. Thereafter, partial summary judgment of the issue of liability was granted against Defendant based upon his admission, in his affidavit, that he had caused the collision. Appellant moved to intervene

as a party defendant, which motion was denied.

Appellant filed its Petition for Intermediate Appeal on or about March 23, 1981, which was granted by Order of this Court dated April 2, 1981.

RELIEF SOUGHT ON APPEAL

Plaintiff-Respondent seeks an Order of this Court affirming the decision of the lower court denying Appellant's attempt to intervene as a party defendant.

STATEMENT OF FACTS

Appellant having accurately set forth a summary of the facts giving rise to this matter, Plaintiff-Respondent concurs therewith.

ARGUMENT

THE INSURANCE COMPANY OF THE PLAINTIFF HAS NO RIGHT TO INTERVENE IN THE TORT ACTION AGAINST AN UNINSURED DEFENDANT.

a.

The status of the law in Utah clearly prohibits intervention.

The question presently before this Court has been previously addressed and this Court has consistently reached the same conclusion: the insurance carrier is not a proper party to actions in tort such as the present one. That determination was reached both in the case of a plaintiff attempting to include the insurance carrier as a party, Christensen v. Peterson, 25 Utah 2d 411, 483 P.2d 447 (1971), and in the case of an insurance company attempting to join itself in the action.

Kesler v. Tate, 28 Utah 2d 355, 502 P.2d 565 (1972). See also, Wright v. Brown, 574 P.2d 1154 (Utah, 1978).

This Court set out the rationale for its determination in Christensen, stating essentially three separate bases: first, that it constituted prejudicial error to inject deliberately a disclosure of insurance coverage in a personal injury trial; second, that it was generally improper to join an action in tort, the primary action between Plaintiff and Defendant, with a supplemental action sounding in contract between Plaintiff and the insurance carrier; and finally, that it is intolerable to place the parties in a position where the insurer's interest is to defeat the claim of its own insured, citing Holt v. Bell, 392 P.2d 361, 363 (Okl. 1964).

The law as it exists in Utah is correct, both from a legal standpoint and an equitable one. It should remain unchanged, despite the challenges of Appellant, which are addressed hereafter.

b.

Appellant will be deprived of no constitutional right by failure to allow intervention.

It is entirely correct, as Appellant asserts, that one whose interests may be affected by judicial proceedings is entitled to the due process of law guaranteed by Utah Const. Art. I, §7: the right to be heard, with all of the procedural safeguards and opportunities the term "due process" entails. The fundamental misconception of Appellant in the present case

is its assertion that it has such a protectable interest; it does not.

The case before this Court is one sounding in tort between the Plaintiff and the Defendant. No allegation has been made that Appellant has committed a wrongful act rendering it liable to Plaintiff for damages, nor could such an allegation be sustained. This action seeks merely to establish that Plaintiff has been harmed, that the person causing that harm is the Defendant, and the extent of that harm. None of these things involve or implicate the Appellant for tort liability.

Appellant's relationship with the Plaintiff, on the other hand, stems from a contract between the two whereby Appellant, in exchange for a fee, agreed to provide Plaintiff with insurance protection. Appellant's interests are affected only if and when it is called upon to perform under its contract; i.e. when a money judgment is awarded to Plaintiff against the Defendant who, by virtue of his uninsured status, is unable to satisfy it. In other words, the Appellant's obligation matures only after the satisfaction of a condition precedent, the resolution of the tort action in favor of Plaintiff against an uninsured Defendant.

At such time as Appellant is called upon to perform under its contract, and it questions the validity of that contract or its required performance, it may seek redress in the courts. Certainly due process requires no more than this. Due process does not require that Appellant be allowed to inter-

vene in this action, one totally distinct from an action to interpret the contract of insurance. The mere possibility that Appellant, at some future date, may be required to do what it has promised to do is insufficient to require Appellant's entry into this suit, which is solely between Plaintiff and Defendant herein.

Appellant's assertions that failure to allow it to intervene herein will result in the Plaintiff and the uninsured motorist conspiring to obtain a judgment and an unlimited award of damages is without foundation. Appellant seems to disregard the necessity of Plaintiff meeting her burden of proof and discounts the ability of the courts to ensure legitimate proceedings. Surely the Appellant can not have so little faith in the judicial system. Plaintiff will receive a judgment for damages only if her case is proved by competent evidence, and only to the extent warranted by that evidence. The trial Court is fully capable of maintaining the integrity of its proceedings without Appellant's presence as watchdog.

This is so even if, as Appellant seems to assume, the Defendant will not actively contest the measure of damages. That assumption is not necessarily correct, however. The Defendant is not excused from his liability solely by virtue of his status as an uninsured motorist. He will be subject to any award of damages Plaintiff receives against him, and it cannot be assumed that the Defendant will have no interest in keeping such an award as low as possible.

Similarly, Appellant's assertion that it will be denied due process because it is prohibited from asserting any type of defense is groundless. Appellant may, if called upon to perform its contract, assert any and all defenses to that contract which it has available. No further protection is needed by Appellant, and no more is given any person in like circumstances. Nor will that, as Appellant asserts, result in a second trial of the same issues. Appellant's obligation is contractual and, should a dispute arise, the issues to be determined would concern the contract. As noted above, Appellant has no interest in or standing to raise defenses to the tort action, and such issues would be inappropriate in any dispute between Plaintiff and Appellant. The two cases being entirely distinct, there would be no violation of the principle of judicial economy, since the same issues would not be litigated twice.

Appellant's interests with, and obligations to, Plaintiff being entirely separate and distinct from those involved in this suit between Plaintiff and Defendant, and Appellant having full recourse to the courts at some later date if need be, there is no violation of due process in preventing Appellant's intervention herein.

c.

Rule 24, Utah Rules of Civil Procedure, does not require that Appellant's intervention be allowed.

Rule 24, Utah Rules of Civil Procedure, provides for

intervention "...(2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action... ." This rule, then, requires three elements for intervention to be allowed, all of which must be present: an interest in the action; inadequate representation of that interest; and a judgment which may be binding on the applicant. As will be seen, none of these elements exist in the present suit with regard to Appellant.

1. An interest in the action -- As has been previously noted, Appellant has no interest in the instant action, which is in tort and exists between Plaintiff and Defendant. Appellant's interest lies in its contractual relationship with Plaintiff, which is not involved in this suit. Appellant's liability is secondary, arising only upon the conclusion of the present action favorably to Plaintiff and Plaintiff's invoking her contract with Appellant.

This Court recognized the distinction of interests in Campbell v. Stagg, 596 P.2d 1037 (Utah 1979), an action for personal injuries suffered in an automobile accident. In that case, the Plaintiff, believing his injuries minimal, executed a release naming both the Defendant and his insurer, State Farm, in exchange for payment from the insurer. Subsequently, the Plaintiff's condition deteriorated, he rescinded his release and brought suit against the Defendant. At trial, Defendant sought to vacate the trial setting because the insurer had not

been named as an indispensable party. The motion was denied and Plaintiff was awarded a judgment. In affirming that the insurer need not be made a party, this Court said:

> State Farm has committed no act making it liable in tort to Plaintiff, as has defendant. State Farm did, however, contractually bind itself with defendant, the insured, to compensate persons such as plaintiff in the event of a collision caused by defendant. State Farm's liability to plaintiff arises only secondarily, through its contractual arrangement with defendant, and the release agreement itself cannot alter State Farm's liability to defendant under the terms of contract between them.
>
> In Utah, a plaintiff must direct his action against the actual tortfeasor, not the insurer. The fact that plaintiff signed a release agreement which named the insurer as a releasee does not change the nature of the rights between plaintiff and the insurer; plaintiff has no direct cause of action against the insurer which he could release. Plaintiff's only cause of action lies against defendant, which is an action in tort.

596 P.2d at 1039 (Emphasis in original; footnote omitted).

While in Campbell the insurer was that of defendant where here it is that of Plaintiff, the distinction between the insurer's interest in contract and the parties' interest in tort is equally applicable in the case at bar. Appellant's interest lying in contract with Plaintiff, it has no interest in the present suit justifying intervention under Rule 24.

2. Inadequate representation -- Appellant having no interest in the present litigation, it can not be said that its interests will be inadequately represented. Nevertheless, as stated above, it can not be assumed that Defendant will not

attempt to minimize the damages which might be awarded against him, since he will be liable thereon notwithstanding the existence of uninsured motorist coverage. Further, the burden placed upon the Plaintiff to satisfy the fact finder by competent evidence of the extent of damages suffered will more than adequately protect Appellant from any attempt at having the amount of such damages established, through collusion, as a higher figure than justified. It might be noted, perhaps unnecessarily, that Plaintiff has no intention of following such a course of action at any rate.

3. Binding judgment -- Any judgment rendered in this action will be against Defendant, not Appellant. As such, the judgment will not bind Appellant. Appellant's obligation to pay Plaintiff will arise, if at all, from its contract with Plaintiff, and that contract likewise determines the extent of Appellant's liability.

While it is true that the award of a judgment against Defendant may signal the time when Appellant's obligation arises, this is so not because the judgment acts directly upon Appellant but because the contract, as drafted by Appellant, sets forth that occurrence as the condition upon which Appellant shall perform on its contract. Similarly, the amount of a judgment against Defendant may determine the extent of Appellant's liability to Plaintiff, but again not merely because it is a judgment but because Appellant's contract utilizes that amount as the computation of Appellant's obligation to pay. This is readily

seen from the fact that, regardless of the size of judgment rendered against Defendant, Appellant will be obligated to pay no more than the limit set forth in the contract between it and Plaintiff.

Finally, Plaintiff could not execute upon the judgment against Appellant. Plaintiff could only, upon the award of a judgment, seek to enforce her contract with Appellant. Appellant could then assert any defenses to that contract it may have and ultimately seek the protection of the courts, if need be. Only upon the resolution of any litigation to interpret and enforce the contract, should that become necessary, would there be a judgment binding upon Appellant. Of course, it is readily apparent that in any such litigation Appellant would of necessity be a party, rendering it unnecessary that Appellant become a party herein. None of the requirements of Rule 24 having been met in this case, intervention is not permissible pursuant thereto.

d.

Public policy requires that intervention be denied.

This Court noted in Christensen v. Peterson, 25 Utah 2d 411, 483 P.2d 447, 448 (1971), citing Holt v. Bell, 392 P.2d 361, 363 (Okl. 1964), that:

> [w]hen the parties are placed in a position where the interest of an insurer is to defeat the claim of its own insured, the position of the parties is such that the court cannot countenance the situation. The placing of the parties thusly virtually makes the plaintiff's insurer the liability insurer of the defendant and interested in defeating plaintiff's claim.

Such is the case at bar.

Appellant herein drew up the contract of insurance between it and Plaintiff, established the conditions to be met, determined the requirements under which it would provide coverage, set the premiums to be paid by Plaintiff and otherwise dictated the terms of the contract. It can be safely assumed that Plaintiff had no input in the drafting of the contract; she could accept the terms or take her business elsewhere. Plaintiff accepted the contract and performed thereunder by paying the specified premiums and meeting the other requirements thereof. Certainly this Court cannot now tolerate Appellant's attempt, after reaping the benefit of Plaintiff's full performance under the contract, to take a position antagonistic to Plaintiff's interests and essentially defeat the contract it itself had fashioned. To do so would be unjust and unfair.

Appellant could have included in its contract the right to enter into litigation such as this with a position hostile to its insured; it failed to do so. The legislature, in providing for uninsured motorist coverage (Utah Code Ann. §41-12-21.1 (1967)), could easily have foreseen the very situation present before this Court and explicitly provided for the insurer's right to intervene; it did not. Plaintiff, by suggesting these alternatives, intimates no opinion on their enforceability, but merely asserts that if such an anamolous result as Appellant proposes is to be accepted, it be explicitly and clearly provided for before the contract is entered into.

CONCLUSION

The denial of Appellant's attempt to intervene in this

action contrary to Plaintiff's interests contravenes neither the right of due process nor the provisions of Rule 24. Appellant has no interest requiring its intervention in this proceeding, and may avail itself fully of any defenses it may have to its contract at such time as it is called upon to perform. To allow Appellant to enter and attempt to defeat Plaintiff's interests under the contract between Plaintiff and Appellant would be manifestly unfair.

The Lower Court's order denying intervention is correct and should be affirmed.

RESPECTFULLY SUBMITTED this 16th day of October, 1981.

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Brief of Plaintiff-Respondent to Timothy R. Hanson of Hanson, Russon, Hanson & Dunn, 175 South West Temple, Salt Lake City, Utah 84101, Attorneys for Intervenor-Appellant; and to Earl Chambers, Eden, Utah 84310, Defendant-Respondent, Pro-se; postage prepaid this 16th day of October, 1981.

Michelle Elm

MICHELLE ELM, Secretary