2004

Robert L. Youngblood II v. Auto Owners Insurance Company : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ROBERT L. YOUNGBLOOD, II,

Plaintiff-Appellant,

-v-

AUTO-OWNERS INSURANCE COMPANY, a corporation,

Defendant-Appellee.

REPLY BRIEF OF PLAINTIFF-APPELLANT, ROBERT L. YOUNGBLOOD, II

Case No. 20040184-CA

APPEAL FROM FINAL ORDER (SUMMARY JUDGMENT)
OF THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH
(HONORABLE WILLIAM B. BOHLING)

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I. INTRODUCTION

Mr. Youngblood stands by the legal analysis, and its application to the instant dispute, that is set forth in his Opening Brief. He seeks to refrain from unnecessarily repeating the arguments, regarding the correctness of which he remains confident, that appear in that Brief.

II. ARGUMENT

A. AUTO-OWNERS' BRIEF DEALS WITH THINGS THAT ARE REALLY NOT AT ISSUE, SUGGESTS A MISUNDERSTANDING OF PARTS OF MR. YOUNGBLOOD'S ARGUMENT, AND FAILS EVEN TO ATTEMPT TO COUNTER SIGNIFICANT PARTS OF HIS ARGUMENT. THIS COURT SHOULD REVERSE THE DISTRICT COURT'S SUMMARY JUDGMENT ON THE ESTOPPEL ISSUE.

As the Court will observe, Auto-Owners' Brief deals substantially with things that are really not at issue. Mr. Youngblood has never, for example, contested the proposition that he was a pedestrian. Nor has he argued, either in the District Court proceedings or in this Appeal, that there is any ambiguity in the subject policy of insurance or that that policy, by its terms, provides coverage to him in the particulars of this situation. Nor has he argued waiver.

Mr. Youngblood points out that Auto-Owners appears to have misunderstood part of his argument. He has not contended, and is not presently contending (contrary to the suggestion in Auto-Owners' Brief at 13-

14), that Auto-Owners' waiving its subrogation interest should work to estop Auto-Owners from denying coverage. He has brought the fact of Auto-Owners' waiver of its subrogation interest to the Court's attention for background purposes and to make it abundantly clear that Auto-Owners was aware of the fact that the availability of u.i.m. coverage was important to him and that he would be pursuing a claim under that coverage.

Another misconception under which Auto-Owners appears to labor (see its Brief at 13) has to do with Mr. Youngblood's settlement of his underlying tort claim. One of the things that Mr. Youngblood considered in connection with the question of whether he should accept policy limits or pursue the tortfeasor for assets beyond the $50,000 limits was the supposed availability of u.i.m. insurance coverage. The fact that he obtained policy limits from the liability carrier on the underlying claim does not somehow work to eviscerate or undermine his claim that Auto-Owners is estopped to deny him u.i.m. benefits. It underscores the validity of that claim.

Also, Auto-Owners has mistakenly, at pages 8-9 of its Brief, characterized the subject representations of its agents as ones pertaining to "future facts." Semantics aside, it is clear that both representations, the first made by a sales representative and the second made by a claims adjuster, referred to coverage that was supposedly available (but that was not, in fact,

available) under the subject policy. See Fact 13, set forth at 7-8 of Mr. Youngblood's Opening Brief, and record references there cited.

Mr. Youngblood's primary contention is that Auto-Owners is estopped, by reason of certain representations of its agents regarding the supposed existence of u.i.m. coverage for him as a pedestrian, to deny him coverage. In response to Mr. Youngblood's estoppel claim, Auto-Owners strongly relies, as it did in the District Court proceedings, on this Court's case of Perkins v. Great West Life Assurance Company, 814 P.2d 1125 (Utah App. 1991). Auto-Owners fails to reckon with Mr. Youngblood's analysis, set forth at 10-19 of his Opening Brief, that explains the difference between the situation in Perkins and the situation in this case and that discusses well-reasoned, persuasive case law from other jurisdictions. In those cases, as is the case here and as was not the case in Perkins, affirmative misrepresentations were made by insurance company representatives.

Auto-Owners attempts to distinguish but does not persuasively distinguish the Utah Supreme Court's observations in Ellerbeck v. Continental Casualty Co., 227 P. 805, 808 (Utah 1924). Mr. Youngblood has brought that case to this Court's attention not because of its specific holding but because of its observation, quoted in Mr. Youngblood's Opening Brief at 10, regarding the importance, in Utah, of honesty and fair dealing in insurance relationships.

Auto-Owners does not even attempt to distinguish or explain away the significance of Conder v. A.L. Williams & Associates, 739 P.2d 634 (Utah App. 1987), and Berkeley Bank for Co-ops v. Meibos, 607 P.2d 798 (Utah 1980), cases cited by Mr. Youngblood in his Opening Brief at 17 and 18. These cases all stand for the proposition that, as a matter of settled Utah jurisprudence, people and companies who misrepresent things do so at their peril.

According to Mr. Youngblood's deposition testimony (R. 65-66; 76; 95-105), which has not been refuted by Auto-Owners, specific representations were made regarding his being covered, as a pedestrian, that caused him to acquire the policy and that played a substantial role in his settling the underlying tort claim for liability policy limits. This Court very recently, in Larsen v. Exclusive Cars, Inc., 2004 UT App. 259, in the course of its reversal of the trial court's summary rejection of a fraudulent misrepresentation claim, *restated the hornbook rule that what is contained within the four corners of a* contract is not necessarily outcome-determinative. Questions of reasonable reliance on extra-contractual representations are, despite Auto-Owners' minimalistic argument to the contrary, worthy of serious judicial consideration *in cases of claimed estoppel just as they are in claims of fraudulent* misrepresentation. If Auto-Owners is correct in its analysis and if the rule of

Perkins is to be applied as broadly as Auto-Owners has argued it should be, people even less sophisticated than Mr. Youngblood, and even the mentally infirm, will be held to have no estoppel remedy, even in cases of the most egregious misrepresentations, if they, in reliance on pro-coverage misrepresentations by sloppy or unscrupulous insurance company representatives, do not read the language of their policies. Mr. Youngblood submits that that should not and cannot be the law.

The Utah Supreme Court has recently defined what is meant by "public policy." In Hansen v. America Online, Inc., 2004 UT 62, ¶ 12, that court explained:

> 'Public policy' is the label we attach to those shared expectations and standards of conduct which have acquired both widespread and deeply held allegiance among the citizenry generally.

There is no direct Supreme Court guidance on the question of whether this Court should accept the view of cases such as American Family Mut. Ins. Co. v. Jeffery, 200 U.S. Dist. LEXIS 12225 (S.D. Ind. 2000), and Harr v. Allstate Ins. Co., 255 A.2d 208 (N.J. 1969), discussed in Mr. Youngblood's Opening Brief at 13-16, that insurance companies should be estopped to deny coverage when their representatives make oral representations on which their insureds rely. But the analyses of those cases make sense, and this Court should follow the lead of those courts and the observations of the Utah

Supreme Court in Ellerbeck and Berkeley Bank and this Court in Conder and Larsen regarding the importance of honesty and fair dealing and in furtherance of the important public policy of holding persons and companies to their promises.

This Court should reverse the District Court's granting of Auto-Owners' Motion for Summary Judgment with respect to Mr. Youngblood's estoppel contention.

B. TRIABLE QUESTIONS OF FACT EXIST WITH RESPECT TO THE QUESTION OF WHETHER AUTO-OWNERS BREACHED ITS DUTY OF GOOD FAITH AND FAIR DEALING. THIS COURT SHOULD REVERSE THE DISTRICT COURT'S SUMMARY DISMISSAL OF MR. YOUNGBLOOD'S BAD-FAITH CLAIM.

As pointed out by Mr. Youngblood in his Opening Brief at 19, the Utah Supreme Court, in Beck v. Farmers Insurance Exchange, 701 P.2d 795, 801 (Utah 1985), made it clear that an insurance company can be found liable to its insured, for breach of the company's duty of good faith and fair dealing, if its investigation of, evaluation of, and decision regarding a claim is not done "diligently," "fairly," and "promptly." In Utah, the question of whether an insurance company has discharged its duty of good faith and fair dealing is not necessarily dependent on the question of whether an insured is ultimately determined to be entitled to benefits under a policy. Beck makes it clear that it is the process and not just the result of an insurance company's handling of a

claim that is at the heart of the question of whether the insurance company has acted in good faith and diligently, fairly, and promptly. Mr. Youngblood submits that the Court should analyze this question separately from its analysis of the estoppel claim and should determine that the particulars of Auto-Owners' handling of Mr. Youngblood's claim (see Statement of Facts appearing at pages 5-8 of Mr. Youngblood's Opening Brief) presents triable questions of fact regarding Mr. Youngblood's bad-faith claim. A jury could reasonably find that Auto-Owners did not diligently investigate Mr. Youngblood's claim, did not fairly evaluate it, and/or did not reasonably promptly reach its ultimate determination. A jury could reasonably find that Auto-Owners did not treat Mr. Youngblood fairly in its overall processing of the claim.

Mr. Youngblood through his counsel acknowledges that research has unearthed no case with facts similar to those of this case in which a court has held that a triable question of fact has been presented on the claim of breach of good faith and fair dealing. But Mr. Youngblood also points out that no contrary authority has been found. The reach of Beck v. Farmers is broad, and this Court should rule that the question of whether Auto-Owners breached its duty of good faith and fair dealing, in one or more particulars, is (analogous to, for example, the question of whether a defendant in a personal injury case

operated his motor vehicle in a negligent manner) a quintessential jury question. The Court should reverse the District Court's grant of summary judgment on Mr. Youngblood's bad-faith claim.

If the Court rejects this part of Mr. Youngblood's analysis and holds, for whatever reason, that, as a matter of law, Auto-Owners did not breach its duty of good faith and fair dealing, the Court should nonetheless determine that triable questions of fact exist with respect to Mr. Youngblood's contention that Auto-Owners is estopped to deny coverage.

III. CONCLUSION

Based on the foregoing analysis and that set forth in his Opening Brief, Mr. Youngblood urges the Court to reverse the Summary Judgment in favor of Auto-Owners and to remand this case for jury trial.

Respectfully submitted this 5th day of August, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of August, 2004, I caused to be served two true and correct copies of the foregoing REPLY BRIEF OF PLAINTIFF-APPELLANT, ROBERT L. YOUNGBLOOD, II by the method indicated below, and addressed to the following:

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