IN THE COURT OF APPEALS OF IOWA

No. 6-431 / 05-1632
Filed August 23, 2006

DANNY L. CORNELL,
Plaintiff-Appellant/Cross-Appellee,

vs.

GRINNELL MUTUAL REINSURANCE COMPANY,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Des Moines County, John G. Linn and R. David Fahey, Judges.

Danny L. Cornell appeals challenging certain rulings made in his claim for payment of damages to his vehicle that he claims were covered under an auto policy he carried with Grinnell Mutual Reinsurance Company. Grinnell Mutual cross-appeals contending defendant's claim should have been dismissed in its entirety. **AFFIRMED.**

David L. Phipps and Stephen D. Marso of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Douglas A. Haag of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

SACKETT, C.J.

Danny L. Cornell sued Grinnell Mutual Reinsurance Company, his auto insurance carrier, contending Grinnell Mutual should, among other things, pay for damage to the transmission of his insured vehicle. Both parties filed a number of motions and the question of whether Grinnell Mutual should pay for the transmission was ultimately submitted to the jury, which returned a verdict in Cornell's favor. Cornell appeals contending the district court made certain erroneous rulings in precluding the admission of certain evidence and in dismissing certain of his claims. Cornell also contends the district court should have awarded him attorney's fees. Grinnell Mutual has cross-appealed contending Cornell's claim should have been dismissed as a matter of law. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Cornell had in a single-vehicle accident while driving his 1996 Toyota Landcruiser. On December 17, 2000, Cornell was driving on a rural road during poor weather conditions and slid off an icy road into a ditch. The front-end of the Toyota hit the opposite side of the ditch and left the Toyota settled at a steep angle, with the front-end lower than the back-end.

Cornell attempted to drive the Toyota from the ditch by rocking it out, driving forward and then backward. After Cornell was unable to drive the Toyota out, he walked to a nearby farmhouse and called a tow truck. Cornell returned to the Toyota and he again unsuccessfully tried to rock out the Toyota. Russ Wagner subsequently arrived with a tow truck. Wagner had difficulty pulling the Toyota from the ditch due to the icy road conditions so he instructed Cornell to

put the Toyota in reverse and "go as hard as he could" while Wagner attempted to pull it out. The Toyota was successfully removed from the ditch.

Cornell drove home, but immediately noticed mechanical problems. Cornell called Wagner, who is a mechanic. Wagner suggested snow may have jammed into the mechanics of the Toyota and Wagner offered to let Cornell bring the Toyota to his shop to let the snow melt overnight. Still the mechanical problems persisted and Wagner suggested Cornell take the Toyota to a Toyota dealer, which Cornell did. At the dealership the problem was diagnosed as a burned transmission that needed to be replaced. The mechanic at the dealership suspected the transmission was "starved of fluid due to the angle the vehicle was at," which caused the damage. The transmission was replaced for $5,206.62 and some paint damage allegedly caused by the accident was repaired for $156.81.

Cornell filed a claim for coverage of the loss with Grinnell Mutual. The claim was assigned to claims adjuster Bob Wysong. Wysong denied the claim. Grinnell Mutual supported Wysong's denial.

On December 13, 2002, Cornell filed a three-count petition in district court (1) against Grinnell Mutual for breach of contract, (2) against Grinnell Mutual for first-party bad faith in denying his claim, and (3) against claims adjuster Wysong for intentional interference with contractual relations.

On January 15, 2004, Cornell filed a partial motion for summary judgment on the breach of contract claim. The motion was denied. The district court found there existed "genuine issues of material fact underlying the coverage question." On April 20, 2004, Grinnell Mutual filed a motion in limine to preclude plaintiff

from presenting evidence at trial that defendants "conducted an inadequate/improper investigation, processing and/or evaluation of his claim for coverage."[1] The district court held that, because it previously found there to be genuine issues of material fact as to the coverage issue, the issue of coverage was "fairly debatable." Where a claim is "fairly debatable" an insurance company can debate that claim without being subject to a first-party bad faith claim. *Sampson v. American Standard Ins. Co.*, 582 N.W.2d 146, 149 (Iowa 1998). Further, the district court held that where a claim is fairly debatable, a claims representative such as Wysong cannot be found liable for intentional interference with contractual relations. Therefore, the court granted defendants' motion to preclude evidence regarding whether "the investigation/processing/consideration of plaintiff's claim for coverage was inadequate, improper, deficient and/or the product of improper motives." Essentially, the court held such evidence was irrelevant pursuant to Iowa Rule of Evidence 5.402 because plaintiff did not have valid claims on counts II and III of his petition.

Subsequent to the district court's ruling on the admissibility of evidence, defendants filed a motion for partial summary judgment on the first-party bad faith claim and the intentional interference with contractual relations claim. The district court granted summary judgment on those claims.

A jury trial commenced on June 7, 2005 on the breach of contract claim. At the close of Cornell's case Grinnell Mutual filed a motion for directed verdict contending there was no coverage as a matter of law under the "other than

[1] The district court stated the motion was actually a "request for advance ruling on the admissibility of evidence" and so construed the motion. For purposes of brevity and consistency we will refer to the motion as a motion in limine.

collision" provision of the insurance policy.[2] The district court held that the list of perils included in the "other than collision" provision was exclusive. The type of loss incurred by Cornell was not on that list; therefore, the district court held the loss was not covered by the "other than collision" provision as a matter of law and granted Grinnell Mutual's motion for directed verdict on that issue. At the close of Grinnell Mutual's evidence Cornell filed a motion for directed verdict that was denied by the district court.

Cornell's remaining claim, that the loss was covered by the "collision" coverage provision of the policy, was submitted to the jury. The jury returned a verdict in favor of Cornell and awarded him $5,206.62 for the transmission and $120 for temporary transportation. The district court entered judgment in favor of Cornell and against Grinnell Mutual in the amount of $5,076.62 (reducing the award by the amount of the $250 insurance deductible) plus interest and court costs. Cornell filed a post-trial motion requesting the district court order Grinnell Mutual to pay his attorney fees and costs, which was denied.

Cornell on appeal contends (1) the district court erred in not granting his pretrial motion for summary judgment because he was entitled to judgment as a

[2] Relevantly, this provision provides:

> (A) We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto," including their equipment. . . . We will pay for your loss to "your covered auto" caused by (1) Other than "collision" . . .
> (B) Loss caused by the following is considered other than "collision":
>
> 1. Missiles or falling objects;
> 2. Fire;
> 3. Theft or larceny;
> 4. Explosion or earthquake;
> 5. Windstorm;
> 6. Hail, water or flood;
> 7. Malicious mischief or vandalism;
> 8. Riot or civil commotion;
> 9. Contact with bird or animal; or
> 10. Breakage of glass.

matter of law under both the "collision" and "other than collision" provisions of his insurance policy, (2) the district court erred in granting defendants' motion in limine, (3) the district court erred in granting the defendants' motion for partial summary judgment on the first-party bad faith and intentional interference with contractual relations claims, (4) the district court erred in granting Grinnell Mutual's motion for directed verdict on the "other than collision" coverage claim, (5) the district court erred in denying Cornell's motion for directed verdict, and (6) the district court erred in denying Cornell's request for attorney fees and costs. Grinnell Mutual on cross-appeal contends (1) the district erred as a matter of law when it failed to direct a verdict in its favor finding the "collision" provision of the policy did not cover Cornell's loss as a matter of law, and (2) the district court erred when it failed to direct a verdict in its favor as a matter of law finding the "mechanical breakdown" exclusion applied to preclude coverage. We affirm.

II. CORNELL'S APPEAL.

A. Cornell's Motion for Partial Summary Judgment.

We first address Cornell's contention that the district court erred in not ruling that his loss was covered by the insurance policy as a matter of law under either the "collision" or "other than collision" provisions of the policy. If there was any error in not granting the motion based on the "collision" provision, the error was cured by the verdict in Cornell's favor based upon that provision. *Brant v. Bockholt*, 532 N.W.2d 801, 803 (Iowa 1995). Furthermore, even if the failure of the district court to submit "other than collision" theory to the jury was in error, which we do not reach a conclusion on here, it was also cured by the verdict in

Cornell's favor. *See Mills v. Guthrie County Rural Elec. Co-op. Ass'n*, 454 N.W.2d 846, 849 (Iowa 1990).

B. Defendants' Motion in Limine.

We review rulings on the admission of evidence for an abuse of discretion. *See Clinton Physical Therapy Services, P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 609-10 (Iowa 2006). "[W]e give much leeway [to] trial judges who must fairly weigh probative value against probable dangers." *State v. Taylor,* 689 N.W.2d 116, 124 (Iowa 2004).

Through defendants' motion in limine, the district court was asked to determine whether the insurance claim was "fairly debatable" because "when an objective reasonable basis for denying the claim exists, the insurer as a matter of law cannot be held liable for bad faith. The debate may involve a dispute concerning an issue of fact or law." *Sampson v. American Standard Ins. Co.*, 582 N.W.2d 146, 150 (Iowa 1998). Defendants' argued that if the claim was fairly debatable, then the claims of first-party bad faith and intentional interference with contractual relations should be dismissed as a matter of law. As a result of the claims being fairly debatable, defendants argued evidence to support plaintiff's case on those two claims was irrelevant and should not be allowed at trial.

The district court granted defendant's motion, finding the insurance claim was fairly debatable because there were factual disputes as to "when, where, and how the transmission damage occurred." We agree.

Additionally, in order for the transmission damage to be covered due to Cornell's accident, the accident had to be the proximate cause of the

transmission damage. *Bettis v. Wayne County Mut. Ins. Ass'n*, 447 N.W.2d 569, 571 (Iowa Ct. App. 1989). Even assuming the facts alleged by Cornell to be true, that the transmission was damaged due to him trying to rock the Toyota out of the ditch or driving in reverse to assist the tow truck in pulling the Toyota out of the ditch, the issue of the proximate cause of the transmission damage remained fairly debatable. Reasonable minds could differ as to whether hitting the ditch was "the predominant cause which set in motion the chain of events causing the loss" or whether defendant's actions trying to free the car was an intervening event that was the predominant cause of the loss. *See* 11 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance 3d* § 156.86, at 107 (2005) ("Where the circumstances are such that a reasonable person would not continue to operate the vehicle, the insurer will not be liable for harm which is sustained as the result of such operation after the collision.")

We cannot say the district court abused its discretion in granting the motion; therefore, we affirm on this issue.

C. Defendant's Motion for Partial Summary Judgment.

We review summary judgment rulings for correction of errors of law. Iowa R. App. P. 6.4; *Mason v. Vision Iowa Bd.*, 700 N.W.2d 349, 353 (Iowa 2005). Where the record shows no genuine dispute of a material fact, summary judgment is appropriate. *Mason*, 700 N.W.2d at 353. In determining whether summary judgment is appropriate, we view the entire record in a light most favorable to the nonmoving party. *Id.* We also indulge in every legitimate inference that the evidence will bear in an effort to ascertain the existence of a fact question. *Id.*

The motion in limine sustained by the district court precluded Cornell from presenting evidence to support his claims of first-party bad faith and intentional interference with contractual relations; however, it did not go so far as to dismiss those counts because defendants had not filed a motion for summary judgment. Defendants subsequently filed a motion for partial summary judgment asking for dismissal of those claims; the district court granted the motion.

We agree with the district court's position. Upon granting of the motion in limine preventing the admission of evidence to support the first-party bad faith and intentional interference with contractual relations claims, summary judgment was appropriate. There existed no genuine issues of material fact on those claims and defendants were entitled to judgment as a matter of law. *See Mason*, 700 N.W.2d at 353. We affirm on this issue.

D. District Court's Grant of Grinnell Mutual's Motion for Directed Verdict.

Cornell appeals the district court's directing a verdict that, as a matter of law, the loss sustained by Cornell was not covered by the "other than collision" provision in his insurance policy. We do not decide whether the district court's ruling was in error. We once again note if any error was committed in failing to submit an additional theory of liability, that error was cured by the verdict in Cornell's favor. *Mills*, 454 N.W.2d at 849.

E. District Court's Denial of Cornell's Motion for a Directed Verdict.

Once more, we do not decide whether the district court's ruling was in error. If any error was committed in failing to grant Cornell's motion, that error was cured by the verdict in Cornell's favor. *Id.*

F. Cornell's Motion for Attorney's Fees and Costs.

Cornell filed a post-trial motion pursuant to Iowa Rule of Civil Procedure 1.517(3) requesting that Grinnell Mutual be required to pay his attorney's fees and costs due to Grinnell Mutual's alleged failure admit to certain discovery requests. The district court denied the motion. We review for an abuse of discretion. *Koegel v. R Motors, Inc.*, 448 N.W.2d 452, 456 (Iowa 1989).

In ruling on the motion the district court made appropriate findings and ultimately held that "a reasonable person in the defendant's position with the information available at the time the requests for admission were made, could believe there was a basis to deny the plaintiff's requests." We agree with the district court's findings and the result reached. We affirm on this issue.

III. GRINNELL MUTUAL'S CROSS-APPEAL.

Grinnell Mutual argues the district court erred when it refused to rule in its favor on its motion for directed verdict that Cornell's loss was not a "direct and accidental loss" caused by a "collision" as a matter of law. We review the denial of a motion for directed verdict for errors at law. *Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 766 (Iowa 2002) (citing *McClure v. Walgreen Co.*, 613 N.W.2d 225, 230 (Iowa 2000)). We must consider the evidence in a light most favorable to the nonmoving party. *Id.* If each element of the claim is supported by substantial evidence in the record, the court must overrule the motion. *Lamb v. Manitowoc Co.*, 570 N.W.2d 65, 68 (Iowa 1997). However, if reasonable minds could

deduce different inferences from the evidence presented, the court must submit the issue to the jury. *Rife*, 641 N.W.2d at 767.

We first must determine if there was a "collision" within the meaning of the insurance policy. In viewing the facts in the light most favorable to Cornell, on the evening of the accident Cornell lost control of his Toyota while driving it and slid into a ditch at a steep angle with the front-end of the Toyota resting against the opposite side of the ditch causing the Toyota to become stuck. It took a tow truck to pull it out. The policy defines collision as "the upset of 'your covered auto' or a 'non-owned auto' or their impact with another vehicle or object." We conclude the evidence viewed in the light most favorable to Cornell constitutes sufficient evidence of a collision. Reasonable minds could find that Cornell's vehicle impacted an object, that being the side of the ditch. Therefore, it was appropriate for the district court to submit the case to the jury on the collision element. *Id.*

We must next determine whether the transmission damage was a "direct or accidental loss" caused by the collision. Viewing the evidence in the light most favorable to Cornell, the transmission was damaged by the Toyota's position in the ditch, Cornell trying to rock the Toyota out of the ditch, and/or by Cornell driving in reverse while being towed out of the ditch. The factual circumstances are such that reasonable minds could deduce different inferences as to whether it was reasonable for Cornell to continue to operate the vehicle in the situation with which he was presented. *See Bettis*, 447 N.W.2d at 571. Therefore, the district court appropriately submitted the issue to the jury. *Rife*, 641 N.W.2d at 767.

Finally, Grinnell Mutual argues the district court erred when it failed to direct a verdict in its favor based on the mechanical breakdown exclusion of the insurance policy. "'Mechanical breakdown' means a functional defect in the moving parts of machinery which causes it to operate improperly or cease operating." *Connie's Const. Co., Inc. v. Continental Western Ins. Co.*, 227 N.W.2d 204, 207 (Iowa 1975). Similar to the *Connie's Construction* case, if there was a mechanical breakdown in the present case it was not caused by a "functional defect," but instead the breakdown was caused by the actions of Cornell trying the drive the vehicle out of the ditch. *Id.* Thus, the district court appropriately denied Grinnell Mutual's motion for directed verdict on this issue.

AFFIRMED.