

State of Minnesota
In Court of Appeals

DAVID S. KASID,

Appellant/Petitioner,

vs.

COUNTRY MUTUAL INSURANCE COMPANY,

Respondent.

APPELLANT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUE FOR REVIEW

I.

Did the trial court err in its conclusion that a passenger, who does not believe that he was injured in a collision, has a duty to obtain information regarding the other driver's insurance, driver's license, name, address, phone number, et cetera?

STATEMENT OF THE CASE

On December 23, 2006, Appellant David S. Kasid was a passenger in a vehicle owned by Joyce Mancino (a.k.a. Joyce Arlt) and operated by Timothy Arlt. Plaintiff was traveling as a passenger at or near the intersection of Aboretum Boulevard and Market Boulevard in the City of Chanhassen. The vehicle in which Plaintiff was a passenger was stopped at a red light when it was rear-ended by Defendant Jane Doe.

The occupants of the vehicle in which Plaintiff was a passenger got out to inspect the damage done to their vehicle. Joyce Arlt spoke with the driver of the other vehicle and obtained her telephone number and license plate number. She wrote that information down on a sales receipt and kept the sales receipt in her purse for a period of time.

A few months after the accident occurred, Plaintiff's symptoms worsened and Plaintiff attempted to obtain Jane Doe's information from Joyce Arlt. At that time, Joyce Arlt informed Plaintiff that the receipt she had written the information on was no longer available and she did not recall what had happened to it.

The Appellant made a claim for those uninsured motorist (UM) benefits from the Respondent Country Mutual Insurance Company and was denied. A Summons and Complaint was served upon Respondent, who Answered the Complaint and sent a Request for Admissions.

After receiving Mr. Kasid's responses to admissions, Respondent brought a motion for Summary Judgment, arguing that Appellant had not triggered Country's UM

coverage.

The Trial Court held that “Plaintiff was unable to provide any evidence tending to show that the Doe vehicle was an uninsured vehicle under the policy language” and granted Respondent’s Summary Judgment motion and dismissed Appellant’s case. This appeal followed.

STATEMENT OF THE FACTS

On December 23, 2006, Appellant was a passenger in a vehicle driven Mr. Tim Arlt and owned by Joyce Mancino (Arlt) operating near the intersection of Aboretum Boulevard and Market Boulevard in Chanhassen, MN. (AA.2) On that date, the vehicle which Appellant was a passenger in was rear ended by Jane Doe. (AA. 3) At all times mentioned Appellant was covered under defendant’s automobile insurance, said insurance issued by Respondent Country Mutual Insurance Company. (AA. 3)

Immediately following the accident, Joyce Arlt spoke with the driver of the other vehicle and obtained her license plate and phone number. (AA. 39) Ms. Arlt wrote this information on the back of a sales receipt and placed it in her purse. (AA. 39) Appellant, at the time of the accident, did not realize he was injured and felt no need to obtain any identifying information of Jane Doe. (AA. 35, 36) Furthermore, Appellant knew that the owner of the vehicle in which he was a passenger had obtained all pertinent identifying information. (AA. 36)

Once Appellant’s injuries were made evident, Appellant notified Tim Arlt that he

needed the information that had been obtained at the accident, to which he was informed that Joyce Arlt did not recall what she had done with the information and it was no longer available. (AA. 39)

Appellant then made a claim for uninsured motorist benefits and a summons and complaint was served on Country Mutual Insurance Company. (AA. 1) Shortly thereafter, Respondent moved for summary judgment claiming that Country's UM benefits had not been triggered. (AA. 10) Summary judgment was granted by Judge M. Michael Monahan. (AA. 75)

ARGUMENTS

I.

STANDARD OF REVIEW

On appeal from summary judgment, a reviewing court asks whether (1) there are any genuine issues of material fact; and (2) whether the lower court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "The reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). This review is undertaken de novo. *Art Goebel, Inc v. North Suburban Agencies, Inc* , 567 N.W.2d 511, 515 (Minn. 1997).

Summary judgment is a "blunt instrument, which should be employed only where it is perfectly clear that no issue of fact is involved in the cause of action." *Donnay v.*

Boulware, 144 N.W.2d 711, 716(Minn. 1966). Summary judgment must be used sparingly as it "is not a substitute for trial and may be granted only if, based on the entire record, no issue or material fact exists, and the moving party is entitled to judgment as a matter of law." *Bixler by Bixler v. J.C. Penney Co., Inc.*, 376 N.W.2d 209, 215 (Minn. 1985). Thus, a motion for summary judgment should be denied if reasonable persons might draw different conclusions from the evidence presented. *Carl v. Pennington*, 364 N.W.2d 455, 457 (Minn. App. 1985).

II.

Did the trial court err in its conclusion that a passenger, who was involved in a collision but does not believe that he was injured at that time, has a duty to obtain information regarding the other driver's insurance, driver's license, name, address, phone number, etc.?

A PASSENGER DOES NOT HAVE A DUTY TO OBTAIN INFORMATION FROM THE OTHER DRIVER WHEN INVOLVED IN AN ACCIDENT

According to Minnesota Statute, the duty to exchange and obtain information rests with the drivers of the respective vehicles. Therefore, in the instant case the duty to obtain this information rested with Mr. Arlt, and him alone. In this case Mrs. Arlt, the owner of the vehicle and policy holder, did obtain the information. Appellant had no obligation to obtain such information by law, especially since he knew Mrs. Arlt had obtained this information.

Driver to give information. (a) The driver of any motor vehicle involved in an accident resulting in bodily injury to or death of any individual, or damage to any vehicle driven or attended by any individual, shall stop and give the driver's name, address, and date of birth and the registration plate number of the vehicle being

driven. The driver shall, upon request and if available, exhibit the driver's license or permit to drive to the individual struck or the driver or occupant of or individual attending any vehicle collided with. The driver also shall give the information and upon request exhibit the license or permit to any peace officer at the scene of the accident or who is investigating the accident. The driver shall render reasonable assistance to any individual injured in the accident. See M.S.A. § 169.09, subd. 3.

In fact, Minnesota Statute § 169.09 clearly and concisely imposes all duties to obtain information upon the driver of the vehicle. M.S.A. § 169.09, subd. 1, 2, 3 does not, at any point, mention any duty of a passenger to obtain or exchange any information with anyone in the event of any accident.

Furthermore, when an individual obtains a drivers license and makes the conscious decision to drive, it is his duty to abide by and obey the statutes of the State of Minnesota. Minnesota Statute § 169.09 states that the driver is required to exchange information, not the passenger. See M.S.A. § 169.09. Thus, it seems contrary to law to deny Appealant coverage since Ms. Arlt did obtain the necessary information, although she failed to preserve it and make it available to her passenger. Again, the responsibility to obtain any identifying information falls on the operator of the vehicle, not on a passenger. If the legislature had intended to extend this duty to passengers, it could have done so when the statute was enacted.

THE METHOD OF DETERMINING THE LEGISLATURE'S INTENT IS TO RELY ON THE PLAIN MEANING OF THE LANGUAGE USED IN THE STATUTE

Minnesota Statute 169.09 clearly imposes all duties to obtain identifying information on the driver of the vehicle. See M.S.A. § 169.09, subd. 1, 2, 3. When a

statute is unambiguous, the Court of Appeals looks only at its plain language and presumes that language manifests legislative intent. See *In re Welfare of S.R.S.*, 756 N.W.2d 123 (Minn.App.,2008). Furthermore, when construing a statute, the court begins by examining the statutory language; a statute is applied according to its plain meaning unless its meaning is ambiguous. See *State v. Moen*, 752 N.W.2d 532 (Minn.App.,2008). Finally, A statute must be construed according to its plain language. See *Munger v State*, 749 N.W.2d 335 (Minn.,2008).

A statute is only ambiguous when the language is subject to more than one reasonable interpretation. *In re Stadsvold*, 754 N.W.2d 323 (Minn., 2008). The word driver is unambiguous. In fact, M.S.A. § 169.011, Subd. 24 states “Driver” means “every person who drives or is in actual physical control of a vehicle.” There is no ambiguity with this term and it must be interpreted by its plain meaning. Thus, by statute Appellant had no obligation to obtain identifying information from the other driver. The word “driver” simply cannot be interpreted any other way than to mean the driver of that vehicle. The term “driver” is not ambiguous; therefore, the responsibility to obtain information rested with Mr. Arlt and not Appellant to obtain information. Accordingly, Appellant should not be denied UM benefits for not doing something he was not required to do by policy or by statute .

Respondent has cited *Lhotka v. Illinois Farmers Ins Co.* , 572 N.W.2d 772 (Minn. Ct.App.1998). In this case the accident victim, the insured, had time to obtain identifying

information, but failed to do so. In the case before the court, Appellant had no reason to obtain the information from the other driver because he knew that Mrs. Arlt had already obtained this information. Thus, there was no reason for him to do so, especially since he did not realize that he was injured at the time of the accident. Furthermore, he was not required to do so by statute since he was not the driver of the vehicle.

In *Lhotka*, the other driver stopped, questioned Lhotka about her condition, and did not leave until Lhotka assured her that she was okay. In this case, Appellant did not speak directly to the driver of the other vehicle because he did not realize he was injured at the time of the accident and because he was not required to do so by statute.

Respondent has also cited *Halseth v. State Farm Mut. Auto. Ins. Co.*, 268 N.W.2d 730 (Minn.1978) for its definition of hit-and-run. Plaintiff concurs that this is the correct definition. *Halseth* found that an accident victim, the driver, who has an opportunity to retrieve identifying information was not entitled to bring a uninsured motorist claim. The distinction between *Halseth* and the instant case is that Joyce Arlt, the owner and insured, did obtain the necessary information from the other driver and Appellant knew she had done so. Once Appellant realized the severity of his injuries, he did all that he could do to obtain the identification of the other driver from the driver of the vehicle in which he had been a passenger. He sought this information from Tim and Joyce Arlt, the only people who had the legal duty to obtain it.

Mrs. Arlt's policy requires the insured to report information about an accident to

the insurer within thirty days, and also requires the insured to report the accident to the police within twenty-four hours or as soon as practicable. If Mr. or Mrs. Arlt met either of these obligations, the pertinent information would have been preserved and available to Appellant..

These obligations cannot fairly be imposed on a passenger who is an unnamed insured. Appellant was not in privity of contract with the Mrs. Arlt's insurance carrier. Furthermore, the policy and Minnesota Statute do not say anything about what passengers must do following a collision.

APPELLANT SHOULD BE ABLE TO RECOVER UNDER THE HIT-AND-RUN PROVISIONS OF COUNTRY INSURANCE'S POLICY

Appellant has not found any Minnesota case with a similar fact scenario to his own. However, in *Pilgrim Ins. Co. v. Molard*, 897 N.E.2d 1231 (Mass.App.Ct., 2008), a foreign jurisdiction case, a passenger, Molard, was in the taxi cab that caused an accident. After the accident, Molard remained in the taxi cab while the taxi driver got out to speak with the driver of the other vehicle. After the two drivers spoke, they returned to their respective vehicles and went on their way. Molard, not realizing she was injured at the time of the accident, did not obtain any identifying information of from either of the drivers and was then dropped off at her house.

Later Molard realizing that she was injured made a claim for UM benefits. The court in *Pilgrim* held that a person who is injured in "an accident and who, unaware of his injuries or incapacitated by them and leaves the vehicle without obtaining identifying

information about the vehicle is nevertheless entitled to recover under the hit-and-run provisions of a standard state automobile insurance policy.”

Pilgrim and the case now before the court both involve passengers, who had no culpability for the collision and no duty to identifying information. The vehicle in which Ms. Molard was riding was the at-fault vehicle and the driver was unknown to her. One, therefore, could argue that Ms. Molard had opportunity and greater reason to obtain the drivers’ information from the taxi driver considering she remained in the taxi after the accident and continued on her way afterwards. Yet, the court held that she was entitled to make a UM claim. The pivotal factor mitigating in favor of Molard was that she was not aware of injuries at the time of the collision and, therefore, had no reason to obtain identifying information.

Similarly, Appellant did not know at the accident scene that he was injured. Furthermore, he knew that the Mrs. Arlt had obtained the necessary information and this person was of course known to him. He had a source to go to obtain this information, if the need should ever arise.

Appellant is being penalized because the only person who had a statutory duty to obtain identifying information failed to preserve it. Certainly, the duty to obtain such information must also entail a duty to preserve it, especially for the passengers in one’s vehicle

In the case before the court, Respondent’s argument is that Appellant should be

penalized and stopped from making a UM claim, because she did not preserve the identifying information for her passenger. In short, Respondent is asserting that if she obtains but then fails to maintain identifying information, then her passenger is simply out of luck. This is a defense of unclean hands: The Respondent failed to do that which she should have done; therefore, her passenger must pay the price.

Other jurisdictions have also held that where a person is hit by a vehicle and talked with its driver, but does not realize at that time he is injured, he may thereafter consider that vehicle as if it were a hit and run vehicle. See *Riemenschneider v. Motor Vehicle Acc Indem Corp*, N.Y.Ct.App., 232 N.E.2d 630 (1967). In *Riemenschneider*, immediately after Riemenschneider's car, in which he was a passenger, was struck, the driver got out and inspected his own and the other car. Seeing no damage to either, he inquired of Riemenschneider and another passenger if they were "all right" and received an affirmative answer. Having no reason to inquire further, he did not take the license number of the other car nor get the name of the owner or driver and both cars drove away. The following day, Riemenschneider was admitted to the hospital and in due course made a claim for UM benefits.

The court in *Riemenschneider* held that "an injured person who is not aware of his injury until it is too late to take steps to make the necessary identification is in precisely the same situation of deprivation of remedy as he would be if he knew he was hurt but the other driver left the scene without opportunity to identify him."

Appellant did not realize he was injured until some time after the accident. Furthermore, Ms. Arlt went one step further than the driver in *Riemenschneider*, and did obtain the information. Following *Riemenschneider*, Appellant is in the exact same position as he would have been if he would have realized the extent of his injuries at the scene of accident, and the driver of the other vehicle would have left the scene without giving Mrs. Arlt the opportunity to obtain identifying information.

CONCLUSION

Based on the foregoing, Appellant David S. Kasid respectfully requests that this Court vacate the district court's judgment and enter an order in Respondent's favor, declaring that Mr. Kasid is entitled to UM benefits from Country Mutual Insurance Company arising out of this accident.

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