STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1908

Carol Dearstyne,
Appellant,

vs.

Auto Club Insurance Association
d/b/a AAA d/b/a AAA Michigan,
Respondent.

Filed July 13, 2010
Affirmed
Johnson, Judge

Carlton County District Court
File No. 09-CV-09-927

Jeffrey M. Montpetit, Marcia K. Miller, Sieben, Grose, Von Holtum & Carey, Ltd., Minneapolis, Minnesota (for appellant)

John D. Kelly, David L. Tilden, Hanft Fride, P.A., Duluth, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

This appeal presents the question whether a person may pursue a claim for underinsured-motorist benefits against an insurance company even though she previously

executed a release of "any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensations" against the insurance company. The district court entered summary judgment in favor of the insurance company. We affirm.

FACTS

In June 2005, Carol Dearstyne was a passenger in a motor vehicle owned and operated by William Rodgers in the city of Cloquet. Rodgers and Dearstyne were rear-ended by a vehicle owned and operated by Gerald Vork. Rodgers was insured by Auto Club Insurance Association (AAA); Vork was insured by Illinois Farmers Insurance Company.

In March 2007, Dearstyne sued Vork for negligence. Vork later pleaded a third-party claim against Rodgers. In August 2008, the three parties reached a mediated settlement agreement providing, among other things, that Vork and Rodgers would pay Dearstyne $16,500 and $500, respectively. On September 4, 2008, Dearstyne mailed a *Schmidt-Clothier* notice of the settlement offer to AAA, which received it on September 8, 2008. AAA did not respond to the notice.

On October 13, 2008, pursuant to the mediated settlement agreement, Dearstyne executed a two-page, seven-paragraph document entitled "Release of All Claims." The first two paragraphs of the document provide as follows:

> FOR AND IN CONSIDERATION OF the payment in the amount of Sixteen Thousand Five Hundred and 00/100 Dollars ($16,500.00), the receipt of which is hereby acknowledged, I, being of lawful age, do hereby release, acquit, and forever discharge Gerald Vork and his insurer,

> Illinois Farmers Insurance Company, and William Joseph Rodgers and his insurer, Auto Club Insurance Association, of and from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensations, on account of, or in any way growing out of, any and all known or unknown personal injuries and property damage resulting from, or to result from, the accident that occurred on or about June 29, 2005, at or near the intersection of 14th and Kenwood, City of Cloquet, County of Carlton, State of Minnesota.
>
> The undersigned hereby acknowledges receipt and payment of $16,500 for all bodily injuries.

The sixth paragraph states, "This release contains the entire agreement between the undersigned and the parties to be released."

Dearstyne later sought underinsured-motorist (UIM) benefits from AAA, Rodgers's insurer. AAA denied the claim on the ground that Dearstyne had released all claims against AAA. In November 2008, Dearstyne commenced this declaratory judgment against AAA, seeking to establish that AAA is obligated to provide her with UIM benefits. In May 2009, AAA moved for summary judgment. In September 2009, the district court granted the motion, reasoning that Dearstyne released AAA from any obligation to provide her with UIM benefits. Dearstyne appeals.

D E C I S I O N

Dearstyne argues that the district court erred by concluding, as a matter of law, that AAA is not obligated to provide her with UIM benefits because she released her UIM claim against AAA when she executed the two-page Release of All Claims.

A district court must grant a motion for summary judgment "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see also* Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the party against whom summary judgment was granted. *Frieler v. Carlson Mktg. Group, Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We apply a *de novo* standard of review to a grant of summary judgment, and we view the evidence in the light most favorable to the non-moving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008); *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 39 (Minn. App. 2010).

Dearstyne's argument calls for an interpretation of the release. We interpret a release of claims in the same manner as we interpret a contract. *Karnes v. Quality Pork Processors*, 532 N.W.2d 560, 562 (Minn. 1995). "The primary goal of contract interpretation is to ascertain and enforce the intent of the parties." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). If a contract is "clear and unambiguous," a court "should not rewrite, modify, or limit its effect by a strained construction." *Id.* at 364-65. Rather, a court "must deduce the parties' intent from the language used." *Metropolitan Sports Facilities Comm'n v. General Mills, Inc.*, 470 N.W.2d 118, 123 (Minn. 1991).

In this case, the district court stated that Dearstyne's release is unambiguous. Accordingly, the district court gave effect to the plain language of the release by ruling that Dearstyne released her UIM claim against AAA. We agree with the district court's straightforward analysis. "A release may, dependent upon its terms, have the effect of

extinguishing a right of action . . . ." *Gronquist v. Olson*, 242 Minn. 119, 125, 64 N.W.2d 159, 164 (1954). Furthermore, "the law presumes that parties to a release agreement intend what is expressed in a signed writing." *Sorensen v. Coast-to-Coast Stores, Inc.*, 353 N.W.2d 666, 670 (Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). Thus, if a person executes a release of "any and all" claims against another party, there is no basis in the language of the release to conclude that some types of claims are not released. *See, e.g., Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 736-38 (Minn. App. 1995) (holding that release "from all claims" barred all of plaintiff's claims, not just claim concerning fees, as plaintiff contended), *review denied* (Minn. Sept. 28, 1995).

In an attempt to avoid this natural interpretation of the release, Dearstyne makes two arguments. First, she contends that she did not release the UIM claim because it had not yet accrued at the time she executed the release. Dearstyne does not identify any caselaw stating that a release of a claim is unenforceable if the claim has not yet accrued. The caselaw permits a person to release such a claim. If the facts underlying multiple causes of action occurred before a release was executed, the "causes of action existed at the time of the release whether [the releasing party] knew of them or not and are within the scope of the release." *Sorensen*, 353 N.W.2d at 669. Similarly, if a person "knowingly and voluntarily, with advice of counsel, agree[s] to release" all claims seeking a recovery for "all injuries, both known and unknown," the person "effectively assume[s] the risk of mistake as to the nature and extent of injuries." *Barilla v. Clapshaw*, 306 Minn. 437, 441, 237 N.W.2d 830, 832 (1976). Thus, Dearstyne's UIM

claim "existed" at the time Dearstyne executed the release, regardless whether it had accrued. *See Sorensen*, 353 N.W.2d at 669.

Furthermore, Dearstyne is incorrect in stating that her claim had not yet accrued when she executed the release. A UIM claim against an insurer accrues when the injured person obtains a judgment against, or reaches a settlement with, the tortfeasor. *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406-07 (Minn. 2000). In the case of a settlement, the UIM claim accrues when there is an enforceable settlement agreement. *Stroop v. Farmers Ins. Exch.*, 764 N.W.2d 384, 387-88 (Minn. App. 2009), *review denied* (Minn. July 22, 2009). If the injured party gives a 30-day *Schmidt-Clothier* notice to the UIM insurer, the settlement agreement is enforceable when the UIM insurer declines to participate in the settlement. *Id.* at 388. A UIM insurer declines to participate in a settlement by not responding to *Schmidt-Clothier* notice within 30 days. *Van Kampen v. Waseca Mut. Ins. Co.*, 754 N.W.2d 578, 583 (Minn. App. 2008). In this case, Dearstyne sent the *Schmidt-Clothier* notice to AAA on September 4, 2008, and AAA received it on September 8, 2008. AAA did not respond. Thus, Dearstyne's UIM claim against AAA accrued before she executed the release on October 13, 2008.

Second, Dearstyne contends that she did not release the UIM claim because it is a statutory claim, which, she asserts, can be released only if the release specifically refers to the claim. As legal authority for this contention, she relies on *Balderrama v. Milbank Mut. Ins. Co.*, 324 N.W.2d 355 (Minn. 1982), a case in which the supreme court held that a plaintiff's settlement of his common-law claims against a tortfeasor did not bar a statutory claim against the tortfeasor's insurer. *Id.* at 356. The supreme court stated that

the settlement between the plaintiff and the tortfeasor said "nothing about a release of [the insurer's] separate statutory obligation to pay basic economic loss benefits" and that the plaintiff "could not have enforced any statutory right to basic economic loss benefits against [the tortfeasor because] his settlement with the tortfeasor is unrelated to and does not affect that statutory right." *Id.* The key to *Balderrama* is that the settlement agreement between the plaintiff and the tortfeasor released only the tortfeasor; the settlement agreement did not purport to release the tortfeasor's insurer in any way. *Id.* The plaintiff naturally did not have a statutory claim for economic-loss benefits against the tortfeasor; that type of claim could have been brought only against the tortfeasor's insurer. *Id.* The statutory claim was not released simply because the settlement agreement did not release *any* claims against the insurer. *Id.* In contrast, Dearstyne's release expressly released all of Dearstyne's claims against AAA as well as all of her claims against Rodgers, Vork, and Illinois Farmers. Thus, *Balderrama* is distinguishable.

Dearstyne also relies on the language of the mediated settlement agreement and the *Schmidt-Clothier* notice, which, she asserts, shows that she did not intend to release her UIM claim against AAA. But a court may consider parol evidence concerning the parties' intent only if the language of a release is ambiguous. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). Dearstyne may not rely on other documents in the district court record because her release is unambiguous.

Dearstyne also argues that the release is unenforceable because it violates the Minnesota Unfair Claims Practices Act (UCPA), Minn. Stat. §§ 72A.17-.32 (2008). Dearstyne acknowledges that there is no caselaw recognizing a private cause of action

under the UCPA. In addition, Dearstyne did not properly preserve this argument. She did not raise it in her memorandum in opposition to AAA's summary judgment motion. She raised it only in a supplemental memorandum that was served and filed *after* the summary judgment motion had been argued to the district court. The district court did not analyze the issue in its order granting AAA's motion. A district court is within its discretion when it does not consider an issue that was raised in an untimely manner. *See American Warehousing & Distributing, Inc. v. Michael Ede Mgmt., Inc.*, 414 N.W.2d 554, 557 (Minn. App. 1987), *review dismissed* (Minn. Jan. 20, 1988). Because Dearstyne's argument was not properly preserved and was not analyzed by the district court, we will not review it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

In sum, the district court did not err by concluding that Dearstyne released her UIM claim against AAA when she executed her written release of claims.

Affirmed.