STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1116

American Family Mutual Insurance Company,
Respondent,

vs.

American Automobile Association d/b/a Auto Club Insurance Association, et al.,
Appellants.

Filed February 25, 2013
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CV-11-23146

Michelle D. Hurley, Steven L. Theesfeld, Yost & Baill, LLP, Minneapolis, Minnesota (for respondent)

Michael J. Happe, Ryberg & Happe, S.C., Eau Claire, Wisconsin (for appellants)

Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and Crippen, Judge.*

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

KALITOWSKI, Judge

Respondent, American Family Mutual Insurance Company, brought this subrogation action against a tortfeasor and the tortfeasor's insurer, appellant American

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Automobile Association, under Hawaii law to recover no-fault benefits respondent paid prior to its insured's settlement with the tortfeasor. On appeal from summary judgment, appellant argues that the district court misconstrued Haw. Rev. Stat. § 431:10C-307 (2012),[1] and that respondent is not entitled to any recovery under Hawaii law. We affirm.

D E C I S I O N

This subrogation action arises out of a motor vehicle accident that occurred in Hawaii in 2009 between Kathleen Venaas and Francis Mell. Mell is a Minnesota resident, and it is undisputed that the accident was a result of Mell's negligence. At the time of the accident, appellant insured Mell, and respondent insured Venaas. Respondent paid $5,405.50 in no-fault benefits for medical expenses Venaas incurred as a result of the accident. Venaas settled her negligence claim for personal injuries against Mell and appellant. Respondent then brought this action against Mell and appellant under Hawaii law to recover the $5,405.50 in no-fault benefits it paid prior to the settlement. The district court granted summary judgment in favor of respondent.

On appeal from summary judgment, we review de novo whether a genuine issue of material fact exists and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). A genuine issue of material fact exists if a rational trier of fact, considering the record as a

[1] The motor vehicle accident occurred in 2009, but because the statute's legislative history indicates that it has not been amended since 1998, we apply the most recent version of the statute. *See McClelland v. McClelland*, 393 N.W.2d 224, 226-27 (Minn. App. 1986) (indicating that the current version of a statute will be used unless it changes or alters a matured or unconditional right of the parties or creates some other injustice), *review denied* (Minn. Nov. 17, 1986).

whole, could find for the party against whom summary judgment was granted. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). We 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).

It is undisputed that this matter is governed by Hawaii law. The district court concluded that Haw. Rev. Stat. § 431:10C-307 is not applicable because the statute provides for recovery only when a settlement duplicates no-fault benefits paid, and the settlement in this matter did not duplicate no-fault benefits respondent paid. But the district court further concluded that respondent could enforce its subrogation rights against appellant under Hawaii common law for 100% of the no-fault benefits it paid.

Appellant argues that the district court erred in construing Haw. Rev. Stat. § 431:10C-307. The construction of a statute is a legal question, which an appellate court reviews de novo. *Wesely v. Flor*, 806 N.W.2d 36, 39 (Minn. 2011). "When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

Haw. Rev. Stat. § 431:10C-307, which is part of the Hawaii motor vehicle insurance law, is entitled, "Reimbursement of duplicate benefits," and states:

> Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, which duplicates personal injury protection benefits already paid under the provisions of this article, the motor vehicle insurer shall be reimbursed fifty per cent of the personal injury protection benefits paid to or on behalf of the person receiving the duplicate benefits up to the maximum limit.

See Haw. Rev. Stat. §§ 431:10C-101 to :10C-608 (2012) (chapter governing motor vehicle insurance).

Under Hawaii law, whether a settlement duplicates no-fault payments already paid for purposes of section 431:10C-307 is an issue of fact, and the insurer seeking reimbursement bears the burden of proving that a settlement duplicates, in whole or in part, the no-fault benefits previously paid. *First Ins. Co. of Hawaii v. Jackson*, 681 P.2d 569, 570-71 (Haw. 1984). Respondent sought recovery for no-fault payments made for Venaas's medical expenses. But appellant, as the nonmoving party at summary judgment, argued that there was no duplication of recovery. The settlement agreement is the only evidence in the record relevant to the issue of duplication, and it states that the consideration paid was for "general damages and future medical expenses only and does not duplicate any no-fault benefits or medical payments to date." Thus, on this record there is no disputed issue of fact concerning whether the settlement payment duplicated no-fault benefits paid prior to the settlement.

Appellant argues that under Hawaii law, no-fault subrogation is controlled exclusively by section 431:10C-307 and that the district court erred in determining the statute was not applicable. But the plain language of section 431:10C-307 does not indicate that the Hawaii Legislature intended that the statute abrogate a no-fault insurer's subrogation rights at common law. The statute provides that when a settlement "duplicates personal injury protection benefits already paid . . . , the motor vehicle insurer shall be reimbursed fifty per cent of the personal injury protection benefits paid to or on behalf of the person receiving the duplicate benefits." Haw. Rev. Stat. § 431:10C-

307. Thus, the statute expressly creates a right to reimbursement when a settlement is duplicative of no-fault benefits paid. *Id.* But the statute is silent about rights when a settlement does *not* duplicate no-fault benefits paid. *Id.* And the statute neither states that it creates the exclusive basis under which a no-fault claimant may seek reimbursement against a tortfeasor for no-fault benefits paid nor mentions the word subrogation. *Id.* We conclude that the plain language of the statute does not abrogate a no-fault insurer's subrogation rights against a tortfeasor or a tortfeasor's insurer at common law.

Policy considerations also support our reading of the statute. A conclusion that section 431:10C-307 eliminates a no-fault insurer's subrogation rights against a tortfeasor or a tortfeasor's insurer at common law would unjustly enrich tortfeasors and their insurers. This result would contravene Hawaii caselaw recognizing the importance of preserving an insurer's subrogation rights to avoid the unjust enrichment of a tortfeasor. *See, e.g., State Farm Fire and Cas. Co. v. Pac. Rent-All, Inc.*, 978 P.2d 753, 766-70 (Haw. 1999) (discussing Hawaii caselaw preserving subrogation rights from third-party settlements to prevent unjust enrichment of tortfeasors).

Appellant, relying on *Grain Dealers Mut. Ins. Co. v. Pac. Ins. Co.*, 768 P.2d 226 (Haw. 1989), argues that section 431:10C-307 is the only law under which a no-fault insurer can recover from a tortfeasor or a tortfeasor's insurer. The *Grain Dealers* court interpreted an earlier version of the statute, which was substantively similar to section 431:10C-307. *Grain* Dealers, 768 P.2d at 229; *see Sol v. AIG Hawaii Ins. Co.*, 875 P.2d

921, 925 n.3 (Haw. 1994) (explaining that in 1987 the Hawaii legislature repealed chapter 294, "Motor Vehicle Accident Reparations," and replaced it with chapter 431, "Insurance Code," Article 10C, "Motor Vehicle Insurance," but that Haw. Rev. Stat. § 431:10C-307, replacing Haw. Rev. Stat. § 294-7, did not change substantively); *see also Pac. Ins. Co. v. Esperanza*, 833 P.2d 890, 893 n.6 (Haw. 1992) (stating that Haw. Rev. Stat. § 294-7 (1985) provided: "Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, which duplicates no-fault benefits already paid under the provisions of this chapter, the no-fault insurer shall be subrogated to fifty percent of the no-fault benefits . . . paid to such person."). But *Grain Dealers* did not address whether the statute abrogates a no-fault insurer's subrogation rights at common law.

At issue in *Grain Dealers* was whether under the statute, a no-fault insurer could pursue its subrogation rights against not only its insured, but also against a tortfeasor or a tortfeasor's insurer. 768 P.2d at 227-28. The court held that a no-fault insurer has a right to pursue a tortfeasor and a tortfeasor's insurer for the no-fault benefits paid to its insured prior to a settlement. *Id.* at 229. Significantly, in *Grain Dealers*, it was undisputed that the settlement was duplicative of no-fault benefits paid and that if the no-fault insurer could pursue its claim against the tortfeasor's insurer, it would do so under the statute. *Id.* at 228-29. Thus, a no-fault insurer's subrogation rights against a tortfeasor and a tortfeasor's insurer at common law was not at issue. *Id.*

Because section 431:10C-307 does not abrogate an insurer's subrogation rights under Hawaii common law to recover against a tortfeasor and a tortfeasor's insurer for

no-fault payments paid prior to a settlement, we conclude that the district court did not err in granting summary judgment in favor of respondent.

Affirmed.