STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2183

Shelly Dixon,
Respondent,

vs.

Progressive Preferred Insurance Company,
Appellant.

Filed June 17, 2013
Affirmed in part, reversed in part, and remanded
Peterson, Judge

Hennepin County District Court
File No. 27-CV-12-9854

Jed Benjamin Iverson, St. Paul, Minnesota (for respondent)

Nicholas Leander Klehr, Hopkins, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Klaphake, Judge.*

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

PETERSON, Judge

In this appeal from a summary judgment enforcing a settlement agreement for respondent's no-fault claim, appellant insurer argues that the district court erred in

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

determining that respondent's acceptance of appellant's settlement offer created a binding contract that could not be rescinded based on mutual or unilateral mistake. We affirm in part, reverse in part, and remand.

FACTS

After she was injured in an automobile accident, respondent Shelly Dixon submitted a claim for no-fault medical-expense benefits to her insurer, appellant Progressive Preferred Insurance Company. Respondent's policy with appellant provided a maximum of $40,000 in no-fault benefits, $20,000 for medical-expense benefits and $20,000 for wage-loss benefits. After paying part of respondent's medical-expense claim, appellant required an independent medical examination (IME), and, following the IME, appellant stopped paying benefits to respondent.

Respondent petitioned for mandatory no-fault arbitration of her claim for unpaid medical-expense benefits. The arbitrator awarded respondent her entire claim of $12,977.11. After appellant paid the arbitration award, the medical-expense benefits paid totaled $15,384.38, which left $4,615.62 remaining of the $20,000 policy limit.

In a March 31, 2011 letter to respondent's attorney, a no-fault specialist employed by appellant stated:

> I have recently completed a thorough review of this file which included the accident facts, your client's alleged injuries, treatment and medical history. Based on the current treatment status, I feel that this is an appropriate time to attempt to bring this file to conclusion. As a result of my evaluation of this file I am willing to offer $10000.00 in exchange for a full and final release of the No-Fault claim.

By letter dated April 6, 2011, respondent's attorney accepted the settlement offer on respondent's behalf. The next day, the no-fault specialist responded by letter stating that the "$10000" was a typographical error, she could not offer that amount because it exceeded the remaining benefits available to respondent, and she had intended to make a settlement offer of $1,000.

Respondent maintained that her April 6, 2011 acceptance created a binding contract not subject to rescission and brought this breach-of-contract lawsuit against appellant, seeking to enforce the $10,000 settlement agreement. The parties filed cross-motions for summary judgment. The district court concluded that, as a matter of law, respondent's acceptance of appellant's offer to settle respondent's no-fault claim for $10,000 created a binding contract that could not be rescinded based on mutual or unilateral mistake. The district court denied appellant's motion for summary judgment and granted respondent's motion for summary judgment. This appeal followed.

D E C I S I O N

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from a summary judgment, this court reviews de novo whether any genuine issues of material fact exist and whether the district court erred in applying the law. *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013); *see also SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 860-61 (Minn. 2011) (explaining that de novo review

applies to district court's determination that, as a matter of law, elements of rescission were not met even though rescission is an equitable remedy). The evidence is viewed "in the light most favorable to the party against whom summary judgment was granted." *McKee*, 825 N.W.2d at 729.

"A compromise settlement of a lawsuit is contractual in nature. To constitute a full and enforceable settlement, there must be such a definite offer and acceptance that it can be said that there has been a meeting of the minds on the essential terms of the agreement." *Jallen v. Agre*, 264 Minn. 369, 373, 119 N.W.2d 739, 743 (1963) (citations omitted). "Where there is a dispute as to whether a settlement was reached, it is ordinarily for the trial court to determine what the facts are." *Id.* The party seeking rescission of a contract has the burden of proof. *See Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 314 (Minn. 2003) (stating that party seeking contract reformation has burden of proof); *S. Minn. Mun. Power Agency v. City of St. Peter*, 433 N.W.2d 463, 469 (Minn. App. 1988) (stating that party seeking rescission based on misrepresentation has burden of proof).

Mutual mistake

When there is a mutual mistake concerning a material fact, a contract may be rescinded provided that "the party seeking to avoid the contract did not assume the risk of the mistake." *Winter v. Skoglund*, 404 N.W.2d 786, 793 (Minn. 1987) (citing *Restatement (Second) of Contracts* § 152(1) (1981) ("Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made

has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake . . . .")).

Appellant argues that, because respondent had submitted a claim only for medical-expense benefits and less than $10,000 in medical-expense benefits remained available under the policy limits when the $10,000 offer was made, respondent's attorney must have been mistaken as to the amount of remaining benefits. But the record shows that, when the settlement offer was made, both parties were aware of the terms of respondent's insurance policy and the events that had occurred with respect to her medical-expense claim, specifically, the treatments that respondent had received, the payments that appellant had made, and the arbitration decision. The district court, therefore, correctly concluded that the contract could not be rescinded based on mutual mistake.

Unilateral mistake

The Minnesota cases that explain the circumstances when a party may be relieved of a contractual obligation because of that party's own mistake are not consistent. An early opinion states that a contract may be rescinded at the instance of a mistaken party if rescission will not prejudice the other party. *Olson v. Shepard*, 165 Minn. 433, 436, 206 N.W.711, 712 (1926). Later opinions indicate that a mistaken party seeking rescission must show more than that the other party will not be prejudiced. In the early opinion, the supreme court stated:

> While the decisions are not in harmony, the weight of authority is to the effect that a court, in the exercise of its equitable powers, may cancel a contract at the instance of a party who proves that he was mistaken as to a material element of the contract at the time he made it, *if he acts*

> *promptly and the contract can be rescinded without prejudice to the other party; that is, if both parties can be placed in statu[s] quo.* This on the ground that the parties did not have the same subject-matter in mind in making the contract, and did not in fact come to an agreement in respect to the same thing. This rule is confined within narrow limits, and does not apply where the parties have changed their position so that the former state of things be restored. *The mistaken party may be relieved where the other party who understood the contract to be as in fact made will lose nothing more than the benefit of his bargain.*

Id. at 436-37, 206 N.W. at 712-13 (emphasis added) (citations omitted).

In a later opinion, the supreme court stated:

> It is clear. . . that the court, under its equitable power, does have the right to rescind a contract for a purely unilateral mistake of one contracting party not induced or contributed to by the other. . . . However, our examination of the cases indicates that in all instances in which one party has been permitted to avoid the obligations of a contract merely because of unilateral mistake, there have been at least two conditions involved. *Relief from contractual obligations on grounds of unilateral mistake alone has been granted only when enforcement would impose an oppressive burden on the one seeking rescission, and when rescission would impose no substantial hardship on the one seeking enforcement.*

Gethsemane Lutheran Church v. Zacho, 258 Minn. 438, 444-45, 104 N.W.2d 645, 649 (1960) (emphasis added) (citations omitted). And in an even later opinion, the supreme court stated:

> *Absent ambiguity, fraud, or misrepresentation, a mistake of one of the parties alone as to the subject matter of the contract is no ground for rescission.* However, a contract may be avoided by one of the parties for his own mistake of fact when such mistake was caused by the inequitable conduct of the other contracting party.

N. Star Ctr., Inc. v. Sibley Bowl, Inc., 295 Minn. 424, 426, 205 N.W.2d 331, 332 (1973) (emphasis added) (citation omitted).

In the memorandum accompanying its order, the district court quoted *Olson*, *Gethsemane Lutheran Church*, and *N. Star Ctr., Inc.*[1] and identified the situations in which the supreme court has stated that rescission may be granted based on a unilateral mistake. The district court then stated that in *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985), this court "held that, in addition to situations in which there was ambiguity, fraud, or misrepresentation, a contract could be rescinded under unilateral mistake doctrine where 'the contract may be rescinded without prejudice to the other party.'" We disagree with the district court's understanding of this court's holding in *Speckel*.

In *Speckel*, a personal-injury case, the plaintiff's attorney made a settlement demand for the policy limits of $50,000. *Id.* at 891. The defendant's attorney responded that he believed the demand was overstated but he had conveyed it to the insurer for consideration. *Id.* Shortly before the scheduled trial date, the defendant's attorney sent the plaintiff's attorney a letter that contained the following settlement offer:

> In reviewing my file concerning this claim and the upcoming trial, I note that we have a demand in our file for policy limits of $50,000.00. While I agree that the case has some value, I cannot agree that this is a limits case.
>
> At this time I have authority to offer you $50,000.00 in settlement of your claim against my client and her mother. I

[1] We have quoted these three opinions more extensively than they were quoted by the district court. Our quotations from the opinions include the portions of the opinions that were quoted by the district court.

> would appreciate hearing from you at your earliest convenience and would be pleased to carry any offer you may wish to make back to my client's insurance company for their consideration.

Id.

Upon receiving this letter, plaintiff's counsel promptly responded by letter, stating that the $50,000 offer to settle the case was accepted. *Id.* at 892. When plaintiff's counsel later called defendant's counsel, defendant's counsel said that the amount offered should have been $15,000 and he did not have authority to offer $50,000. *Id.* Plaintiff's counsel pursued collection of the $50,000 and ultimately brought a motion to compel performance. *Id.* The trial court found that there had been an unequivocal offer of $50,000 and granted the motion to compel performance. *Id.*

In *Speckel*, this court did not hold that, in addition to situations in which there was ambiguity, fraud, or misrepresentation, a contract could be rescinded for the unilateral mistake of a party when rescission would not prejudice the other party. That basis for rescission was recognized long ago in *Olson*, and this court merely echoed *Olson* when it stated that

> [t]he trial court also correctly disregarded the fact that the letter contained the unintended amount as the result of a mistake. A unilateral mistake in entering a contract is not a basis for rescission unless there is ambiguity, fraud, misrepresentation, or *where the contract may be rescinded without prejudice to the other party*.

Id. at 893 (citing *Olson*, 165 Minn. 433, 206 N.W. 711).

This court then concluded that "[t]he letter containing the disputed settlement amount raised a presumption of error and a consequent duty to inquire. It therefore was

not a valid offer enforceable upon acceptance." *Id.* at 894. In other words, because the plaintiff's attorney had a duty to inquire about the presumptively erroneous offer, he did not create a contract by simply accepting the offer, and no contract was formed. This court explained that

> [a] duty to inquire may be imposed on the person receiving [an] offer when there are factors that reasonably raise a presumption of error. An offeree will not be permitted to snap up an offer that is too good to be true; no agreement based on such an offer can be enforced by the acceptor.

Id. at 893 (quotation and citation omitted). This court held that a presumption of error imposed a duty to inquire on plaintiff's attorney based on the following factors: the letter's internal inconsistency of stating that the case was not worth the policy limits and then offering exactly that amount; "the policy limits, requested when negotiations began, were offered on the eve of trial when the parties were presumably prepared and circumstances had not changed"; and the letter's invitation of a counteroffer despite offering the full amount of the settlement demand. *Id.* at 893. Accordingly, this court reversed the trial court's order compelling performance of the settlement agreement. *Id.*

It appears that because the district court believed that *Speckel* recognized an additional situation where a contract could be rescinded based on a unilateral mistake, the court did not determine whether respondent could form a contract by simply accepting appellant's offer to settle for $10,000. Instead, as part of its determination whether the settlement agreement should be rescinded based on a unilateral mistake, the district court considered whether appellant's offer raised a presumption of error that triggered a duty in respondent to inquire further about the offer. The district court concluded that although

only $4,615.62 remained available in medical-expense benefits under respondent's no-fault policy, the $10,000 offer to settle "in exchange for a full and final release of the No-Fault claim" did not raise a presumption of error that triggered a duty to inquire because $20,000 in wage-loss benefits remained available under the policy and there was no argument that respondent could not assert a wage-loss claim up until the time of settlement.[2]

In reaching this conclusion, the district court identified a possible set of circumstances in which appellant's $10,000 offer would not reasonably appear to be erroneous. A $10,000 offer would not appear unusual as an attempt to settle a complete no-fault claim when $4,615.62 remained available in coverage for medical-expense benefits and $20,000 remained available in coverage for wage-loss benefits. But the scenario that the district court identified is not the only possible scenario that the evidence could prove.

Although respondent's no-fault policy included $20,000 in coverage for wage-loss benefits, the settlement offer referred only to facts related to a medical-expense claim and stated that the no-fault specialist's review of the file "included the accident facts, [respondent's] alleged injuries, treatment and medical history" and that the offer was "[b]ased on the current treatment status," which suggested that the $10,000 settlement offer was solely for a medical-expense claim. Respondent had neither asserted a wage-loss claim nor submitted any documentation to support such a claim, which also

[2] The district court did not identify any evidence that would establish a factual basis for a wage-loss claim.

suggested that the $10,000 settlement offer was solely for a medical-expense claim. When viewed in the light most favorable to appellant, the evidence could reasonably raise a presumption of error that would impose on respondent a duty to inquire about appellant's settlement offer.

Because there is a fact issue whether appellant's settlement offer reasonably raised a presumption of error that imposed on respondent a duty to inquire about the offer, we affirm the denial of appellant's summary-judgment motion, reverse the grant of respondent's summary-judgment motion, and remand for further proceedings.

Affirmed in part, reversed in part, and remanded.