SUPREME COURT OF APPEALS OF WEST VIRGINIA

Richards v. Kees

212 W. Va. 375 (2002) · Decided October 31, 2002

SUMMARY

The West Virginia Supreme Court of Appeals reviewed summary judgment in favor of an automobile insurer and insured based on accord and satisfaction. The court held that cashing a $200 check did not establish accord and satisfaction because the evidence did not show that the claimant knowingly accepted the check as full settlement of bodily injury claims, and it reversed the circuit court.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
JURISDICTION	West Virginia
DECIDED	October 31, 2002
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiffs appealed from an order granting the defendants summary judgment on the ground that cashing a $200 insurance check constituted an accord and satisfaction of bodily injury claims arising from an automobile accident.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	published opinion
PARTIES	Leon Richards, Elaine Richards v. Roy Kees, Allstate Insurance Company

TOPICS

accord and satisfaction · summary judgment · contracts · insurance · civil procedure

PRACTICE AREAS

civil procedure · contracts · insurance · torts

QUESTIONS PRESENTED

1. Whether the cashing of Allstate's $200 check constituted an accord and satisfaction of Richards's bodily injury claim.

2. Whether summary judgment was proper when the evidence did not establish that Richards knowingly accepted the check on the condition that it constituted full satisfaction of the disputed bodily injury claim.

HOLDINGS

1. Cashing the check did not constitute an accord and satisfaction because the evidence did not establish that Richards accepted the payment with knowledge that Allstate offered it only on the condition that it be accepted in full satisfaction of the disputed bodily injury claim.
2. The circuit court erred in granting summary judgment to the appellees on the accord-and-satisfaction defense.

KEY QUOTATIONS

> *"A circuit court's entry of summary judgment is reviewed de novo."* (212 W. Va. at 376)

> *"Upon a full review of the facts involved in this case, we simply cannot conclude that the critical third element of the accord and satisfaction test was met: the acceptance with "knowledge that the debtor offered it only upon the condition that the creditor accept the payment in full satisfaction of the disputed claim.""* (212 W. Va. at 377)

FACTUAL BACKGROUND

Leon Richards was involved in a rear-end automobile accident on December 30, 1998, and later consulted a physician for headaches and a serious nosebleed. While negotiating with Allstate over property damage, Richards was told that a separate $200 check would be sent in addition to a $1,600 property-damage payment; he understood the $200 to compensate him for his efforts and long-distance telephone expenses. The check contained language stating that it was in final settlement of all bodily injury claims, but Richards cashed it without any prior discussion of a bodily injury claim, submission of medical bills, or notation indicating awareness of the settlement condition.

PROCEDURAL HISTORY

After Allstate denied Richards's bodily injury claim based on his cashing of a check marked as final settlement, Richards sued Roy Kees and Allstate. The Circuit Court of Fayette County granted Allstate summary judgment, concluding that the elements of accord and satisfaction were satisfied. The Supreme Court of Appeals of West Virginia reversed.

DISPOSITION

reversed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 461 S.E.2d 755 (1994)
- Charleston Urban Renewal Authority v. Stanley, 176 W. Va. 591, 346 S.E.2d 740 (1985)

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)

OPINION

PER CURIAM.

PER CURIAM. Appellants Leon Richards and Elaine Richards appeal from the August 28, 2001, order of the Circuit Court of Fayette County granting summary judgment to Appellees Roy Kees and Allstate Insurance Company ("Allstate"). At issue below was whether the transmittal of a $200 check by Allstate to Mr. *376Richards and the cashing of that check, which contained words indicating that it was in final settlement of any bodily injury claims arising from an automobile accident, constituted an accord and satisfaction.

The circuit court based its grant of summary judgment on its decision that the doctrine of accord and satisfaction was met under the facts of this case. We disagree and, accordingly, reverse. I.Factual and Procedural Background Mr. Richards was involved in an automobile accident on December 30, 1998, when a vehicle being driven by Appellee Roy Kees struck Mr. Richards' vehicle from behind.

Although Mr. Richards did not seek out immediate medical attention, he did consult a physician about a week after the accident in connection with severe headaches and a serious nose bleed. Following the accident, Mr. Richards began negotiations with Allstate, Mr. Kees' liability insurer, in connection with the property damage his vehicle sustained as a result of the accident.

During the course of those negotiations, Mr. Richards was advised by Dave Danner, the Allstate insurance adjuster, that a $200 cheek would be forthcoming in addition to the separate payment for their property damage claim in the amount of $1600. Mr. Richards testified that his understanding concerning the issuance of the $200 check was payment for his "good leg work"1 and to cover the costs of the long distance phone bills he had incurred in communicating with the adjuster.

A check issued by Allstate dated January 11, 1999, for the amount of $200, was transmitted to Mr. Richards. On the top left hand corner of the face of the check there was a notation indicating the following: "FINAL SETTLEMENT OF ANY AND ALL CLAIMS ARISING FROM BODILY INJURY CAUSED BY ACCIDENT ON 12/30/98." Mr. Richards received the check and presented the same for payment.

When he later attempted to advance a claim for bodily injury arising from the accident, Allstate denied the claim, asserting that an accord and satisfaction had occurred based on Mr. Richards' cashing of the $200 check.

The Richards instituted a cause of action against Mr. Kees and Allstate following the denial of their bodily injury claim.2 In response to the lawsuit, Allstate filed a motion for summary judgment on the grounds of accord and satisfaction. Appellants responded to the summary judgment motion by arguing that Mi\ Richards, who has an eighth grade education, is functionally illiterate and that there had been no discussions between Mr. Richards and Allstate concerning the settlement of a bodily injury claim.

The circuit court granted summary judgment on the grounds of accord and satisfaction, and Appellants seek a reversal of that decision. II.Standard of Review “A circuit court’s entry of summary judgment is reviewed de novo.” Syl. Pt. 1, Painter v. Peavy, 192 W.Va. 189, 461 S.E.2d 755 (1994).

Accordingly, we proceed to determine whether error was committed in issuing a grant of summary judgment under the facts of this ease. III.Discussion We applied the three-prong standard for establishing an accord and satisfaction in Peavy: “To show an accord and satisfaction, the person asserting the defense must prove three elements: (1) Consideration to support an accord and satisfaction; (2) an offer of partial payment in full satisfaction of a disputed claim; and (3) acceptance of the partial payment by the creditor with knowledge that the debtor offered it only upon the condition that the creditor accept the payment in full satisfaction of the disputed.claim or not at all.” Syllabus Point 1, Charleston Urban Renewal Authority v. Stanley, 176 W.Va.

591, 346 S.E.2d 740 (1985). Peavy, 192 W.Va. at 190-91, 451 S.E.2d at 756-57, syl. pt. 5. *377Appellees suggest that just as in Peavy, the facts of this case demonstrate the three elements necessary to find an accord and satisfaction. Appellees contend that the language conspicuously written on the face of the check clearly constitutes the offer; the cheek was the consideration; and the cashing of the check constituted Mr. Richards’ acceptance of the offer.

In response to Mi'. Richards’ claim of cashing the check totally unaware of the “final settlement” language or its significance, Appellees argue that “the court in Peavy prevented the plaintiff in that case from claiming the status of a wary person, ignorant of the law and its consequences.” Appellees misconstrue the Peavy case and its application to the case sub judice.

There are several significant distinctions between the facts presented in Peavy and the facts involved in the present case. Critically, the plaintiff in Peavy did not cash the cheek herself; she transmitted it to her attorney who cashed it with the notation “deposited under protest” on the back of the check.

In recognition of the attorney’s involvement in the check cashing at issue in Peavy, this Court observed: “This is not a case where a wary person, ignorant of the law, made a mistake.” 192 W.Va. at 194, n. 9, 451 S.E.2d at 760, n. 9.

We did not, however, as Appel-lees suggest, indicate that ignorance or unawareness of the settlement language would have no bearing on the issue of accord and satisfaction in other cases. Another critical distinction between Peavy and this case is the submission of medical bills prior to the transmittal of the partial settlement cheek.

In Peavy, the plaintiff had submitted receipts reflecting medical treatment in the amount of $708.60 prior to the transmittal of the $750 settlement check. In stark contrast, Mr. Richards had not submitted any medical bills at the time of his receipt of the $200 check, and there had been absolutely no discussion whatsoever between Mr. Richards and Allstate with regard to a medical claim related to the accident.

Unlike the cashing of the check in Peavy, there was no notation made by Mr. Richards upon his cashing of the check. In Peavy, we viewed the notation that the $750 settlement check was being presented for payment “under protest” as further evidence that the plaintiff in that case was aware of the condition upon which the cheek was being offered. 192 W.Va. at 193, 451 S.E.2d at 759.

There is no comparable evidence in this case to demonstrate an awareness on Mr. Richards’ part with regard to the condition of full settlement of his bodily injury claims. Upon a full review of the facts involved in this case, we simply cannot conclude that the critical third element of the accord and satisfaction test was met: the acceptance with “knowledge that the debtor offered it only upon the condition that the creditor accept the payment in full satisfaction of the disputed claim.” Peavy, 192 W.Va. at 190, 451 S.E.2d at 756, syl. pt.

5, in part. The absence of any submitted medical bills; the complete absence of any discussion regarding a bodily injury claim; and the evidence of Mr. Richards’ limited education and understanding all point to the fact that Mr. Richards’ cashing of the $200 check did not constitute an accord and satisfaction under the facts of this case. Based on the foregoing, the decision of the Circuit Court of Fayette County is hereby reversed.

Reversed.. As to what “good leg work” referred to, Mr. Richards testified that it was in connection with his efforts in taking various documents, such as the police report and citations received by Mr. Kees, to the State Police Headquarters in Oak Hill from where those documents were apparently transmitted via facsimile to Allstate.. Their claim of bad faith has been bifurcated and stayed pending resolution of the claims against Mr. Kees.

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