SUPREME COURT OF COLORADO

Giampapa v. American Family Mutual Insurance Co.

64 P.3d 230 (Colo. 2003) · Decided February 24, 2003

SUMMARY

The Colorado Supreme Court held that the Colorado Auto Accident Reparations Act does not preempt common-law contract remedies when an insurer wrongfully refuses to pay benefits. It further held that a full range of foreseeable non-economic damages is available for an insurer's willful-and-wanton breach of an insurance contract, provided the damages are a natural and probable result of the breach. The court reversed the court of appeals and reinstated the insured's $900,000 special-damages award.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Chief Justice Mullarkey; Justice Bender; Justice Coats; Justice Kourlis
JURISDICTION	Colorado
DECIDED	February 24, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of Colorado granted certiorari to review the court of appeals' refusal to reconsider its earlier decision limiting Giampapa's contract damages to mental anguish. The court considered whether the No Fault Act preempted common-law contract remedies, whether Colorado's willful-and-wanton rule remained valid and permitted a full range of non-economic contract damages, whether the law-of-the-case doctrine barred reconsideration, and whether the insurer had waived its statutory damages-cap argument.
STANDARD OF REVIEW	The court reviewed legal questions concerning statutory preemption, the availability and scope of contract damages, and the law-of-the-case doctrine de novo. It deferred to the jury's verdict where the trial court properly instructed the jury and the record supported the findings.
PRECEDENTIAL VALUE	precedential
PARTIES	Gioacchino (Jack) Giampapa v. American Family Mutual Insurance Co.

TOPICS

insurance coverage · insurance bad faith · breach of contract · consequential damages · statutory interpretation

PRACTICE AREAS

insurance law · contract law · insurance bad faith · remedies · statutory interpretation

QUESTIONS PRESENTED

1. Whether the No Fault Act preempts a common-law contract claim and remedies for an insurer's wrongful refusal to pay automobile insurance benefits.
2. Whether Colorado's willful-and-wanton rule for contract breaches remains valid.
3. Whether a complete range of foreseeable non-economic damages, rather than only mental-anguish damages, is recoverable for a willful-and-wanton breach of an insurance contract.
4. Whether the law-of-the-case doctrine barred reconsideration of the court of appeals' prior ruling after the precedent on which it relied had been reversed.
5. Whether the insurer waived its argument that the statutory cap on non-economic damages applied to the $900,000 contract award.

HOLDINGS

1. The No Fault Act does not expressly or implicitly preempt a common-law contract claim or the recovery of nonduplicative special damages for an insurer's wrongful refusal to pay benefits.
2. Colorado retains its longstanding willful-and-wanton rule permitting non-economic damages for a willful-and-wanton breach of contract when the damages satisfy ordinary contract-damages requirements.
3. A complete range of non-economic damages is recoverable for a willful-and-wanton breach of an insurance contract, not merely damages labeled mental anguish, provided the damages were foreseeable at the time of contracting, proven with reasonable certainty, and were a natural and probable result of the breach.
4. The jury findings and instructions sufficiently established foreseeability, reasonable certainty, causation, and willful-and-wanton conduct, and American Family waived its argument that the statutory non-economic-damages cap applied to the $900,000 award.

KEY QUOTATIONS

> *"We hold that a complete range of non-economic damages is available when an insurer has willfully and wantonly breached its contract with an insured, so long as the damages are foreseeable at the time of contracting and the damages are a natural and probable result of the breach."* (64 P.3d at 234)

> *"We find no such express or implied repeal or suspension here."* (64 P.3d at 236-237)

> *"In light of these considerations, we conclude that a full range of non-economic damages, not limited to "mental anguish" damages, is recoverable in the event of a willful-and-wanton breach of contract."* (64 P.3d at 242)

FACTUAL BACKGROUND

Giampapa was seriously injured when vehicles collided after one rear-ended his stopped vehicle. His automobile policy included medical benefits and coverage for reasonable and necessary durable medical equipment, but American Family repeatedly refused to pay for prescribed home therapy equipment and failed to timely pay some medical-provider bills. Giampapa consequently continued difficult long-distance travel for therapy, experienced increased pain and medication side effects, suffered deterioration in his personal and professional life, and eventually shut down his business. The jury found that American Family's conduct constituted a willful-and-wanton breach and awarded $900,000 in contract special damages, separate statutory damages, and separate tort damages.

PROCEDURAL HISTORY

A jury found for Giampapa on common-law contract, No Fault Act, and tortious bad-faith claims. It awarded $900,000 in special damages on the contract claim, statutory treble damages for unpaid benefits, and separate tort and punitive damages. The court of appeals initially held that the No Fault Act did not displace the contract claim but limited non-economic contract damages to mental anguish and ordered a limited retrial. After a retrial award was reduced under the statutory cap, and after the Colorado Supreme Court reversed the relevant precedent in Decker v. Browning-Ferris Industries of Colorado, Inc., the court of appeals declined to reconsider its prior ruling and remanded the reduced award. The Colorado Supreme Court reversed the second court-of-appeals judgment, disapproved Giampapa I, reinstated the $900,000 award, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals was directed to return the case to the trial court for proceedings consistent with the opinion, including reinstatement of the original $900,000 special-damages award.

CASES CITED

- Giampapa v. American Family Mutual Insurance Co., 919 P.2d 838, 840-41 (Colo. App. 1995)
- Decker v. Browning-Ferris Industries of Colorado, Inc., 903 P.2d 1150 (Colo. App. 1995)
- Decker v. Browning-Ferris Industries of Colorado, Inc., 931 P.2d 436, 448 (Colo. 1997)
- State v. Nieto, 993 P.2d 493, 500 (Colo. 2000)
- People v. District Court, 713 P.2d 918, 921 (Colo. 1986)
- Kristensen v. Jones, 195 Colo. 122, 124, 575 P.2d 854, 855 (1978)
- Collard v. Hohnstein, 64 Colo. 478, 479, 174 P. 596 (1918)
- Farmers Group, Inc. v. Williams, 805 P.2d 419, 424-26 (Colo. 1991)
- Denver & Rio Grande Railroad Co. v. Henderson, 10 Colo. 1, 2, 13 P. 910, 911 (1887)
- Adams v. Farmers Insurance Group, 983 P.2d 797, 803 (Colo. 1999)

- Mid-Century Insurance Co. v. Travelers Indemnity Co., 982 P.2d 310, 314-15 (Colo. 1999)
- Westesen v. Olathe State Bank, 78 Colo. 217, 219-20, 240 P. 689, 690-91 (1925)
- Hall v. Jackson, 24 Colo. App. 225, 227-28, 134 P. 151, 151-52 (1913)
- McCreery v. Miller's Groceteria Co., 99 Colo. 499, 503, 64 P.2d 803, 805 (1936)
- Trimble v. City of Denver, 697 P.2d 716, 730-32 (Colo. 1985)
- People v. Blehm, 983 P.2d 779, 788 (Colo. 1999)
- Town of Alma v. AZCO Construction, Inc., 10 P.3d 1256, 1262 (Colo. 2000)
- People ex rel. Gallagher v. District Court, 666 P.2d 550, 553 (Colo. 1983)
- People v. Dunlap, 975 P.2d 723, 758 (Colo. 1999)
- People v. Roybal, 672 P.2d 1003, 1005 n.5 (Colo. 1983)
- Pearson v. District Court, 924 P.2d 512, 515 (Colo. 1996)
- City of Aurora v. Allen, 885 P.2d 207, 212 (Colo. 1994)
- Allison v. Industrial Claim Appeals Office, 884 P.2d 1113, 1118 (Colo. 1994)
- Stewart v. Rice, 47 P.3d 316, 322 (Colo. 2002)
- Peterson v. Colorado Potato Flake & Manufacturing Co., 164 Colo. 304, 310, 435 P.2d 237, 240 (1967)