SUPREME COURT OF WISCONSIN

Drinkwater v. American Family Mutual Insurance Co.

Drinkwater, 290 Wis. 2d 642 (Wis. 2006) · No. 2004AP1793 · Decided June 1, 2006

SUMMARY

The Supreme Court of Wisconsin held that Wisconsin law, rather than Iowa law, governed Medical Associates Health Plan's subrogation claim against Shane Drinkwater's personal-injury recovery. Applying Wisconsin's made-whole doctrine, the court concluded that Drinkwater was not required to reimburse the Plan because his tort recovery did not fully compensate his damages, and it affirmed the circuit court judgment.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Ann Walsh Bradley, J.; David T. Prosser, J.
JURISDICTION	Wisconsin
DECIDED	June 1, 2006
DOCKET	2004AP1793
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of Wisconsin reviewed a circuit court judgment on certification from the court of appeals. The circuit court applied Wisconsin law, held that Drinkwater had not been made whole, and denied the Plan's subrogation claim against the proceeds of his personal-injury recovery.
STANDARD OF REVIEW	The choice-of-law determination is a question of law reviewed independently on appeal.
PRECEDENTIAL VALUE	Published precedential Wisconsin Supreme Court opinion
PARTIES	Medical Associates Health Plans v. Shane T. Drinkwater

TOPICS

subrogation · insurance coverage · contract interpretation · appellate procedure · standard of review

PRACTICE AREAS

insurance · subrogation · conflict of laws · personal injury · appellate procedure

QUESTIONS PRESENTED

1. Whether Iowa or Wisconsin law governs the Plan's subrogation claim against Drinkwater's recovery.
2. Whether Wisconsin's made-whole doctrine applies despite the health-plan contract's Iowa choice-of-law and subrogation provisions.
3. Whether the Plan may exercise subrogation rights when Drinkwater's tort recovery does not fully compensate him for his damages.

HOLDINGS

1. Wisconsin law governs the Plan's subrogation claim against Drinkwater's recovery.
2. Under Wisconsin law, an insurer or subrogee may not recover against an insured's tort recovery until the insured has been made whole, regardless of contrary contractual language.
3. The Plan was not entitled to subrogation against Drinkwater's $250,000 recovery because he was not made whole under Wisconsin law.

KEY QUOTATIONS

> *"pursuant to this court's holdings in Garrity and Rimes, an insurer is not entitled to subrogation against its insured unless and until the insured is made whole, regardless of contractual language to the contrary."* (¶ 23)

> *"that the law of the forum should presumptively apply unless it becomes clear that nonforum contacts are of the greater significance."* (¶ 40)

> *"Wisconsin law applies to require that Drinkwater must be made whole before the Plan is entitled to subrogation against Drinkwater's recovery for his personal injuries."* (¶ 65)

FACTUAL BACKGROUND

Drinkwater, a Wisconsin resident employed by an Iowa company, was severely injured in September 2002 when another Wisconsin resident struck his motorcycle in Wisconsin. Medical Associates Health Plan, an Iowa nonprofit corporation, paid $89,006.10 in medical expenses under a group health plan issued in Iowa to Drinkwater's employer. The tortfeasor's insurer paid its $250,000 policy limit, while the circuit court found Drinkwater's total damages to be $424,000, so he was not made whole.

PROCEDURAL HISTORY

Drinkwater sued the negligent motorist and the motorist's insurer after a Wisconsin motorcycle accident and named Medical Associates Health Plan as a potentially subrogated party. The Plan counterclaimed and cross-claimed for reimbursement under Iowa law and the health-plan contract. The Grant County Circuit Court applied Wisconsin law, conducted a made-whole hearing, found total damages of $424,000 against a $250,000 recovery, and awarded Drinkwater the escrowed funds. The Plan appealed, and the court of appeals certified the choice-of-law question to the Wisconsin Supreme Court.

DISPOSITION

affirmed

CASES CITED

- American Family Mutual Insurance Co. v. Powell, 169 Wis. 2d 605, 486 N.W.2d 537 (Ct. App. 1992)
- Rimes v. State Farm Mutual Automobile Insurance Co., 106 Wis. 2d 263, 316 N.W.2d 348 (1982)
- Ludwig v. Farm Bureau Mutual Insurance Co., 393 N.W.2d 143 (Iowa 1986)
- Hamill v. Kuchler, 203 Wis. 414, 232 N.W. 877 (1931)
- Defiance Machine Works v. Gill, 170 Wis. 477, 175 N.W. 940 (1920)
- Poluckie v. Wegenke, 137 Wis. 433, 119 N.W. 188 (1909)
- Garrity v. Rural Mutual Insurance Co., 77 Wis. 2d 537, 253 N.W.2d 512 (1977)
- Ruckel v. Gassner, 2002 WI 67, 253 Wis. 2d 280, 646 N.W.2d 11
- Bush v. National School Studios, Inc., 139 Wis. 2d 635, 407 N.W.2d 883 (1987)
- Beilfuss v. Huffy Corp., 2004 WI App 118, 274 Wis. 2d 500, 685 N.W.2d 373
- General Medical Corp. v. Kobs, 179 Wis. 2d 422, 507 N.W.2d 381 (Ct. App. 1993)
- Wilcox v. Wilcox, 26 Wis. 2d 617, 133 N.W.2d 408 (1965)
- State Farm Mutual Automobile Insurance Co. v. Gillette, 2004 WI 31, 251 Wis. 2d 561, 641 N.W.2d 662
- Beloit Liquidating Trust v. Grade, 2004 WI 39, 270 Wis. 2d 356, 677 N.W.2d 298
- Heath v. Zellmer, 35 Wis. 2d 578, 151 N.W.2d 664 (1967)
- American Standard Insurance Co. v. Cleveland, 124 Wis. 2d 258, 369 N.W.2d 168 (Ct. App. 1985)
- Finch v. Southside Lincoln-Mercury, Inc., 2004 WI App 110, 274 Wis. 2d 719, 685 N.W.2d 154
- Conklin v. Horner, 38 Wis. 2d 468, 157 N.W.2d 579 (1968)
- Iowa American Insurance Co. v. Pipho, 456 N.W.2d 228 (Iowa Ct. App. 1990)
- Schlosser v. Allis-Chalmers Corp., 86 Wis. 2d 226, 271 N.W.2d 879 (1978)

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