SUPREME COURT OF ALABAMA

Mitchell v. State Farm Mutual Automobile Insurance Co.

118 So. 3d 699 (Ala. 2012) · Decided September 21, 2012

SUMMARY

The Alabama Supreme Court held that the common-fund doctrine applies when an insured's attorney creates a recovery fund that benefits both the insured and a subrogated automobile insurer. In the absence of contrary policy language, State Farm was required to pay a pro rata share of the insured's attorney fees attributable to recovering the $5,000 medical-payments subrogation amount. The court also held that State Farm's communications asserting its subrogation rights did not constitute active participation sufficient to avoid the doctrine.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Main, Justice; Malone, C.J.; Woodall, J.; Bolin, J.; Parker, J.; Murdock, J.; Shaw, J.; Wise, J.
JURISDICTION	Alabama
DECIDED	September 21, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Supreme Court of Alabama granted certiorari review of the Court of Civil Appeals' reversal of a circuit court summary judgment favoring State Farm. The issue was whether State Farm, as a subrogated insurer, had to pay a pro rata share of the insured's attorney fees under the common-fund doctrine.
STANDARD OF REVIEW	De novo review applies to the application of law to undisputed facts, to whether the common-fund doctrine applies, and to interpretation of an insurance policy as a matter of law. Although attorney-fee awards are generally reviewed for abuse of discretion, the legal applicability of the common-fund doctrine on undisputed facts is reviewed de novo.
PRECEDENTIAL VALUE	Published Alabama Supreme Court opinion; precedential.
PARTIES	State Farm Mutual Automobile Insurance Company v. Tracy Mitchell

TOPICS

subrogation · insurance · remedies · appellate procedure · standard of review

PRACTICE AREAS

Insurance subrogation | Insurance remedies | Appellate procedure

QUESTIONS PRESENTED

1. Whether the common-fund doctrine applies when an insured's attorney obtains a recovery from which a subrogated automobile insurer is reimbursed for medical-payments coverage.
2. Whether State Farm's communications with Cotton States and Mitchell's attorney constituted active participation sufficient to defeat application of the common-fund doctrine.
3. Whether the language of State Farm's insurance policy expressly abrogated the common-fund doctrine.

HOLDINGS

1. In the absence of an agreement to the contrary, the common-fund doctrine applies when an insured's attorney creates a fund that benefits both the insured and the subrogated insurer. The insurer must pay a pro rata share of the insured's reasonable attorney fees attributable to recovering the insurer's subrogated interest.
2. An insurer's communications asserting its subrogation rights and stating that it intends to protect its own interests do not constitute the active participation necessary to defeat the common-fund doctrine when the insured's attorney alone creates the recovery.
3. The policy language providing for subrogation, reimbursement, and recovery 'to the extent of our payment' did not expressly abrogate the common-fund doctrine.

KEY QUOTATIONS

> *“We adopt the requirements as set out by the Court of Civil of Appeals in Capulli, which involved subrogation for payment of medical expenses and conclude that a common fund arises in the medical-payments-coverage context where:”* (at 708)

> *“Thus, if the insurer wishes to receive the benefit of the funds recovered by the insured’s attorney, the insurer must share in the attorney fees of recovering those funds from the tortfeasor or the tortfeasor’s insured.”* (at 709)

> *“We likewise do not consider the actions taken by State Farm to constitute “active participation.” State Farm’s communication with Cotton States and Mitchell’s attorney do not amount to “active participation.””* (at 710-11)

> *“Because the policy language cited by State Farm does not expressly abrogate the common-fund doctrine under that facts of this case, we hold that State Farm must pay a pro rata share of Mitchell’s attorney fees.”* (at 712)

FACTUAL BACKGROUND

Tracy Mitchell was injured in a December 2008 automobile collision caused by Amy Kirk. State Farm, Mitchell's insurer, paid $5,000 in medical-payments coverage and $7,992.90 in other coverage payments, then asserted subrogation rights against Kirk's insurer, Cotton States. Mitchell's attorney investigated the collision, gathered medical records, filed suit, and negotiated a $35,000 settlement with Cotton States; $5,000 of the settlement was paid into court to resolve the competing claims over State Farm's medical-payment reimbursement. State Farm sought full reimbursement without contributing to Mitchell's attorney fees.

PROCEDURAL HISTORY

Mitchell sued the driver, State Farm, and fictitiously named defendants after an automobile collision, asserting personal-injury claims, underinsured-motorist claims, and claims concerning State Farm's subrogation demand for medical payments. The circuit court granted State Farm partial summary judgment, ruling that the common-fund doctrine did not apply, and entered a Rule 54(b) final judgment. The Alabama Court of Civil Appeals reversed, holding that a common fund existed, that the doctrine was not contractually abrogated, and that State Farm's activities did not constitute active participation. The Alabama Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Mitchell v. State Farm Mutual Automobile Insurance Co., 118 So. 3d 693 (Ala. Civ. App. 2011)
- Jones v. Regions Bank, 25 So. 3d 427, 441 (Ala. 2009)
- City of Bessemer v. McClain, 957 So. 2d 1061, 1078 (Ala. 2006)
- Battle v. City of Birmingham, 656 So. 2d 344, 347 (Ala. 1995)
- Government Employees Insurance Co. v. Capulli, 859 So. 2d 1115 (Ala. Civ. App. 2002)
- Trustees v. Greenough, 105 U.S. 527 (1881)
- Central R.R. & Banking Co. v. Pettus, 113 U.S. 116 (1885)
- Blue Cross & Blue Shield of Alabama v. Freeman, 447 So. 2d 757 (Ala. Civ. App. 1983)
- Reynolds v. Colonial Bank, 874 So. 2d 497 (Ala. 2003)
- Greene v. Town of Cedar Bluff, 965 So. 2d 773, 779 (Ala. 2007)
- Manci v. Ball, Koons & Watson, 995 So. 2d 161, 170 (Ala. 2008)
- Putman v. Womack, 607 So. 2d 166, 166-67 (Ala. 1992)
- Hartford Casualty Insurance Co. v. Merchants & Farmers Bank, 928 So. 2d 1006, 1009 (Ala. 2005)
- International Underwriters/Brokers, Inc. v. Liao, 548 So. 2d 163 (Ala. 1989)
- Alabama Farm Bureau Mutual Casualty Insurance Co. v. Williams, 365 So. 2d 315 (Ala. Civ. App. 1978)
- Alabama Farm Bureau Mutual Casualty Insurance Co. v. Anderson, 48 Ala. App. 172, 263 So. 2d 149 (1972)
- Alston v. State Farm Mutual Automobile Insurance Co., 660 So. 2d 1314 (Ala. Civ. App. 1995)
- Lyons v. GEICO Insurance Co., 689 So. 2d 182 (Ala. Civ. App. 1997)
- Eiland v. Meherin, 854 So. 2d 1134, 1139 (Ala. Civ. App. 2002)
- Wolfe v. Alfa Mutual Insurance Co., 880 So. 2d 1163, 1166 (Ala. Civ. App. 2003)
- Ex parte State Farm Fire & Casualty Co., 764 So. 2d 543 (Ala. 2000)

- 21st Century Insurance Co. v. Superior Court, 47 Cal. 4th 511, 213 P.3d 972, 98 Cal. Rptr. 3d 516 (2009)
- Boll v. State Farm Mutual Automobile Insurance Co., 140 Idaho 334, 92 P.3d 1081 (2004)
- Baier v. State Farm Insurance Co., 66 Ill. 2d 119, 361 N.E.2d 1100 (1977)
- State Farm Mutual Automobile Insurance Co. v. Clinton, 267 Or. 653, 518 P.2d 645 (1974)
- Mahler v. Szucs, 135 Wash. 2d 398, 957 P.2d 632, 648 (1998)

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