Mitleider v. Brier Grieves Agency, Inc.

53 So. 3d 410 (Fla. 4th DCA 2011) · Decided February 16, 2011

SUMMARY

The Florida Fourth District Court of Appeal held that a signed rejection of uninsured motorist coverage creates a conclusive presumption of an informed and knowing rejection under section 627.727(9), Florida Statutes (2007). The presumption barred the plaintiff's negligence and related claims against the insurance agency and agent for allegedly failing to offer or explain uninsured motorist coverage, and the court affirmed dismissal.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Levine, J.; Polen, J.; Ciklin, J.
JURISDICTION	Florida
DECIDED	February 16, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting a motion to dismiss for failure to state a cause of action.
STANDARD OF REVIEW	De novo review of an order granting a motion to dismiss for failure to state a cause of action; the court considers the four corners of the complaint, accepts alleged facts as true, and draws reasonable inferences in favor of the pleader.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Mitleider v. Brier Grieves Agency, Inc., the agency's employee

TOPICS

uninsured motorist · insurance coverage · statutory interpretation · negligence · negligent misrepresentation

PRACTICE AREAS

insurance · insurance coverage · torts · statutory interpretation

QUESTIONS PRESENTED

1. Whether signing a form rejecting uninsured motorist coverage creates a conclusive presumption that the rejection was informed and knowing under section 627.727(9), Florida Statutes (2007).
2. Whether that conclusive presumption applies to negligence and related claims against an insurance agency and its agent for allegedly failing to offer or explain uninsured motorist coverage.
3. Whether the trial court properly dismissed the complaint for failure to state a cause of action.

HOLDINGS

1. Under section 627.727(9), Florida Statutes (2007), signing the prescribed form rejecting uninsured motorist coverage creates a conclusive presumption that the rejection was an informed and knowing acceptance of the limitation.
2. The conclusive presumption applies not only to coverage claims against the insurer but also to claims against the insurance agency and its agent arising from the alleged failure to offer or explain uninsured motorist coverage.
3. The trial court properly dismissed the complaint for failure to state a cause of action.

KEY QUOTATIONS

> "*The presumption created by § 627.727 cannot be rebutted by testimony that the person signing the rejection form did not read it.*" (53 So. 3d at 411)

> "*This conclusive presumption applies whether in a case against the insurance company for coverage or against the insurance agency and its agent.*" (53 So. 3d at 412-13)

FACTUAL BACKGROUND

Mitleider was covered under an insurance policy obtained by his father, who signed a form rejecting uninsured motorist coverage. Mitleider alleged that the insurance agency and its employee failed to offer or inform him of uninsured motorist coverage and advised him that such coverage was unnecessary to be fully protected. He brought negligence, negligent misrepresentation, and vicarious-liability claims against the agency and employee.

PROCEDURAL HISTORY

Mitleider sued the insurance agency and its employee for negligence, negligent misrepresentation, and vicarious liability, alleging that they failed to offer or explain uninsured motorist coverage and advised that it was unnecessary. The trial court initially denied the motion to dismiss, but on rehearing granted it after concluding that the signed uninsured-motorist rejection form created a conclusive presumption of an informed and knowing rejection under the current version of section 627.727. Mitleider appealed.

DISPOSITION

affirmed

CASES CITED

- Adams v. Aetna Casualty & Surety Co., 574 So. 2d 1142, 1155 (Fla. 1st DCA 1991)
- Goodall v. Whispering Woods Ctr., L.L.C., 990 So. 2d 695, 697 (Fla. 4th DCA 2008)
- Auger v. State Farm Mut. Auto. Ins. Co., 516 So. 2d 1024, 1024 (Fla. 2d DCA 1987)
- White v. Allstate Ins. Co., 530 So. 2d 967, 969 (Fla. 1st DCA 1988)

OPINION

Mitleider v. Brier Grieves Agency, Inc.

53 So. 3d 410

LEVINE, J.

LEVINE, J. The issue presented is whether the execution of a form, which rejects uninsured motorist coverage, absolves the insurance agency and its agent of liability for negligently failing to procure uninsured motorist coverage. We find that it does, since section 627.727(9), Florida Statutes (2007), creates a conclusive presumption that an informed and knowing rejection of uninsured motorist coverage was made. Appellant filed a complaint for negligence, negligent misrepresentation, and vicarious liability against the appellee insurance agency and its employee. Appellant alleged that, when he was obtaining insurance, appellee failed to offer or inform him of uninsured motorist coverage and advised him that uninsured motorist cover*412age was unnecessary to be fully protected. Appellee responded to the complaint with a motion to dismiss, pointing out that appellant's father, who executed the insurance policy that covered appellant, had signed a form rejecting uninsured motorist coverage. Initially, the trial court denied the motion to dismiss, relying on Adams v. Aetna Casualty & Surety Co., 574 So.2d 1142, 1155 (Fla. 1st DCA 1991), which stated that the signing of an uninsured motorist rejection form did not necessarily give rise to a conclusive presumption that the insured had a full understanding of uninsured motorist coverage. At a rehearing, the trial court reversed its ruling after determining that the Adams case was based on an earlier version of section 627.727 and that the current law stated that execution of the form waiving uninsured motorist coverage created a conclusive presumption that the rejection of coverage was informed and knowing. The trial court granted the motion to dismiss, and this appeal ensues. We review the trial court's granting of the motion to dismiss for failure to state a cause of action under a de novo standard of review. Goodall v. Whispering Woods Ctr., L.L.C., 990 So.2d 695, 697 (Fla. 4th DCA 2008). "In reviewing an order granting a motion to dismiss, this court's gaze is limited to the four corners of the complaint. The facts alleged in the complaint must be accepted as true and all reasonable inferences are drawn in favor of the pleader." Id. (citation and internal quotation marks omitted). Section 627.727(1) requires that uninsured motorist coverage be applicable to all, unless "an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy." § 627.727(1), Fla. Stat. (2007). The statute was amended in 1984 to include the following: "If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations." § 627.727(9), Fla. Stat. (2007);

see also Auger v. State Farm Mut. Auto. Ins. Co., 516 So.2d 1024, 1024 (Fla. 2d DCA 1987) (discussing the 1984 amendment to section 627.727). The conclusive presumption of the statute forestalls appellant's claim that he was not offered or informed of uninsured motorist coverage. "The presumption created by § 627.727 cannot be rebutted by testimony that the person signing the rejection form did not read it. The consequences of signing any document or contract cannot be avoided by merely testifying that the document or contract was not read.... " White v. Allstate Ins. Co., 530 So.2d 967, 969 (Fla. 1st DCA 1988). Appellant concedes that the statute would prevent him from challenging the waiver of uninsured motorist coverage against the insurance company, but appellant argues that, based on Adams, a claim against the insurance agent could still be valid. We believe that Adams is inapplicable, since the First District relied on the 1982 version of section 627.727,1 which did not contain the current clear declaration that, if the uninsured motorist rejection form is signed, it "shall be conclusively presumed that there was an informed, knowing acceptance of such limitations." § 627.727(9), Fla. Stat. (2007). This conclusive presumption applies whether in a case against the insurance company for coverage or against the insurance agency and its agent. It would not make sense to enforce this conclusive presumption against an insurance company on a coverage issue, recognizing that the written re*413jection was informed and knowing, and not equally recognize the same action of written rejection of insurance as informed and knowing, where the claim is against an insurance agent instead. Therefore, we find the trial court was correct, and we affirm the trial court's dismissal and enforce the text of the statute. Affirmed. POLEN and CIKLIN, JJ., concur. . See Adams, 574 So.2d at 1144.