SUPREME COURT OF NORTH DAKOTA

Grinnell Mutual Reinsurance Co. v. Thompson

778 N.W.2d 526 (N.D. 2010) · No. No. 20090250 · Decided February 17, 2010

SUMMARY

The Supreme Court of North Dakota reversed a district court judgment requiring Grinnell Mutual Reinsurance Company to provide coverage and a defense for Shelly Thompson following an intentional collision. The court held that Shelly was neither a named insured nor a permissive operator, so North Dakota's Financial Responsibility Laws did not require minimum coverage for her conduct and the insurance policy controlled. The court concluded that the policy's intentional-acts exclusion permitted Grinnell to deny coverage.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Vande Walle, Chief Justice; Dale V. Sandstrom, Justice; Daniel J. Crothers, Justice; Kapsner, Justice; Carol Ronning Maring, Justice
JURISDICTION	North Dakota
DECIDED	February 17, 2010
DOCKET	No. 20090250
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Grinnell appealed from a district court judgment granting partial summary judgment to Foltz Trucking, FBF Leasing, and Continental Western and requiring Grinnell to provide coverage, indemnification, and a defense concerning the collision.
STANDARD OF REVIEW	Summary judgment and interpretation of statutes and insurance contracts are reviewed de novo. Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published North Dakota Supreme Court opinion
PARTIES	Grinnell Mutual Reinsurance Company v. Foltz Trucking, Inc., FBF Leasing, Inc., Continental Western Insurance Company

TOPICS

insurance coverage | duty to defend | statutory interpretation | contract interpretation | declaratory relief insurance

PRACTICE AREAS

insurance coverage | insurance law | contract interpretation | statutory interpretation | declaratory judgment

QUESTIONS PRESENTED

1. Whether North Dakota's Financial Responsibility Laws require minimum liability coverage for a spouse or family member who drives the named insured's vehicle without permission.
2. Whether Shelly Thompson was a named insured under Norman Thompson's policy because the policy defined 'you' and 'your' to include a resident spouse.
3. Whether the policy's intentional-acts exclusion could exclude coverage for Shelly Thompson's intentional collision when she was a nonpermissive operator.
4. Whether the district court properly granted partial summary judgment to Foltz, FBF Leasing, and Continental and denied Grinnell's summary-judgment motion.

HOLDINGS

1. Shelly Thompson was an insured under the policy but was not the named insured. Norman Thompson alone was the named insured because he was identified as such in the policy declarations.
2. The Financial Responsibility Laws do not require any minimum level of coverage for a nonpermissive operator who is neither the named insured nor a person using the vehicle with the named insured's express or implied permission.
3. Because Shelly Thompson was a nonpermissive operator outside the statutory minimum-coverage mandate, the policy controlled and permitted Grinnell to exclude coverage for her intentional collision.
4. Summary judgment was proper because the parties identified no genuine issue of material fact and the dispositive issues were legal questions concerning statutory and policy interpretation.

KEY QUOTATIONS

> *"The Financial Responsibility Laws do not require any minimum level of coverage for nonpermissive operators, such as Shelly Thompson. The coverage Grinnell must provide for Shelly Thompson is thus dictated by the terms of Grinnell's policy, not the Financial Responsibility Laws."* (532-533)

> *"Because the Financial Responsibility Laws do not require a minimum level of coverage for Shelly Thompson, a nonpermissive operator, Grinnell can exclude coverage for her intentional collision with the semi-trailer."* (533)

FACTUAL BACKGROUND

Norman Thompson owned a 1995 Buick Regal insured under a Grinnell policy naming him as the named insured and defining his resident spouse, Shelly Thompson, as an insured or family member. Shelly drove the

Buick without Norman's permission and intentionally attempted to collide with a semi-trailer owned by Foltz Trucking. The policy covered damages for which an insured became legally responsible because of an auto accident but excluded liability coverage for an insured who intentionally caused bodily injury or property damage. Foltz, FBF Leasing, and Continental sought coverage up to North Dakota's minimum statutory limits.

PROCEDURAL HISTORY

After Foltz sued Norman and Shelly Thompson for damages, Grinnell provided a defense subject to its right to deny coverage or withdraw and filed a declaratory-judgment action. The district court granted the defendants' partial-summary-judgment motion and denied Grinnell's motion, concluding the policy had to provide minimum statutory coverage despite Shelly Thompson's lack of permission to drive. The Supreme Court of North Dakota reversed and remanded for entry of judgment granting Grinnell summary judgment.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Enter judgment denying Foltz Trucking's, FBF Leasing's, and Continental Western's motion for partial summary judgment and granting Grinnell's motion for summary judgment.

CASES CITED

- Kambeitz v. Acuity Ins. Co., 2009 ND 166, ¶ 8, 772 N.W.2d 632
- Bragg v. Burlington Res. Oil & Gas Co. LP, 2009 ND 33, ¶ 5, 763 N.W.2d 481
- State v. Brown, 2009 ND 150, ¶ 15, 771 N.W.2d 267
- In re M.W., 2009 ND 55, ¶ 6, 764 N.W.2d 185
- Schleuter v. Northern Plains Ins. Co., 2009 ND 171, ¶ 8, 772 N.W.2d 879
- ACUITY v. Burd & Smith Constr., 2006 ND 187, ¶ 7, 721 N.W.2d 33
- Ziegelmann v. TMG Life Ins. Co., 2000 ND 55, ¶ 6, 607 N.W.2d 898
- Nationwide Mut. Ins. Cos. v. Lagodinski, 2004 ND 147, ¶ 9, 683 N.W.2d 906
- Hughes v. State Farm Mut. Auto. Ins. Co., 236 N.W.2d 870, 877, 883-85 (N.D. 1975)
- Odom v. Farmers Ins. Co., 216 Ariz. 530, 169 P.3d 120, 122 n.1 (Ariz. Ct. App. 2007)
- Nationwide Mut. Ins. Co. v. Buffetta, 230 F.3d 634, 639 n.3 (3d Cir. 2000)
- Grinnell Mut. Reins. Co. v. Farm & City Ins. Co., 2000 ND 163, ¶ 16, 616 N.W.2d 353
- Haser v. Maryland Cas. Co., 78 N.D. 893, 53 N.W.2d 508, 510, 512 (1952)
- Auto. Club Ins. Co. v. Hoffert, 195 N.W.2d 542, 545-46 (N.D. 1972)
- Cont'l Cas. Co. v. Kinsey, 499 N.W.2d 574, 580-81 (N.D. 1993)
- Hins v. Heer, 259 N.W.2d 38, 40 (N.D. 1977)
- Capitol Indem. Corp. v. Evolution, Inc., 293 F. Supp. 2d 1067, 1074 (D.N.D. 2003)
- State Farm Mut. Auto. Ins. Co. v. Wertz, 540 N.W.2d 636, 639-40 (S.D. 1995)

- Williams v. Diggs, 593 So. 2d 385, 387 (La. Ct. App. 1991)
- Utica Mut. Ins. Co. v. Travelers Indem. Co., 223 Va. 145, 286 S.E.2d 225, 226 (1982)
- Snyder v. Nelson, 278 Or. 409, 564 P.2d 681, 684 (1977)
- Richard v. Fliflet, 370 N.W.2d 528, 530, 534-35 (N.D. 1985)
- DeCoteau v. Nodak Mut. Ins. Co., 2000 ND 3, ¶ 22, 603 N.W.2d 906
- Speros v. Fricke, 2004 UT 69, 98 P.3d 28
- Dotts v. Taressa J.A., 182 W. Va. 586, 390 S.E.2d 568, 572-74 (1990)
- Mead v. Farmers Union Mut. Ins. Co., 2000 ND 139, ¶¶ 7, 22, 613 N.W.2d 512
- Ohio Cas. Ins. Co. v. Horner, 1998 ND 168, ¶¶ 1-2, 583 N.W.2d 804
- Ohio Cas. Ins. Co. v. Clark, 1998 ND 153, ¶ 18, 583 N.W.2d 377
- Nodak Mut. Ins. Co. v. Heim, 1997 ND 36, ¶ 24, 559 N.W.2d 846
- Nat'l Farmers Union Prop. & Cas. Co. v. Kovash, 452 N.W.2d 307, 311 (N.D. 1990)
- State Farm Fire & Cas. Co. v. Tringali, 686 F.2d 821, 824 (9th Cir. 1982)
- Wheeler v. O'Connell, 297 Mass. 549, 9 N.E.2d 544, 546 (1937)
- Nationwide Mut. Ins. Co. v. Roberts, 261 N.C. 285, 134 S.E.2d 654, 659 (1964)