SUPREME COURT OF NORTH CAROLINA

Liberty Mutual Insurance Co. v. Pennington, 356 N.C. 571

573 S.E.2d 118 (2002) · No. No. 185PA01 · Decided December 20, 2002

SUMMARY

The Supreme Court of North Carolina held that an insured's claim for underinsured motorist benefits was not barred merely because the insurer was not notified within the statute of limitations applicable to the underlying tort action. The court further held that whether the insureds acted in good faith and whether the insurer suffered material prejudice from delayed notice presented genuine issues of material fact, precluding summary judgment. The court affirmed the Court of Appeals' reversal of the trial court's summary judgment for Liberty Mutual.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Butterfield, Justice
JURISDICTION	North Carolina
DECIDED	December 20, 2002
DOCKET	No. 185PA01
DISPOSITION	affirmed
PROCEDURAL POSTURE	Liberty Mutual brought a declaratory-judgment action seeking a declaration that its policy provided no underinsured-motorist coverage. The trial court granted Liberty Mutual summary judgment. The Court of Appeals reversed, and the Supreme Court of North Carolina affirmed the Court of Appeals.
STANDARD OF REVIEW	Summary judgment is proper only when the materials show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The evidence must be viewed in the light most favorable to the nonmoving party, and factual issues may not be resolved on summary judgment.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of North Carolina; binding precedent in North Carolina.
PARTIES	Liberty Mutual Insurance Co. v. Judy Bass Pennington, Rick Pennington

TOPICS

uninsured motorist | insurance coverage | statutory interpretation | summary judgment | declaratory relief insurance

PRACTICE AREAS

insurance law | civil procedure | appellate procedure | statutory interpretation

QUESTIONS PRESENTED

1. Whether N.C.G.S. § 20-279.21(b)(4) required notice of a UIM claim within the statute of limitations applicable to the underlying tort action.
2. Whether the three-year limitations period for liabilities created by statute under N.C.G.S. § 1-52(2) barred the Penningtons' UIM claim.
3. Whether the Penningtons' failure to comply promptly with the policy's notice provisions barred recovery of UIM benefits as a matter of law on summary judgment.
4. Whether Liberty Mutual established material prejudice from the delayed notice sufficient to avoid UIM liability.

HOLDINGS

1. N.C.G.S. § 20-279.21(b)(4) does not require an insured to notify the UIM carrier of a claim within the statute of limitations applicable to the underlying tort action; failure to provide notice within that period, without more, does not bar recovery of UIM benefits.
2. The three-year statute of limitations for liabilities created by statute under N.C.G.S. § 1-52(2) does not apply to bar the Penningtons' UIM claim.
3. The policy-notice issue could not be resolved on summary judgment because genuine issues remained regarding whether the Penningtons acted in good faith and whether Liberty Mutual suffered material prejudice in investigating and defending the UIM claim.

KEY QUOTATIONS

> *“The language of the statute is clear, and nothing therein suggests that the notification requirement is subject to a statute of limitations.”* (573 S.E.2d at 120)

> *“Thus, although plaintiff's liability to defendants arises, in part, from N.C.G.S. § 20-279.21(b)(4), "this action is actually one for the tort allegedly committed by the [underinsured] motorist."”* (573 S.E.2d at 123)

> *“Accordingly, we hold that the issue of whether defendants are barred from recovering UIM benefits for failure to comply with the notice provisions of the policy is not yet ripe for summary judgment and that the trial court erroneously entered judgment in favor of plaintiff.”* (573 S.E.2d at 125)

FACTUAL BACKGROUND

Judy Pennington and her daughter were injured on 9 December 1993 when a truck owned by Blackburn Logging Company and driven by Clee Earp caused Judy's vehicle to collide with other vehicles. The Penningtons sued the tortfeasors and learned during court-ordered mediation on 10 December 1997 that the tortfeasors' liability limits were $25,000/$50,000. They then notified Liberty Mutual of their intention to seek UIM benefits under a policy with $50,000/$100,000 limits, but Liberty Mutual argued that notice was untimely and that the delay violated the policy.

PROCEDURAL HISTORY

After the Penningtons were injured in an automobile accident, they sued the tortfeasors and later notified Liberty Mutual of a potential UIM claim after learning the tortfeasors' liability limits. Liberty Mutual filed a declaratory-judgment action, arguing that the claim was barred by statutory and policy notice requirements. The trial court granted Liberty Mutual summary judgment; the Court of Appeals unanimously reversed; the Supreme Court allowed certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759 (1989)
- Proctor v. N.C. Farm Bureau Mut. Ins. Co., 324 N.C. 221, 376 S.E.2d 761 (1989)
- Woodson v. Rowland, 329 N.C. 330, 407 S.E.2d 222 (1991)
- Correll v. Division of Soc. Servs., 332 N.C. 141, 418 S.E.2d 232 (1992)
- State v. Camp, 286 N.C. 148, 209 S.E.2d 754 (1974)
- Brown v. Lumbermens Mut. Cas. Co., 285 N.C. 313, 204 S.E.2d 829 (1974)
- Silvers v. Horace Mann Ins. Co., 324 N.C. 289, 378 S.E.2d 21 (1989)
- Buchanan v. Buchanan, 83 N.C. App. 428, 350 S.E.2d 175 (1986), disc. rev. denied, 319 N.C. 224, 353 S.E.2d 406 (1987)
- Dalton v. Camp, 353 N.C. 647, 548 S.E.2d 704 (2001)
- DeWitt v. Eveready Battery Co., 355 N.C. 672, 565 S.E.2d 140 (2002)
- Marcus Bros. Textiles, Inc. v. Price Waterhouse, LLP, 350 N.C. 214, 513 S.E.2d 320 (1999)
- Koontz v. City of Winston-Salem, 280 N.C. 513, 186 S.E.2d 897 (1972)
- Lowe v. Bradford, 305 N.C. 366, 289 S.E.2d 363 (1982)
- Roumillat v. Simplistic Enters., Inc., 331 N.C. 57, 414 S.E.2d 339 (1992)
- Alford v. Shaw, 327 N.C. 526, 398 S.E.2d 445 (1990)
- Ward v. Durham Life Ins. Co., 325 N.C. 202, 381 S.E.2d 698 (1989)
- Great Am. Ins. Co. v. C.G. Tate Constr. Co., 303 N.C. 387, 279 S.E.2d 769 (1981)
- Dobson v. Harris, 352 N.C. 77, 530 S.E.2d 829 (2000)
- Great Am. Ins. Co. v. C.G. Tate Constr. Co., 46 N.C. App. 427, 265 S.E.2d 467 (1980)

INSTRUCTIONS FOR AN AI ASSISTANT