NEBRASKA SUPREME COURT

Barnes v. American Standard Insurance Company of Wisconsin

Barnes v. American Standard Ins. Co. of Wis., 297 Neb. 331 (2017) · No. No. S-16-854 · Decided July 28, 2017

SUMMARY

The Nebraska Supreme Court considered whether an insurer established, as a matter of law, that it mailed a policy cancellation notice by certified mail as required by Neb. Rev. Stat. § 44-516. The court held that the evidence created a genuine issue of material fact and that the district court improperly resolved inferences in favor of the insurer on summary judgment. The court reversed and remanded for further proceedings.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Wright, J.; Cassel, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	July 28, 2017
DOCKET	No. S-16-854
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Barnes appealed from an order granting American Standard's motion for partial summary judgment, denying Barnes' cross-motion for partial summary judgment, and dismissing his complaint with prejudice.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court determines whether the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and whether the moving party is entitled to judgment as a matter of law. Evidence is viewed in the light most favorable to the party against whom summary judgment was granted, with that party receiving the benefit of all reasonable inferences.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jimmy R. Barnes, Jr. v. American Standard Insurance Company of Wisconsin

TOPICS

summary judgment · insurance coverage · statutory interpretation · standard of review · appellate procedure

PRACTICE AREAS

insurance · civil procedure · appellate procedure · statutory interpretation · evidence

QUESTIONS PRESENTED

1. Whether the evidence established as a matter of law that American Standard mailed the cancellation notice by certified mail as required by Neb. Rev. Stat. § 44-516(1).
2. Whether the district court improperly resolved factual issues and drew inferences in favor of the summary-judgment movant.
3. Whether the district court erred by dismissing Barnes' complaint with prejudice after ruling on the cross-motions for partial summary judgment.

HOLDINGS

1. Summary judgment is improper when the evidence leaves a genuine issue of material fact, and the court may not resolve factual disputes or draw disputed inferences in favor of the moving party.
2. The insurer bears the burden of establishing an effective cancellation before the loss.
3. Section 44-516(1) requires cancellation notices within its scope to be mailed by registered or certified mail; the insured need not actually receive the notice.
4. American Standard's evidence did not establish as a matter of law that it mailed Barnes' cancellation notice by certified mail, so the issue had to be resolved in further proceedings rather than on summary judgment.

KEY QUOTATIONS

> *"Summary judgment proceedings do not resolve factual issues, but instead determine whether there is a material issue of fact in dispute."* (338)

> *"The burden of establishing an effective cancellation before a loss is on the insurer."* (339)

> *"In sum, taking the inferences in favor of Barnes as the non-moving party, the evidence submitted by American Standard did not establish directly that it mailed the notice of cancellation by certified mail and it was not entitled to judgment as a matter of law."* (346)

FACTUAL BACKGROUND

Barnes purchased a motorcycle insurance policy from American Standard that included underinsured motorist coverage. American Standard prepared cancellation notices after premium-payment problems and asserted that it mailed the notices by certified mail, while Barnes alleged that he did not receive them. Barnes was injured in an accident with an underinsured motorist after the purported cancellation date and sought coverage under the policy. The insurer denied the claim, and the district court granted summary judgment based largely on mailing records and evidence concerning American Standard's customary procedures.

PROCEDURAL HISTORY

Barnes sued American Standard in the Douglas County District Court after the insurer denied his underinsured motorist claim on the ground that his motorcycle policy had been canceled before his accident. The parties filed cross-motions for partial summary judgment. The district court found that American Standard had sent the cancellation notice by certified mail, granted the insurer's motion, denied Barnes' motion, and dismissed the complaint with prejudice. The Nebraska Supreme Court reversed and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded for further proceedings consistent with the opinion. The factual issue of whether American Standard mailed the cancellation notice by certified mail was to be resolved by the trier of fact, and Barnes had demanded a jury trial.

CASES CITED

- Midland Properties v. Wells Fargo, 296 Neb. 407, 893 N.W.2d 460 (2017)
- Brock v. Dunning, 288 Neb. 909, 854 N.W.2d 275 (2014)
- Daniels v. Allstate Indemnity Co., 261 Neb. 671, 624 N.W.2d 636 (2001)
- Houska v. City of Wahoo, 235 Neb. 635, 456 N.W.2d 750 (1990)
- Sanders v. Mittlieder, 195 Neb. 232, 237 N.W.2d 838 (1976)
- In re Adoption of Chase T., 295 Neb. 390, 888 N.W.2d 507 (2016)
- Coleman v. C.I.R., 94 T.C. 82 (1990)
- United States v. Ahrens, 530 F.2d 781 (8th Cir. 1976)
- Wiley v. United States, 20 F.3d 222 (6th Cir. 1994)
- Cropper v. C.I.R., 826 F.3d 1280 (10th Cir. 2016)
- Horton v. Washington Cty. Tax Claim Bureau, 623 Pa. 113, 81 A.3d 883 (2013)
- Ragan v. Columbia Mut. Ins. Co., 183 Ill. 2d 342, 701 N.E.2d 493, 233 Ill. Dec. 643 (1998)
- Hunt v. State Farm Mutual Automobile Insurance Co., 2013 IL App (1st) 120561, 994 N.E.2d 561, 373 Ill. Dec. 792 (2013)

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