SUPREME COURT OF INDIANA

Idan (John) Filip and Valaria Filip v. Carrie Block and 1st Choice Insurance Agency

Filip v. Block, 879 N.E.2d 1076 (Ind. 2008) · No. 75S05-0704-CV-149 · Decided January 29, 2008

SUMMARY

The Indiana Supreme Court addressed how parties must designate evidence under Indiana Trial Rule 56(C), holding that designations may appear in various filings but must be consistent and sufficiently specific. The court also held that a negligence claim against an insurance agent for procuring inadequate coverage generally accrues when the coverage deficiency was or should have been discoverable through ordinary diligence. Summary judgment for the defendants was affirmed, except that the evidence created a factual issue concerning alleged representations about coverage for nonbusiness personal property; the court nevertheless affirmed the judgment overall.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Boehm, Justice; Boehm; Dickson; Rucker; Shepard; Sullivan
JURISDICTION	Indiana
DECIDED	January 29, 2008
DOCKET	75S05-0704-CV-149
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Filips appealed the trial court's grant of summary judgment to Block and 1st Choice Insurance Agency. The Indiana Court of Appeals reversed, holding that the Filips could rely on the pages designated in the defendants' motion and that the negligence claim accrued when the insurance claim was denied. The Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	Summary judgment is reviewed under the same standard applied by the trial court. Summary judgment must be reversed unless there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, with facts and reasonable inferences construed in favor of the nonmoving party.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES	Idan (John) Filip, Valaria Filip v. Carrie Block, 1st Choice Insurance Agency

TOPICS

summary judgment · civil procedure · statute of limitations · insurance · negligence

PRACTICE AREAS

civil procedure · insurance · torts

QUESTIONS PRESENTED

1. Whether Indiana Trial Rule 56(C) requires a particular form or location for designating evidence supporting or opposing summary judgment.
2. Whether a party may rely on pages identified in an opposing party's motion when the opposing party later specifies narrower lines or paragraphs in a memorandum.
3. When the two-year statute of limitations begins to run on a negligence claim against an insurance agent for procuring inadequate or incorrect coverage.
4. Whether reasonable reliance on an insurance agent's representations can toll or postpone the limitations period and create a material factual issue concerning coverage of nonbusiness personal property.
5. Whether an insurance agent owes a general duty to advise an insured about the adequacy or availability of coverage absent a special relationship.

HOLDINGS

1. Trial Rule 56(C) does not mandate a particular form or filing for designating summary-judgment evidence. A designation may appear in a motion, supporting or opposing memorandum, separate filing, or appendix, but it must clearly identify the material relied upon and the entire designation must be in one place.
2. When a party designates both an entire document or set of pages and narrower lines or text, the court may limit that party to the more specific designation. But an opposing party may rely on the broader designation made by the designating party, and the designating party may not later use its narrower memorandum designation to prevent reliance on the remainder of pages identified in its motion.
3. A negligence claim against an insurance agent for procuring incorrect or inadequate coverage accrues when the insured knew or, through ordinary diligence, could have discovered the coverage problem and resulting injury. If the problem was discoverable when coverage began, the limitations period begins at or shortly after the start of coverage, not necessarily when a loss occurs or a claim is denied.
4. Reasonable reliance on an insurance agent's representations may override an insured's duty to read the policy and may postpone accrual of a negligence claim concerning the represented coverage. Here, the evidence created a material factual issue as to the claim for nonbusiness personal-property coverage, so summary judgment could not be sustained on limitations grounds as to that claim.

5. Absent a special relationship, an insurance agent's general duty of reasonable care does not include advising an insured about the adequacy of coverage limits, replacement value, or the availability of alternative forms of coverage. An agent may nevertheless assume a duty to advise through particular representations or conduct creating a special relationship.

KEY QUOTATIONS

> *"We hold that this designation may be accomplished in any one of several places but must be done consistently."* (1078)

> *"We also hold that the statute of limitations for negligence claims against an insurance agent for failure to obtain a desired form of coverage begins to run at the time the failure was first discoverable through ordinary diligence."* (1078)

> *"Rather, the entire designation must be in a single place, whether as a separate document or appendix or as a part of a motion or other filing."* (1081)

> *"The question in this case is at what point the Filips, in the exercise of ordinary diligence, could have discovered that they were underinsured."* (1083)

> *"The agent does not have a duty, however, to tell the potential insured about the adequacy of the coverage or any alternative coverage that is available."* (1086)

FACTUAL BACKGROUND

The Filips purchased a six-unit apartment building and obtained commercial insurance through Carrie Block, seeking coverage substantially similar to that carried by the prior owner. The policy lacked coverage for the Filips' nonbusiness personal property, provided allegedly inadequate limits and valuation for certain property, and lacked business-interruption coverage. A fire substantially destroyed the building in 2003, after which the Filips sued Block and 1st Choice for negligent procurement and selection of insurance.

PROCEDURAL HISTORY

The defendants moved for summary judgment after the Filips sued for negligent selection and procurement of insurance coverage following a fire. The trial court struck the Filips' untimely designation of evidence, limited their opposition to evidence identified in the defendants' memorandum, and granted summary judgment based on the two-year statute of limitations. The Court of Appeals reversed. The Supreme Court affirmed the trial court's judgment, although it held that the Filips could rely on the full pages designated in the defendants' motion.

DISPOSITION

affirmed

CASES CITED

- Row v. Holt, 864 N.E.2d 1011, 1013 (Ind. 2007)
- Naugle v. Beech Grove City School, 864 N.E.2d 1058, 1062 (Ind. 2007)

- National Board of Examiners for Osteopathic Physicians & Surgeons, Inc. v. American Osteopathic Association, 645 N.E.2d 608, 613, 615 (Ind. Ct. App. 1994)
- Pierce v. Bank One-Franklin, N.A., 618 N.E.2d 16, 19 (Ind. Ct. App. 1993)
- Swan v. TRW, Inc., 634 N.E.2d 794, 796 n.1 (Ind. Ct. App. 1994)
- Mid State Bank v. 84 Lumber Co., 629 N.E.2d 909, 913 (Ind. Ct. App. 1994)
- Vogler v. Dominguez, 624 N.E.2d 56, 58 (Ind. Ct. App. 1993)
- AutoXchange.com, Inc. v. Dreyer & Reinbold, Inc., 816 N.E.2d 40, 45-46 (Ind. Ct. App. 2004)
- Rosi v. Business Furniture Corp., 615 N.E.2d 431, 434 n.2 (Ind. 1993)
- Indiana Department of State Revenue v. Caylor-Nickel Clinic, P.C., 587 N.E.2d 1311, 1313 (Ind. 1992)
- Wehling v. Citizens National Bank, 586 N.E.2d 840, 843 (Ind. 1992)
- Foster v. Auto-Owners Insurance Co., 703 N.E.2d 657, 659-60 (Ind. 1998)
- Metropolitan Life Insurance Co. v. Alterovitz, 214 Ind. 186, 196, 14 N.E.2d 570, 574 (1938)
- Page v. Hines, 594 N.E.2d 485, 486-87 (Ind. Ct. App. 1992)
- Shideler v. Dwyer, 275 Ind. 270, 282, 417 N.E.2d 281, 289 (1981)
- Butler v. Williams, 527 N.E.2d 231, 232-34 (Ind. Ct. App. 1988)
- Strauser v. Westfield Insurance Co., 827 N.E.2d 1181, 1182, 1185 (Ind. Ct. App. 2005)
- Commonwealth Insurance Co. v. Stone Container Corp., 323 F.3d 507, 511 (7th Cir. 2003)
- Broadnax v. Morrow, 326 Ill. App. 3d 1074, 261 Ill. Dec. 225, 762 N.E.2d 1152, 1157 (2002)
- Cunningham v. Insurance Co. of North America, 2006 WL 2568464, at *5 (N.Y. App. Div. 2006)
- Toy v. Metropolitan Life Insurance Co., 863 A.2d 1, 7-9 (Pa. Super. Ct. 2004)
- Village Furniture, Inc. v. Associated Insurance Managers, Inc., 541 N.E.2d 306, 308 (Ind. Ct. App. 1989)
- Burns v. Rockford Life Insurance Co., 740 F.2d 542, 544 (7th Cir. 1984)
- American Family Mutual Insurance Co. v. Dye, 634 N.E.2d 844, 847-48 (Ind. Ct. App. 1994)
- Craven v. State Farm Mutual Automobile Insurance Co., 588 N.E.2d 1294, 1297 n.5 (Ind. Ct. App. 1992)
- Parker v. State Farm Mutual Automobile Insurance Co., 630 N.E.2d 567, 568-70 (Ind. Ct. App. 1994), transfer denied