SUPREME COURT OF THE STATE OF MONTANA

Bracken v. McDonnell Enterprises, Inc.

2014 MT 164N (Mont. 2014) · No. DA 13-0744 · Decided June 24, 2014

SUMMARY

The Montana Supreme Court reversed summary judgment for McDonnell Enterprises, Inc., holding that genuine issues of material fact existed regarding the pre-accident value of the plaintiff's vehicle and the extent of his damages after allegedly inadequate repairs. The court rejected the conclusion that Safeco's unilateral valuation and payment established both the measure and limit of the plaintiff's damages. The case was remanded for further proceedings on the negligence and Montana Consumer Protection Act claims.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Justice Michael E. Wheat; Justice Laurie McKinnon; Justice Beth Baker; Justice Jim Rice
JURISDICTION	Montana
DECIDED	June 24, 2014
DOCKET	DA 13-0744
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed the District Court's order granting the defendant summary judgment on negligence and Montana Consumer Protection Act claims.
STANDARD OF REVIEW	Summary judgment is reviewed under the rule that judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Michael R. Bracken v. McDonnell Enterprises, Inc., d/b/a Big Sky Collision Center

TOPICS

summary judgment · negligence · damages · consumer protection · civil procedure

PRACTICE AREAS

civil procedure | negligence | consumer protection | damages | appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was proper when the defendant relied solely on an insurer's unilateral valuation and payment to establish that the plaintiff had suffered no recoverable damages.
2. Whether the plaintiff could maintain negligence and Montana Consumer Protection Act claims despite receiving the insurer's unilateral payment.

HOLDINGS

1. Summary judgment was improper because genuine issues of material fact existed regarding the pre-accident value of Bracken's vehicle and the nature and extent of his other losses.
2. Bracken was entitled to proceed with his negligence and Montana Consumer Protection Act claims because the unresolved factual dispute concerning damages precluded summary judgment.

KEY QUOTATIONS

> *"The District Court incorrectly determined that Safeco's unilateral determination of the "total loss" value of Bracken's Infiniti was both the measure and limit of Bracken's damages."* (¶ 9)

> *"Because there is a genuine issue of material fact in this case, the District Court failed to apply settled Montana law and erred in granting summary judgment to Big Sky on the negligence and Consumer Protection Act claims."* (¶ 10)

FACTUAL BACKGROUND

A third party collided with Bracken's 2009 Infiniti, and Bracken took the vehicle to McDonnell Enterprises' Big Sky Collision Center for repairs. After several unsuccessful repair attempts, Safeco, the other driver's insurer, determined unilaterally that the vehicle was a total loss, assigned it a pre-accident value of $34,860 and a salvage value of $8,455.62, and paid Bracken the difference after he retained the vehicle. Bracken claimed additional losses, including the cost of proper repairs, replacement transportation, and the vehicle's greater value, and submitted affidavit and deposition evidence supporting those claims.

PROCEDURAL HISTORY

Bracken sued McDonnell Enterprises after repeated attempts to repair his vehicle allegedly failed, asserting negligence and violations of the Montana Consumer Protection Act. The Yellowstone County District Court concluded that insurance payments made after Safeco's unilateral valuation of the vehicle fully covered Bracken's losses and granted McDonnell summary judgment. The Montana Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The District Court was directed to conduct further proceedings, allowing Bracken to prove the nature and extent of his claimed damages and to pursue his negligence and Montana Consumer Protection Act claims.

CASES CITED

- Thornton v. Flathead County, 2009 MT 367, ¶ 13, 353 Mont. 252, 220 P.3d 395
- Boyes v. Eddie, 1998 MT 311, ¶ 16, 292 Mont. 152, 970 P.2d 91
- Causenbury v. Mortensen, 1999 MT 221, ¶ 21, 296 Mont. 25, 987 P.2d 351
- Lee v. USAA Cas. Ins. Co., 2001 MT 59, ¶¶ 25-26, 304 Mont. 356, 22 P.3d 631

OPINION

PER CURIAM.

June 24 2014 DA 13-0744 IN THE SUPREME COURT OF THE STATE OF MONTANA 2014 MT 164N MICHAEL R. BRACKEN, Plaintiff and Appellant, v. MCDONNELL ENTERPRISES, INC., d/b/a BIG SKY COLLISION CENTER, Defendant and Appellee. APPEAL FROM: District Court of the Thirteenth Judicial District, In and For the County of Yellowstone, Cause No. DV 12-0744 Honorable Susan P. Watters, Presiding Judge COUNSEL OF RECORD: For Appellant: W. Scott Green, Patten, Peterman, Bekkedahl & Green, PLLC, Billings, Montana For Appellee: Brian Kohn, Attorney at Law, Billings, Montana Submitted on Briefs: June 11, 2014 Decided: June 24, 2014 Filed: ____ Clerk Chief Justice Mike McGrath delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.

Its case title, cause number, and disposition shall be included in this Court’s quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Michael Bracken appeals from the District Court’s Order and Memorandum dated October 29, 2013, granting summary judgment to McDonnell Enterprises.

We reverse and remand. ¶3 In September 2011 a car driven by a third party collided with Bracken’s 2009 Infiniti M35XS. The collision was the fault of the other driver, who was insured by Safeco. Safeco does not insure McDonnell’s Big Sky Collision Center and is not a party to this litigation. Bracken took his Infiniti to Big Sky for repairs. Big Sky attempted to repair Bracken’s vehicle but failed to adequately do so after several attempts.

Safeco agreed with Bracken that Big Sky’s repair of the Infiniti was substandard and determined that the vehicle was a “total loss.” Safeco made a unilateral determination that the value of Bracken’s Infiniti prior to the accident had been $34,860 and that it had a “salvage value” of

$8455.62. Bracken elected to keep the vehicle and so Safeco paid him the difference between those two sums, or $26,455.69.

Bracken did not enter any settlement of his claim with the other driver and did not enter a settlement with Safeco. ¶4 Bracken brought this action against Big Sky for damages and for violation of the Montana Consumer Protection Act, § 30-14-101, et seq., MCA. He sought to recover 2 damages including the value of the Infiniti, the cost of replacement transportation, the cost of getting the repairs properly done, and treble damages under the Consumer Protection Act. ¶5 Big Sky moved for summary judgment, contending that Bracken could not maintain an action for damages because he had suffered no loss arising from the damage to his vehicle.

The motion was based solely upon Safeco's unilateral determination of Bracken's loss, and payment of that amount to Bracken on behalf of the other driver. The District Court granted summary judgment to McDonnell, concluding that Bracken's damage was "the value of the car had the accident not occurred." The District Court determined that the $34,860 pre-accident value set by Safeco was in fact the pre-accident value of the vehicle.

The District Court dismissed Bracken's argument that the Infiniti was worth as much as $55,000 as an attempt to obtain a new vehicle to replace his used vehicle. The District Court concluded that Bracken could not maintain any action against Big Sky, including his claim under the Consumer Protection Act, because all his losses had been paid by Safeco. ¶6 A party is not entitled to summary judgment unless "there is no genuine issue of material fact and the party is entitled to judgment as a matter of law." M. R. Civ.

P. 56(c). A court considering summary judgment must view the evidence in a light most favorable to the non-moving party. Thornton v. Flathead County, 2009 MT 367, ¶ 13, 353 Mont. 252, 220 P.3d 395. Summary judgment is not appropriate unless the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact." M. R. Civ.

P. 56(c)(3); Boyes v. Eddie, 1998 MT 311, ¶ 16, 292 Mont. 152, 970 P.2d. 91. 3 ¶7 Here there was clearly a genuine issue of material fact regarding the pre-accident value of the Infiniti vehicle and regarding the other categories of loss that Bracken seeks to recover from Big Sky. Big Sky's motion for summary judgment relied solely upon Safeco's unilateral determination of the vehicle's value.

Big Sky did not submit any affidavits or other admissible evidence except for copies of Safeco correspondence attached to its brief. Bracken opposed the motion for summary judgment and submitted excerpts of deposition testimony and his own affidavit.

The affidavit affirmed the amount he had received from Safeco; that he had not entered a settlement of his claims with anyone; that he had installed $10,000 worth of after-market equipment on the vehicle; that the vehicle was worth approximately $60,000 prior to the accident; that the replacement cost for a substantially similar vehicle would be $55,000; that he had incurred $7,000 in damage as a result of having to use alternative transportation; and that he had spent time and money to take the vehicle to Spokane seeking to have it repaired. ¶8 A plaintiff's proof of damage is an essential component of a negligence action, Causenbury v. Mortensen, 1999 MT 221, ¶ 21, 296 Mont.

25, 987 P.2d 351, and is therefore a material issue in this case. Bracken contended through his affidavit and other materials submitted in opposition to the motion for summary judgment that he suffered more damage than the vehicle value determined by Safeco. ¶9 The party seeking summary judgment, Big Sky in this case, has the burden to demonstrate that there is no genuine issue of material fact, and then the burden shifts to the opposing party to present evidence of a dispute over material facts.

Lee v. USAA Cas. Ins. Co., 2001 MT 59, ¶¶ 25-26, 304 Mont. 356, 22 P.3d 631. In the present case Bracken met 4 the burden of demonstrating the existence of a genuine dispute as to the nature and extent of his damages.

The District Court incorrectly determined that Safeco's unilateral determination of the "total loss" value of Bracken's Infiniti was both the measure and limit of Bracken's damages. Considering the materials submitted by the parties and construing the evidence in the light most favorable to Bracken as the party opposing summary judgment, there is a genuine issue as to the nature and extent of damages and Bracken is entitled to prove his claims. ¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for memorandum opinions.

Because there is a genuine issue of material fact in this case, the District Court failed to apply settled Montana law and erred in granting summary judgment to Big Sky on the negligence and Consumer Protection Act claims. ¶11 Reversed and remanded for further proceedings. /S/ MIKE McGRATH We Concur: /S/ MICHAEL E WHEAT /S/ LAURIE McKINNON /S/ BETH BAKER /S/ JIM RICE 5