SUPREME COURT OF NEBRASKA

Sweem v. American Fidelity Life Assurance Co.

274 Neb. 313 (2007) · No. S-06-870 · Decided October 5, 2007

SUMMARY

The Supreme Court of Nebraska held that genuine issues of material fact existed as to whether Diane Sweem remained totally disabled under her group disability insurance policy when American Fidelity terminated her benefits. The court reversed summary judgment on the breach of contract claim and remanded that claim for further proceedings, while affirming dismissal of the bad-faith and emotional-distress claims.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stephan, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 5, 2007
DOCKET	S-06-870
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Insured appealed from summary judgment for the insurer in an action seeking disability benefits and other relief under a group disability income insurance policy.
STANDARD OF REVIEW	Summary judgment is proper when the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and the moving party is entitled to judgment as a matter of law. On review, the evidence is viewed in the light most favorable to the party against whom judgment was entered, with that party receiving the benefit of all reasonable inferences.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Nebraska; precedential.
PARTIES	Diane C. Sweem v. American Fidelity Life Assurance Company

TOPICS

insurance coverage · life insurance litigation · breach of contract · summary judgment · civil procedure

PRACTICE AREAS

insurance law | contract law | civil procedure

QUESTIONS PRESENTED

1. Whether the district court improperly disregarded Sweem's post-termination vocational assessment when deciding the breach-of-contract claim.
2. Whether the insurance policy or applicable law limited Sweem's ability to submit evidence of continuing disability after American Fidelity terminated benefits.
3. Whether genuine issues of material fact existed regarding whether Sweem was totally disabled under the policy when benefits were discontinued.
4. Whether summary judgment should be affirmed on Sweem's bad-faith and negligent and intentional emotional-distress claims when she did not assign or argue error concerning those claims.

HOLDINGS

1. A later-obtained vocational assessment was relevant to determining whether Sweem remained totally disabled under the policy at the time benefits were discontinued, even though the insurer did not possess the assessment when it made its termination decision.
2. Genuine issues of material fact existed as to whether Sweem was totally disabled, as defined by the policy, when American Fidelity discontinued her benefits; therefore, summary judgment was improper on the breach-of-contract claim.
3. The judgment dismissing Sweem's bad-faith, negligent-infliction-of-emotional-distress, and intentional-infliction-of-emotional-distress claims was affirmed because Sweem did not assign or argue error concerning those claims.

KEY QUOTATIONS

> *"Because there are genuine issues of material fact which preclude summary judgment on Sweem's breach of contract claim, we reverse, and remand for further proceedings. We affirm the judgment of the district court with respect to Sweem's remaining claims."* (274 Neb. 313)

> *"The Yaffe-Rowell affidavit and report should have been considered by the trial court with respect to Sweem's breach of contract claim."* (274 Neb. 313)

> *"In circumstances such as these, where there is conflicting evidence on the question of whether an insured is "disabled" within the meaning of an insurance policy, we have held that neither party is entitled to summary judgment."* (274 Neb. 313)

FACTUAL BACKGROUND

Sweem, a former teacher, was insured under American Fidelity's group long-term disability policy after suffering severe temporomandibular-joint injuries and related complications. American Fidelity paid benefits for more than ten years, then terminated them in November 2002 after medical and vocational evidence indicated that Sweem could perform less physically demanding work. Sweem presented her own testimony, evidence from her treating physician, and a later vocational assessment stating that she could not perform her former work or any other work in the local or national economy.

PROCEDURAL HISTORY

American Fidelity discontinued Sweem's disability benefits after determining that she was employable in another occupation. Sweem sued for breach of contract, bad faith, and negligent and intentional infliction of emotional distress. The Douglas County District Court granted American Fidelity summary judgment and dismissed the complaint. The Nebraska Supreme Court affirmed as to the bad-faith and emotional-distress claims but reversed and remanded the breach-of-contract claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the district court for further proceedings consistent with the opinion on Sweem's breach-of-contract claim.

CASES CITED

- Stevenson v. Wright, 273 Neb. 789, 733 N.W.2d 559 (2007)
- Sayah v. Metropolitan Property & Casualty Insurance Co., 273 Neb. 744, 733 N.W.2d 192 (2007)
- Strong v. Omaha Construction Industries Pension Plan, 270 Neb. 1, 701 N.W.2d 320 (2005)
- Bates v. Design of the Times, Inc., 261 Neb. 332, 622 N.W.2d 684 (2001)
- Fraternal Order of Police v. County of Douglas, 259 Neb. 822, 612 N.W.2d 483 (2000)
- Riesen v. Irwin Industries Tool Co., 272 Neb. 41, 717 N.W.2d 907 (2006)
- Sherrets, Smith v. MJ Optical, Inc., 259 Neb. 424, 610 N.W.2d 413 (2000)
- Marksmeier v. McGregor Corp., 272 Neb. 401, 722 N.W.2d 65 (2006)
- NEBCO, Inc. v. Adams, 270 Neb. 484, 704 N.W.2d 777 (2005)
- Knudsen v. Mutual of Omaha Insurance Co., 257 Neb. 912, 601 N.W.2d 725 (1999)