

SUPREME JUDICIAL COURT OF MAINE

Beane v. Maine Insurance Guaranty Association

Beane v. Me. Ins. Guar. Ass'n, 2007 ME 40, 916 A.2d 204 · Decided March 1, 2007

OPINION

DANA, J.

Majority: DANA, CALKINS, LEVY, and SILVER, JJ. Dissent: SAUFLEY, C.J., and CLIFFORD and ALEXANDER, JJ. DANA, J. [¶ 1] Rebecca and David Beane appeal from a judgment of the Superior Court (Kennebec County, Studstrup, J.) granting the Maine Insurance Guaranty Association's (MIGA) motion for summary judgment.

The trial court found that MIGA had no obligation to pay the Beanes anything on their medical malpractice claim because the Beanes had not exhausted the solvent insurance coverage held by one of the two physicians involved. See 24-A M.R.S. § 4443(1) (2006).

The Beanes contend that the trial court erred, inter alia, in holding that they failed to exhaust the limits of a solvent insurance policy under *206the Maine Insurance Guaranty Association Act. We agree and vacate the judgment.

I. BACKGROUND [¶2] In 2008, the Beanes filed a complaint against Drs. Daniel Pierce and Sheridan Oldham for negligently failing to diagnose and treat Rebecca's breast cancer. Dr. Pierce's insurance carrier, PHICO, was deemed insolvent in 2002.

Because of PHICO's insolvency, MIGA, a nonprofit, unincorporated entity established pursuant to 24-A M.R.S. §§ 4431-4452 (2006), assumed Dr. Pierce's defense. The Beanes settled their claims against Dr. Oldham for \$600,000, an amount well below the \$1,000,000 limit of the doctor's solvent insurance coverage with St. Paul Insurance Company (St.Paul). MIGA refused to take part in those settlement negotiations. [¶ 3] The Beanes sought a declaratory judgment that MIGA was hable under the PHICO policy for up to \$300,000 and was not permitted to reduce its liability to the Beanes by the settlement they received from St. Paul.

MIGA filed a motion for summary judgment contending that it was not obligated to pay the Beanes because they had not exhausted Dr. Oldham's solvent insurance coverage as is required by 24-A M.R.S. § 4443(1), the exhaustion provision of the Act.

The Beanes filed a cross-motion for summary judgment. [¶ 4] After the court granted MIGA's summary judgment motion and denied the Beanes', the Beanes filed a notice of appeal in February 2005. Later that month, the Beanes, Dr. Pierce, and MIGA reached a settlement dismissing with prejudice all claims against Dr. Pierce.

The settlement stipulated that should we find that the Beanes had no duty under the MIGA Act to exhaust the full \$1,000,000 of Dr. Oldham's solvent coverage, MIGA would pay the Beanes \$300,000; but should we find a duty to recover the full amount of Dr. Oldham's coverage, MIGA would pay nothing, and the matter would be dismissed with prejudice. [¶ 5] In our opinion, on the first appeal, we noted that the parties "made no effort to reopen the record in the Superior Court to add the settlement documents." *Beane v. Me.*

Ins. Guar. Ass'n, 2005 ME 104, ¶ 8, 880 A.2d 284, 286. Because M.R.App. P. 5 includes "no provision to add to the record on appeal material that was not presented to the trial court," we vacated the judgment and remanded with instructions to consider the settlement agreement and "any agreed statement or finding regarding the Beanes' total damages." *Id.* ¶¶ 7, 10, 13, 880 A.2d at 286-87. [¶ 6] On remand, the Beanes and MIGA stipulated for purposes of the pending appeal that the total damages stemming from the medical malpractice suit exceeded \$1,000,000.

The trial court reconsidered the parties' cross-motions for summary judgment in light of the supplemented record and again granted MIGA's motion, finding that "the additional information add[ed] little to the legal argument and [did] not change the court's analysis." *Beane v. Me. Ins. Guar. Ass'n*, 2005 Me. Super LEXIS 182, at *3. This second appeal followed.

II. DISCUSSION A. The Maine Insurance Guaranty Association Act [¶ 7] The MIGA Act, enacted by the Legislature in 1969, created a nonprofit, unincorporated entity known as MIGA. 24-A M.R.S. § 4436 (2006). When a liability insurer becomes insolvent, MIGA is deemed the insurer of the policyholder for "the full amount of the covered claim for benefits" up to a limit of \$300,000 per *207claim.

24-A M.R.S. § 4438(1)(A) (2005).¹ The Act requires certain types of insurers to be members of the Association as a condition of their doing business in Maine. 24-A M.R.S. § 4436. Member insurers "are assessed fees which make up the assets of the Association." *Pinkham v. Morrill*, 622 A.2d 90, 93 (Me.1993). MIGA then "uses the assets derived from these assessments to pay 'covered claims' and to defray the costs of administering the Act." *Id.* [¶ 8] Section 4443(1) of the Act requires a "person having a claim against an insurer under any provision in an insurance policy, other than that of an insolvent insurer... shall be required to exhaust first the person's right under" the solvent policy.² B. Standard of Review [¶ 9] When, as in this case, the facts are undisputed, we review the court's entry of a summary judgment for errors of law.

City of Bangor v. Penobscot County, 2005 ME 35, ¶ 8, 868 A.2d 177, 180. Thus, we must determine whether the court erred as a matter of law in its interpretation of 24-A M.R.S. § 4443(1). "Statutory interpretation is a legal question subject to de novo review." *City of Bangor*, 2005 ME 35, ¶ 9, 868 A.2d at 180. C. Meaning of the Exhaustion Clause [¶ 10] In determining whether the Beanes must exhaust the limits of Dr. Oldham's solvent coverage prior to seeking any

recovery from MIGA, we must first determine whether the Beanes had “a claim against an insurer under any provision in an insurance policy” pursuant to section 4443(1) of the Act.

When a statute is unambiguous, we do not look beyond the plain meaning of its language.³ *Tibbetts v. Me. Bonding & Cas. Co.*, 618 A.2d 731, 733 (Me.1992). [¶ 11] The Beanes contend that the exhaustion requirement applies only to those who have “a claim against an insurer under any provision in an insurance policy.” See 24-A M.R.S. § 4443(1).

The Beanes argue that this provision applies only to claims against an insurer by virtue of a contractual relationship. We agree. [¶ 12] MIGA contends that the exhaustion clause also applies to claims against an insurer pursuant to Maine’s reach-and-apply statute, 24-A M.R.S. § 2904 (2006).⁴ *208 We need not decide that question here because we agree with the Beanes’ contention that at the time of their settlement with Dr. Oldham and St. Paul, they did not have a judgment against Dr. Oldham and, as a consequence, did not have a claim against St. Paul.

See *Ashe v. Enter. Rentr-A-Car*, 2003 ME 147, ¶ 14, 838 A.2d 1157, 1162 (holding that a “final judgment against the tortfeasor is a condition precedent to the injured party’s right to institute an action against the tortfeasor’s liability insurer”); *Associated Hosp. Serv. of Me. v. Me. Bonding & Cas. Co.*, 476 A.2d 189, 190-91 (Me.1984) (“In the absence of the liability of the insured there can be no right of action against his insurer.”); *Allen v. Pomroy*, 277 A.2d 727, 730 (Me.1971) (“It, therefore, becomes apparent that it is proscribed practice in Maine to bring a direct action against an insurance company in a negligence case prior to final judgment [against the defendant insured], the only remedy being found in the ‘Reach and Apply’ statute.”). [¶ 13] We conclude as a matter of law that section 4443(1) does not apply to claims by nonparties to the insurance contract (i.e., third-party claims)⁵ and we do not here decide whether it applies to post-judgment claims against the insured’s insurance company pursuant to Maine’s reach-and-apply statute, 24-A M.R.S. § 2904.

The entry is: Judgment vacated.. Title 24-A M.R.S. § 4438(1)(A) has since been amended. P.L.2005, ch. 603, § 1 (effective date Aug. 23, 2006) (codified at 24-A M.R.S. § 4438(1)(A) (2006)).. Title 24-A M.R.S. § 4443(1) provides: Insurance policy. Any person having a claim against an insurer under any provision in an insurance policy, other than that of an insolvent insurer, which is also a covered claim, shall be required to exhaust first the person's right under the policy.

Any amount otherwise payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under the insurance policy.. Although we find the plain language of the exhaustion clause to be unambiguous, we note that the legislative history of the Act, and of the Post-Assessment Insurance Guaranty Association Model Bill on which it is premised, provided no indication that the authors intended another meaning.. Title 24-A M.R.S. § 2904 (2006) provides: Whenever any person, administrator, executor, guardian, recovers a final judgment against any

other person for any loss or damage specified in section 2903, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment by bringing a civil action, in his own name, against the insurer to reach and apply the insurance money, if when the right of action accrued, the judgment debtor was insured against such liability and if before the recovery of the judgment the insurer had had notice of such accident, injury or damage..

Although we hold that the exhaustion clause does not apply to third party claims, the opinions of other state courts, interpreting substantially similar exhaustion clauses, have been mixed. Although some courts have held that the exhaustion clause applies only to the parties to the insurance contract, see *Med. Malpractice Joint Underwriting Ass'n of R.I. v. R.I.*

Insurers' Insolvency Fund, 703 A.2d 1097, 1101-02 (R.I.1997); *Ins. Comm'r of State of Md. v. Prop. & Cas. Ins. Guar. Coip.*, 313 Md. 518, 546 A.2d 458, 463-65 (1988); *Sands v. Pa. Ins. Guar. Ass'n*, 283 Pa.Super. 217, 423 A.2d 1224, 1226-27 (1980) overruled by statute, other state courts have held that the exhaustion clause applies to nonparties as well, see e.g., *H.K.*

Porter Co. v. Penn. Ins. Guar. Ass'n, 75 F.3d 137, 141-42 (3d Cir.1996); *PIE Mut. In. Co. v. Ohio Guar. Ass'n*, 66 Ohio St.3d 209, 611 N.E.2d 313, 315 (1993); *Conn. Ins. Guar. Ass'n v. Union Carbide Corp.*, 217 Conn. 371, 585 A.2d 1216, 1220-21 (1991).