SUPREME COURT OF SOUTH DAKOTA

American Family Insurance Group v. Robnik

2010 SD 69 (2010) · No. #25334 · Decided August 11, 2010

SUMMARY

The South Dakota Supreme Court affirmed summary judgment for American Family Insurance Group in a declaratory action concerning homeowner's insurance coverage for damages arising from negligent misrepresentation in a real estate sale. The court held that the insured's prior knowledge of sewer problems meant the resulting damages were not an unexpected accident or occurrence under the policy. It also held that res judicata did not preclude the insurer from litigating the coverage issue in the declaratory action.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Zinter, Justice; Gilbertson, Chief Justice; Severson, Justice; Meierhenry, Justice; Sabers, Retired Justice
JURISDICTION	South Dakota
DECIDED	August 11, 2010
DOCKET	#25334
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court order granting American Family's motion for summary judgment and denying Robnik's cross-motion for summary judgment in a declaratory-judgment action concerning insurance coverage.
STANDARD OF REVIEW	De novo review of the circuit court's application of res judicata; summary judgment is appropriate when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	Heather Robnik v. American Family Insurance Group

TOPICS

insurance coverage · declaratory relief insurance · appellate procedure · standard of review · negligent misrepresentation

PRACTICE AREAS

insurance coverage · declaratory relief insurance · appellate procedure · contracts · torts

QUESTIONS PRESENTED

1. Whether Hunter's negligent misrepresentation constituted an accident or occurrence covered by the homeowner's liability policy.
2. Whether collateral estoppel or claim preclusion barred American Family from litigating the expected-damages aspect of its accident-or-occurrence coverage defense after participating in the underlying tort action.
3. Whether summary judgment for American Family was proper when the material coverage facts were undisputed.

HOLDINGS

1. The negligent misrepresentation did not constitute a covered accident or occurrence because Hunter had previously experienced the sewer problem, knew of the defective sewer line, and failed to repair it; therefore, subsequent sewage backups were expected as a matter of law under both the Sheets and Carter Lake approaches.
2. Neither issue preclusion nor claim preclusion barred American Family from litigating whether the damages were expected in the declaratory action.

KEY QUOTATIONS

> *"Accordingly, in the words of Carter Lake, Robnik's sewage backups "subsequent to [Hunter's incident] were not unexpected and thus were not accidents or occurrences as those terms were used in the insurance policy.""* (¶ 12)

> *"Because that issue was not actually litigated in the underlying action, collateral estoppel, the issue preclusion aspect of res judicata, did not bar American Family's accident/occurrence defense in this declaratory action."* (¶ 18)

> *"Accordingly, Hunter's negligent misrepresentation cannot be an accident/occurrence, and the declaratory court did not err in granting American Family's motion for summary judgment."* (¶ 22)

FACTUAL BACKGROUND

Shirley Hunter sold a Rapid City home to Heather Robnik after completing a property disclosure statement stating that she was unaware of sewer problems and that the plumbing and sewer systems were working. Before the sale, Hunter had experienced a sewer blockage, learned of defects in the sewer line, and capped the basement shower and toilet drains rather than repairing the defect or disclosing it. After Robnik uncapped and used those drains, the basement experienced sewage backups. In the underlying tort action, the court found that Hunter negligently made the misrepresentations and that they proximately caused Robnik's damages.

PROCEDURAL HISTORY

Robnik obtained an underlying tort judgment against Shirley Hunter for negligent misrepresentation, property damage, emotional distress, and bodily injury. American Family had intervened to defend Hunter in that action and then sought a declaration regarding coverage under Hunter's homeowner's policy. The declaratory circuit court granted summary judgment to American Family, concluding that the misrepresentations were intentional and that the claimed damages were not covered. The South Dakota Supreme Court affirmed on the alternative ground that the damages were expected and therefore did not arise from a covered accident or occurrence, and held that res judicata did not bar that coverage defense.

DISPOSITION

affirmed

CASES CITED

- Sheets v. Brethren Mut. Ins. Co., 342 Md. 634, 679 A.2d 540 (1996)
- City of Carter Lake v. Aetna Cas. & Sur. Co., 604 F.2d 1052 (8th Cir. 1979)
- Ehresmann v. Muth, 2008 SD 103, 757 N.W.2d 402
- Fisher v. Kahler, 2002 SD 30, 641 N.W.2d 122
- Tipton v. Town of Tabor, 1997 SD 96, 567 N.W.2d 351
- Hoglund v. Dakota Fire Ins., 2007 SD 123, 742 N.W.2d 853
- Schulte v. Progressive Northern Ins. Co., 2005 SD 75, 699 N.W.2d 437
- American Family Mutual Insurance Group v. Kostaneski, 2004 SD 114, 688 N.W.2d 410
- State Cement Plant Commission v. Wausau Underwriters Insurance Co., 2000 SD 116, 616 N.W.2d 397
- Alverson v. Northwestern National Casualty Co., 1997 SD 9, 559 N.W.2d 234
- DeSmet v. Gibson, 1996 SD 102, 552 N.W.2d 98
- Economic Aero Club, Inc. v. Avemco Insurance Co., 540 N.W.2d 644 (S.D. 1995)
- American Family Mutual Insurance Co. v. Elliot, 523 N.W.2d 100 (S.D. 1994)
- American Family Mutual Insurance Co. v. Purdy, 483 N.W.2d 197 (S.D. 1992)
- Dairyland v. Wyant, 474 N.W.2d 514 (S.D. 1991)
- Klatt v. Continental Insurance Co., 409 N.W.2d 366 (S.D. 1987)
- Great Central Insurance Co. v. Roemmich, 291 N.W.2d 772 (S.D. 1980)
- White v. Bain, 2008 SD 52, 752 N.W.2d 203
- Christians v. Christians, 2001 SD 142, 637 N.W.2d 377
- Migra v. Warren City School District Board of Education, 465 U.S. 75 (1984)
- Sodak Distributing Co. v. Wayne, 77 S.D. 496, 93 N.W.2d 791 (1958)
- Lee v. Rapid City Area School District, No. 51-4, 526 N.W.2d 738 (S.D. 1995)

- People ex rel. L.S., 2006 SD 76, 721 N.W.2d 83
- St. Paul Fire and Marine Insurance Co. v. Engelmann, 2002 SD 8, 639 N.W.2d 192
- A-G-E Corp. v. State, 2006 SD 66, 719 N.W.2d 780
- Aetna Casualty & Surety Co. v. Metropolitan Baptist Church, 967 F. Supp. 217 (S.D. Tex. 1996)
- Miller v. Western General Agency, Inc., 41 Cal. App. 4th 1144, 49 Cal. Rptr. 2d 55 (1996)
- Aluise v. Nationwide Mutual Fire Insurance Co., 218 W. Va. 498, 625 S.E.2d 260 (2005)
- Nationwide Property & Casualty v. Comer, 559 F. Supp. 2d 685 (S.D. W. Va. 2008)
- Murray v. Crystex Composites, LLC, 618 F. Supp. 2d 352 (D.N.J. 2009)
- Nebraska Public Advocate v. Nebraska Public Service Commission, 279 Neb. 543, 779 N.W.2d 328 (2010)