IN THE COURT OF APPEALS OF IOWA

No. 1-960 / 10-2036
Filed February 29, 2012

JEROME R. WUEBKER and
DEBRA K. WUEBKER,
Plaintiffs-Appellants,

vs.

HEENAN AGENCY, INC.,
and RAY HEENAN,
Defendants-Appellees.

Appeal from the Iowa District Court for Dallas County, Darrell Goodhue, Judge.

Plaintiffs appeal the district court order granting defendants' motion for summary judgment on their negligence claims. **AFFIRMED.**

Thomas G. Fisher, Jr., of Parrish, Kruidenier, Dunn, Boles, Gribble, Parrish, Gentry & Fisher, L.L.P., Des Moines , for appellants.

John W. Wharton and Joseph M. Barron of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP, West Des Moines, for appellees.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

Plaintiffs appeal the district court order granting summary judgment on their negligence claims against their insurance agent and agency. We affirm.

I. Standard of Review.

We review the entry of summary judgment for the correction of errors at law. *Merriam v. Farm Bureau Ins.*, 793 N.W.2d 520, 522 (Iowa 2011). Summary judgment should only be granted when the moving party is able to affirmatively establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Merriam*, 793 N.W.2d at 522. Under our review, we view the facts in the light most favorable to the nonmoving party. *Merriam*, 793 N.W.2d at 522.

II. Background Facts and Proceedings.

Jerome and Debra Wuebker own and operate an automobile servicing garage, body shop, and automobile detailing businesses in Perry. For many years, the Wuebkers were advised regarding property casualty insurance for their businesses by Heenan Agency, Inc. and Ray Heenan. Heenan Agency, Inc. was only a couple of blocks away from the Wuebkers' businesses, and Heenan stopped by on numerous occasions.

On May 30, 2008, a fire occurred at the Wuebkers' businesses causing extensive damage to one of the buildings on the property, and destroying its contents and some other property. The Wuebkers assert the damage to the building, its contents, and the related property amounted to approximately

$194,000. After the fire, the Wuebkers discovered that their insurance policy was inadequate to replace the building and its contents.

On May 29, 2009, the Wuebkers filed a negligence claim against Heenan and Heenan Agency, Inc. alleging they breached their duty of care by failing to: (1) "properly advise the Wuebkers as to the amount of coverage needed" and (2) "obtain the amount of coverage needed."

On August 25, 2010, Heenan and Heenan Agency, Inc. moved for summary judgment, which the Wuebkers resisted.

Following a contested hearing, the district court granted summary judgment in favor of Heenan and Heenan Agency, Inc. The district court found:

> There is no basis in the record to distinguish this case from *Sandbulte v. Farm Bureau Mut. Ins.*, 343 N.W.2d 457 [(Iowa 1984)], which was also a case involving inadequate dollar coverage. *Sandbulte* at page 464 states, "An expanded agency agreement arrangement or relationship, sufficient to require a greater duty from the agent than the general duty, generally exists when the agent holds himself out as an insurance specialist, consultant, or counselor and is receiving compensation for consultation and advice apart from premiums paid by the insured." There is no evidence that the defendants held themselves out as specialists or counselors or received anything for such services other than the regular premium. The record presented does suggest that the Defendant Heenan was familiar with the buildings in question, had insured the plaintiffs' buildings for an extended time, and the parties were on a friendly basis. Again, the situation is substantially similar to the factual situation in *Sandbulte* where it was held that such relationships do not create either an express or implied expanded agency. *Sandbulte* at page 465 quotes from *Collegiate Mfg. Co. v. McDowell's Agency, Inc.*, 200 N.W.2d 854, 858 [(Iowa 1972)], wherein it is stated that "It is true plaintiff relied on defendant, had great confidence in him, and frequently followed his advice on insurance matters, but this is usually the case. There is no evidence of any agreement, express or implied, that defendant was to assume responsibility for beyond that which would normally attach to his conduct as plaintiffs' agent. The principal-agent relationship cannot be so expanded unilaterally." *Collegiate* also

> presents a situation similar to the instant case. As in *Sandbulte* to permit the conversations and relationships between the plaintiff and the defendant to create an expanded principal-agent relationship would inappropriately make the agent a blanket insurer of the principal.
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> . . . .
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> Based on *Sandbulte* and *Collegiate* as cited above, the Defendants Heenan Agency, Inc. and Ray Heenan's Motion for Summary Judgment is granted.

After a motion to enlarge filed by the Wuebkers, the district court affirmed the grant of summary judgment in favor of Heenan and Heenan Agency, Inc. on December 8, 2010. The Wuebkers filed a notice of appeal two days later. While their appeal was pending, two events occurred affecting this case.

On December 30, 2010, the supreme court issued its decision in *Langwith v. American National General Insurance Company*, 793 N.W.2d 215 (Iowa 2010). In *Langwith*, our supreme court overruled *Sandbulte* to the extent it limited an expanded duty to those cases in which the agent holds himself out as an insurance specialist, consultant, or counselor and receives compensation for additional or specialized services. 793 N.W.2d at 223. Instead, the supreme court held:

> The defendants have advanced no reason, nor have we identified one, that would justify the limitations placed on the circumstances that might be considered in determining the duty undertaken by an insurance agent, as stated in *Sandbulte*. Therefore, we hold that it is for the fact finder to determine, based on a consideration of all the circumstances, the agreement of the parties with respect to the service to be rendered by the insurance agent and whether that service was performed with the skill and knowledge normally possessed by insurance agents under like circumstances.

Id. at 222.

In the very next legislative session, the Iowa General Assembly enacted legislation explicitly abrogating *Langwith*. *See* 2011 Iowa Acts ch. 70, § 45. The new provision amended Iowa Code section 522B.11 by adding subsection 7, which states:

> a. Unless an insurance producer holds oneself out as an insurance specialist, consultant, or counselor and receives compensation for consultation and advice apart from commissions paid by an insurer, the duties and responsibilities of an insurance producer are limited to those duties and responsibilities set forth in *Sandbulte v. Farm Bureau Mut. Ins. Co.*, 343 N.W.2d 457 (Iowa 1984).
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> b. The general assembly declares that the holding of *Langwith v. Am. Nat'l Gen. Ins. Co.*, (No. 08-0778) (Iowa 2010) is abrogated to the extent that it overrules *Sandbulte* and imposes higher or greater duties and responsibilities on insurance producers than those set forth in *Sandbulte*.

Id. Because a specified date was not provided for in the legislation, the act became effective July 1, 2011. *See* Iowa Const. art. III, § 26; Iowa Code § 3.7(1).

Based on this legislation, the scope of an insurance producer's duty to his clients was restored to "use reasonable care, diligence, and judgment in procuring the insurance requested by an insured" unless he held himself out as an insurance specialist, consultant, or counselor and received separate compensation for these services. *Sandbulte*, 343 N.W.2d at 464.

As a result of these two events occurring during the pendency of this appeal, the Wuebkers now argue that the district court erred in granting summary judgment. The Wuebkers' argument relies on the convergence of two propositions: (1) the expanded scope of duty set forth in *Langwith* is applied

retroactively, but (2) Iowa Code section 522B.11(7), which abrogated *Langwith* and restored the scope of duty under *Sandbulte*, is not.

III. Iowa Code Section 522B.11(7).

"A statute is presumed to be prospective in its operation unless expressly made retrospective." Iowa Code § 4.5. "In applying the statutory directive of section 4.5 to determine whether a statute shall apply solely prospectively or retrospectively, we . . . look to the intent of the legislature." *Frideres v. Schiltz*, 540 N.W.2d 261, 265 (Iowa 1995). "The polestar of statutory interpretation is to give effect to the intention of the legislature. We determine that intent from the language of the statute." *Anderson Fin. Servs., LLC v. Miller,* 769 N.W.2d 575, 578 (Iowa 2009) (citations omitted). "In determining [legislative] intent it is a general rule all statutes are to be construed as having a prospective operation only unless the purpose and intent of the legislature to give it retroactive effect is clearly expressed in the act or necessarily implied therefrom." *Schnebly v. St. Joseph Mercy Hosp.,* 166 N.W.2d 780, 782 (Iowa 1969).

Iowa Code section 522B.11(7)(a) provides that the *Sandbulte* case defines duties and responsibilities of insurance producers. The statute does not expressly address the subject of retroactivity. Subparagraph (b), however, necessarily implies that subsection (7) is intended to eliminate the application of the principles set forth in the *Langwith* case. If we were not to give subparagraph (b) such effect, it would be mere surplusage. Section 522B.11(7) did not amend or replace an existing statute. It is a newly enacted statute adopted only months after the *Langwith* decision and is an obvious effort to correct what the legislature

determined to be a court decision that did not express what the legislature wanted the public policy to be with respect to duties and responsibilities of an insurance producer. The legislative decision to abrogate *Langwith* would be thwarted if we were to adopt plaintiffs' argument and apply *Langwith* now.

Further, Iowa Code section 4.4 provides in relevant part that "[i]n enacting a statute, it is presumed that . . . [t]he entire statute is intended to be effective[,] . . . [a] just and reasonable result is intended[,] . . . [and] [p]ublic interest is favored over any private interest. The duty that plaintiffs allege was breached and the damages they allege were suffered all occurred while the *Sandbulte* case was the law. That is the law that was in effect when the district court ruled on the motion for summary judgment. That is the law that was in effect when the plaintiffs filed their notice of appeal. During the pendency of the appeal, *Langwith* was decided; then only six months later abrogated by the legislature. By virtue of Iowa Code section 552B.11(7), *Sandbulte* is the law in effect at the time this court is to decide the appeal. There is nothing that seems unjust or unreasonable about concluding that *Sandbulte* is the applicable law for us to apply today. Under this analysis, the rules of the game (i.e., the law) did not change for plaintiffs from the time they were purchasing insurance, to the time of their insurable loss, to the time of their claim, to the time of their lawsuit, to the time of the summary judgment ruling, to the time of their appeal, and to the time we decide the appeal. The entire statute is made effective, a just and reasonable result is obtained and the public interest as defined by the legislature has been addressed.

Applying Iowa Code section 552B.11(7), there is no genuine issue of material fact and the district court was correct that defendants are entitled to judgment as a matter of law.

IV. Constitutional Claims.

The Wuebkers also raise two constitutional challenges, asserting Iowa Code section 522B.11(7) violates equal protection and the separation of powers under the Iowa Constitution.

A. Equal Protection. The Wuebkers assert that Iowa Code section 522B.11(7) provides a different standard which provides greater protection for insurance agents, than in any other profession. We disagree. By restoring *Sandbulte*, the legislature requires insurance agents to "use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." 343 N.W.2d at 464. "Reasonable care" is the normal common law requirement for a negligence claim. *See Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009). The alleged increased protection only comes into play when a party seeks to show an expanded agency relationship. As stated in *Sandbulte*, the purpose of providing protection in an expanded agency relationship is to ensure the agent is not made "a blanket insurer for his principal." 343 N.W.2d at 465. The protection has a rationale basis and therefore is not constitutionally deficient. *Judicial Branch v. Dist. Ct. for Linn Cnty.*, 800 N.W.2d 569, 579 (Iowa 2011).

B. Separation of Powers. The separation of powers principle is violated when the legislature purports to use powers not granted to it by the Constitution or usurps powers granted by it to another branch. *Schwarzkopf v. Sac Cnty. Bd.*

of Supervisors, 341 N.W.2d 1, 5 (Iowa 1983). The legislature has the power to enact statutes that establish standards and scopes of duty for insurance producers. *See Schneberger v. State Bd. of Social Welfare*, 228 Iowa 399, 404, 291 N.W.2d 859, 861 (1940) ("Legislative power is authority to pass rules of law for the government and regulation of people or property."). Accordingly, the issue is whether section 522B.11 usurps powers granted by the Constitution to the judiciary.

The legislature may not use retroactive legislation to control cases already finally adjudicated by the courts. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 225, 115 S. Ct. 1447, 1456, 131 L. Ed. 2d 328, 346 (1995). However, "[w]hen a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly." *Id*. at 226, 115 S. Ct. at 1457, 131 L. Ed. 2d at 347. Since this case had not reached a final judgment within the courts, there is no separation of powers violation.

V. Conclusion.

We find the legislature intended Iowa Code section 522B.11(7) to be applied retroactively. We also reject the Wuebkers' constitutional challenges. Accordingly, we affirm the district court's grant of summary judgment in favor of the defendants.

AFFIRMED.