IN THE COURT OF APPEALS OF IOWA

No. 2-452 / 12-0435
Filed June 27, 2012

BRIAN RAWLINGS,
Plaintiff-Appellant,

vs.

STATE FARM FIRE & CASUALTY COMPANY,
Defendant-Appellee,

Appeal from the Iowa District Court for Marshall County, Michael J. Moon, Judge.

Plaintiff appeals the district court's grant of summary judgment to defendant insurer on the ground that his claim was barred by a one-year statute of limitations found in Iowa Code section 515.109 (2011). **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Guy R. Cook and Adam D. Zenor of Grefe & Sidney, P.L.C., Des Moines, for appellee.

Considered by Vogel, P.J., Tabor, J., and Schechtman, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SCHECHTMAN, S.J.

I. Background Facts and Proceedings.

On January 29, 2008, a fire destroyed a house, and its contents, owned by Brian Rawlings in rural Marshalltown. Rawlings was insured by a homeowner's policy issued by State Farm Fire and Casualty Company for casualty and accidental fire. The policy contained the standard exclusions for intentional acts, fraud, and concealment, and the condition that any "action must be started within one year after the date of loss or damage." State Farm hired an independent investigator. Rawlings and State Farm disagreed on the amount of loss and its cause.

On November 8, 2008, State Farm sent Rawlings a letter of denial of coverage, concluding (1) the damage was not the result of an accidental direct physical loss; (2) a violation of the fraud and concealment provisions had occurred; and (3) Rawlings had violated the intentional acts provisions of the policy.

Rawlings filed a petition to recover the insurance proceeds on January 28, 2009, the day prior to the expiration of the contractual limitation period. A motion for summary judgment was filed by State Farm eleven months later, which was set for hearing. Five days prior to the hearing date, on January 20, 2010, the action was dismissed by Rawlings without prejudice.

On August 25, 2011, the present action was filed alleging breach of contract and bad faith.[1] State Farm's answer contained the affirmative defense that the "policy's one-year contractual limitation period had run and operates as a bar to this lawsuit." Shortly thereafter, State Farm filed a motion for summary judgment with a statement of

[1] A tort action for bad faith amounts to an action "on this policy" for purposes of applying the one-year contractual limitation. *Stahl v. Preston Mut. Ins. Ass'n*, 517 N.W.2d 201, 204 (Iowa 1994).

its undisputed facts. Rawlings filed his affidavit in resistance. The district court sustained the summary judgment motion on the grounds that the action was filed after the limitation period had expired and dismissed the petition, which resulted in this appeal.

II. Scope and Standards of Review.

We review the district court's summary judgment ruling for the correction of errors at law. *Koeppel v. Speirs*, 808 N.W.2d 177, 179 (Iowa 2011). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Koeppel*, 808 N.W.2d at 179.

III. Analysis.

Upon viewing the evidence and material facts in the light most favorable to Rawlings, as well as granting him all reasonable inferences therefrom, *see Koeppel*, 808 N.W.2d at 179, we conclude Rawlings did not comply with the policy's limitation by timely initiating an action to enforce its terms. Nor was there any waiver of those terms by State Farm.

Rawlings, at the appellate level, contends State Farm "waived" the one-year statute[2] by entertaining continued negotiations with him during the pendency of his first lawsuit, thereby extending the limitations period to ten years as permitted by Iowa Code § 614.1(5) (2011) pertaining to written contracts.[3] The essential elements of a waiver

[2] Rawlings relies upon waiver rather than estoppel, the latter of which prevents a party from employing an allegation or denial of fact because of a prior act, allegation, or denial.

[3] At the trial court level, Rawlings also asserted that the first suit itself extended or tolled the limitation period. The motion court concluded a dismissal without prejudice "leaves the parties

are the existence of a right; knowledge, actual or constructive; and an intention to relinquish such right.[4] *In re Estate of Warrington*, 686 N.W.2d 198, 202 (Iowa 2004).

Rawlings relies solely upon his affidavit for the disputed material facts warranting a denial of summary judgment, the pertinent portion reading:

> I was approached by a representative of Defendant State Farm Insurance Co., before January 28, 2009, inquiring about settling my claim against them. At about this time, and others, I was offered $400,000.00 by a representative of Defendant State Farm Insurance Co. to settle my case completely. Defendant State Farm Insurance Co. was actively interested in and did pursue settlement negotiations with me.

Courts, in ruling on motions for summary judgment, are guided by principles that are well established and the strong language of our rule governing summary judgment. *Wemett v. Schueller*, 545 N.W.2d 1, 2-3 (Iowa Ct. App. 1995). Iowa Rule of Civil Procedure 1.981(5) provides that affidavits "'must set forth *specific facts showing there is a genuine issue for trial.*'" *Id.* at 3 (quoting *Gruener v. City of Cedar Falls,* 189 N.W.2d 577, 580 (Iowa 1971)). In *Wemett* and *Gruener*, awards of summary judgments were affirmed, as the opposing affidavits were based on generalities not specific facts.[5] The gist of each is that material facts are not generated by speculation or circumstantial evidence. *Gruener*, 189 N.W.2d at 580-81; *Wemett*, 545 N.W.2d at 3. "'The motion for

---

as if no action had been instituted," citing *Windus v. Great Plains Gas*, 116 N.W.2d 410, 415-16 (Iowa 1962), as authority. That issue was not pursued on appeal.

[4] The policy did provide that a "waiver or change of any provision of this policy must be in writing by us to be valid." It is admitted there was no such "writing," though that fact is not dispositive of Rawlings's claim.

[5] *Wemett* was an action for supplying alcohol to a minor and aiding or abetting criminal conduct. 545 N.W.2d at 2. The resisting affidavit stated someone brought the vodka to the minor's house, and the three defendants were the only persons there (though there was also an unidentified person). *Id.* at 3. *Gruener* was a negligence action against a municipality where no notice of tort claim was given, alleging fraudulent concealment of the fact that negligence had occurred. 189 N.W.2d at 579. The affidavit was silent as to when a negligent act was discovered to toll the statute to that time. *Id.* at 581.

summary judgment is a sharp and pointed weapon to cut through the maze of frivolous denials.'" *Gruener*, 189 N.W.2d at 581 (citation omitted).

Addressing the subject affidavit, January 28, 2009, was one day prior to the one-year deadline for filing suit, as well as the date the first lawsuit (subsequently dismissed) was filed. That negotiations may have occurred before that time is irrelevant; there was not any waiver as suit was timely initiated. That Rawlings was made an offer by his insurer "at about this time and others" infers some unknown date either before or after January 28, 2009. The affidavit does not state that this offer was made after the one-year anniversary of the loss, but instead left it to speculation as to when it occurred. That does not satisfy the rule to recite "specific facts." More relevantly, since the first lawsuit was dismissed, it does not specify the time or circumstances surrounding any negotiations or offers *after* the voluntary dismissal, as the waiver issue was moot until then.

Rawlings leans almost entirely on *Scheetz v. IMT Insurance Co.*, 324 N.W.2d 302 (Iowa 1982), to support his claim of waiver. The insurer in that case, IMT, did make an offer one day short of the twelve-month limitation period, which it withdrew two months later. *Scheetz*, 324 N.W.2d at 303. Suit was not started until about four years after the loss. *Id*. Our supreme court concluded that the contractual limitation period of twelve months was waived; that it could not be retracted; and that the ten-year statute of limitations applied to the written contract of insurance coverage. *Id.* at 304-05. But similar to the trial court, we perceive *Scheetz* as being significantly distinguishable from

our set of facts: IMT conceded a waiver by its late offer, limiting the issue to whether its retraction started the one-year limitation.[6] *Id.* at 304.

Lastly, Rawlings takes offense to the fact that the district court, when addressing the affidavit he filed in resistance to the motion for summary judgment, described it as a "self-serving affidavit." He argues this usurped the function of the jury and violated the rule that evidence be viewed in the light most favorable to the opposing party. Looking at the ruling, it is evident the motion court fully considered the issue of waiver, concluding a waiver had not occurred with the recitation of material facts to support that conclusion. The label "self-serving" related to its resisting mode, was not any assessment of credibility, and was not a factor in the court's ruling.

The district court's award of summary judgment to State Farm is affirmed.

AFFIRMED.

[6] *Scheetz* was a 5-3 decision. The dissent agreed there was a waiver and summary judgment was appropriate, but the contractual limitation, though tolled when the parties were complying with their contractual terms and negotiating settlement, begins to run when there is a firm denial; that the ten-year statute of limitation was improper. 324 N.W.2d at 313 (Uhlenhopp, J., dissenting).