IN THE COURT OF APPEALS OF IOWA

No. 8-1039 / 08-0576
Filed March 11, 2009

CAROL ROLF,
Plaintiff-Appellee,

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

Insurance company appeals from the district court's interlocutory ruling denying its motion for summary judgment. **REVERSED AND REMANDED.**

Matthew J. Haindfield and David N. May of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for appellant.

Thomas M. Werner, West Des Moines, for appellee.

Heard by Mahan, P.J., and Miller and Doyle, JJ.

MILLER, J.

Nationwide Mutual Insurance Company (Nationwide) appeals from the district court's interlocutory ruling denying its motion for summary judgment as to Carol Rolf's claim for underinsured motorist (UIM) benefits under provisions of her automobile insurance policy with Nationwide. We reverse the judgment of the district court and remand for an order granting Nationwide's motion for summary judgment.

I. BACKGROUND FACTS AND PROCEEDINGS.

The record reveals the following undisputed facts. Rolf was injured in an accident on July 29, 2004, while riding as a passenger on a motorcycle driven by Adam McCarty. At the time of the accident, Rolf and her husband, John, were insured under an automobile insurance policy issued by Nationwide, which included UIM coverage. One condition of coverage under the policy's UIM provisions was the following:

> No one may bring a legal action against us under Underinsured Motorists Coverage until there has been full compliance with all the terms of this policy. Further, any suit against us under this Underinsured Motorists Coverage will be barred unless commenced within two years after the date of the accident.

Rolf received workers' compensation benefits for her injuries because the motorcycle accident occurred while she was en route to a mandatory company picnic. But by the spring of 2006, Rolf realized those benefits would not fully compensate her for the injuries she sustained in the accident. She accordingly consulted an attorney in June 2006 about filing a personal injury action against McCarty. Around July 3, 2006, Rolf's attorney learned McCarty's automobile

insurance policy contained a liability limit of $25,000. He advised Rolf to file a UIM claim against her insurance company, but she was reluctant to do so because she was concerned her insurance company would "either drop us as insureds, or significantly raise our premium rates." Rolf consequently filed suit against McCarty only on July 24, 2006.

In September 2006, Rolf changed her mind and decided to proceed with a UIM claim against her insurer, whom she believed to be Allied Insurance Company (Allied). She amended her petition on September 19, 2006, to add a UIM claim against Allied. Rolf was later informed the proper defendant in the suit was Nationwide, and she amended her petition to reflect that fact in January 2007. Rolf settled her personal injury claim against McCarty in May 2007 and dismissed him as a defendant in the action.

Nationwide thereafter filed a motion for summary judgment, contending that any claim brought by Rolf for UIM coverage was barred because it was not brought within two years of the accident as required by Rolf's insurance policy. Rolf resisted, arguing her UIM claim against Nationwide did not accrue until she discovered that McCarty's liability limit was $25,000. Following a hearing, the district court entered an order denying Nationwide's motion for summary judgment. The court agreed with Rolf and determined there was a "genuine issue of material fact regarding whether the contractual policy limitation is reasonable and enforceable."

Nationwide filed an application for an interlocutory review, which our supreme court granted. On appeal, Nationwide claims the district court erred in

denying its motion for summary judgment because the two-year limitations period in Rolf's insurance policy bars her UIM claim against it.

II. SCOPE AND STANDARDS OF REVIEW.

We review the district court's summary judgment ruling for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). 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); *Faeth*, 707 N.W.2d at 331.

In this case, the facts material to the limitations issue are not in dispute, and the parties have not offered any extrinsic evidence with respect to the meaning of the policy terms. The construction and interpretation of the policy are thus questions of law for the court. *See Nicodemus v. Milwaukee Mut. Ins. Co.*, 612 N.W.2d 785, 787 (Iowa 2000); *Hamm v. Allied Mut. Ins. Co.*, 612 N.W.2d 775, 778 (Iowa 2000). Our role is simply to determine whether the district court correctly applied the law to the undisputed facts in determining Nationwide was not entitled to summary judgment. *See Nicodemus*, 612 N.W.2d at 787.

III. MERITS.

We begin by noting that the applicable statutory limitations period for bringing a claim against an insurer for uninsured motorist (UM) or UIM benefits is ten years. *See* Iowa Code § 614.1(5) (2005) (requiring actions founded upon written contracts to be brought within ten years); *Hamm*, 612 N.W.2d at 779.

However, under general contract law, it is clear that the parties to an insurance policy may agree to a modification of statutory time limitations. *Douglass v. Am. Family Mut. Ins. Co.*, 508 N.W.2d 665, 666 (Iowa 1993). Our supreme court has considered the enforceability of contractual limitations provisions in automobile insurance policies on prior occasions. *See Faeth*, 707 N.W.2d at 334 (discussing the court's decisions on the subject). We believe a brief review of those cases will be helpful in our resolution of the issue presented in this appeal: whether the two-year limitations period contained in the UIM provisions of Rolf's insurance policy[1] is valid and enforceable.

In *Douglass*, 508 N.W.2d at 666-67, our supreme court upheld a contractual period of limitation that provided the insurer could not be sued under UM coverage "*on any claim that is barred by the tort statute of limitations*." The court in *Douglass*

> interpreted that clause to refer to the personal-injury statute of limitations contained in Iowa Code section 614.1(2) and, based on the assumption that the claim accrued on the date of the accident, found that limiting the time to sue to a period of two years following the accident was not unreasonable.

Faeth, 707 N.W.2d at 334. In so concluding, it stated

> it is not against the public interest that [the parties] shall . . . agree upon a shorter time limit than that fixed by statute if the time agreed upon is not so short as to be unreasonable in the light of the

[1] Rolf attempts to argue on appeal that this limitations provision was not part of her insurance policy with Nationwide at the time of the motorcycle accident on July 29, 2004. However, in support of its motion for summary judgment, Nationwide presented an affidavit signed by its underwriting manager stating that provision was in effect on the date of Rolf's accident. Rolf presented no competent evidence to the contrary in her resistance to Nationwide's summary judgment motion. *See Winkel v. Erpelding*, 526 N.W.2d 316, 318 (Iowa 1995) (stating in order to mount a successful resistance to a properly supported motion for summary judgment, "the challenger must come forward with specific facts constituting competent evidence in support of the claim advanced").

> provisions of the contract and the circumstances of its performance and enforcement.

Douglass, 508 N.W.2d at 666.

In the later case of *Hamm*, 612 N.W.2d at 784, our supreme court determined it had erred in its characterization of the policy provision in *Douglass*. Such a nonspecific provision, according to the court in *Hamm*, "merely establishes a general limitation on the scope of coverage; it does not establish the limitations period for asserting a contractual claim for coverage" as it had held in *Douglass*. *Nicodemus*, 612 N.W.2d at 787 n.1; *see also Hamm*, 612 N.W.2d at 784 (pointing out the insurance company "has the ability, if it so chooses, to clearly articulate the applicable limitations period for claims against the tortfeasor and the insurer, and the event upon which the limitations period begins to run").

However, in *Nicodemus*, our supreme court explained its "decision in *Hamm* in no way affected . . . the validity of the legal principles set forth in *Douglass* . . . with respect to the enforceability of a policy provision that actually does shorten the statutory limitations period." 612 N.W.2d at 787 n.1. Thus, *Nicodemus* reaffirmed the basic rule established in *Douglass*: "a contractual limitations provision is enforceable if it is reasonable." *Id.* at 787. "Conversely, an unreasonable limitation on the time for bringing an action under the policy is invalid and unenforceable." *Id.*

In view of the principles set forth in *Douglass*, the court in *Nicodemus* held a two-year contractual limitations period that commenced at the time of the motor vehicle accident was unreasonable because the policy also contained a provision that required the insured to exhaust any tort claims against the tortfeasor before

filing suit against the insurer. *Id.* at 788. The court reasoned that the operative result of the contractual limitations period, when considered together with the policy's exhaustion provision, required "not only that the insured investigate her tort claim and file suit within two years, but also that she *conclude* her litigation against the tortfeasor *and* file an action against her insurer within that same two-year period." *Id.* Such a contracted time frame did not provide the insured with a reasonable period of time to file an action to recover under the UIM provisions of the policy. *Id.*

Our supreme court most recently revisited the issue of contractual limitations provisions in *Faeth*, in which it considered whether a two-year policy limitations period beginning on the date of the accident barred an insured's UM claim against an insurer where the previously self-insured tortfeasor became insolvent after that two-year time period expired. 707 N.W.2d at 330. The court determined such a provision was unreasonable based on the facts presented in that case because it left the insured "with no time to sue following the accrual of his claim." *Id.* at 335.

Rolf relies on the foregoing cases in arguing that the two-year contractual limitations provision in her policy with Nationwide is "unreasonable and unenforceable since it fails to take into account when a claimant's UIM claim 'accrues'; i.e., when a claimant discovers the elements supporting the particular UIM claim." She asserts "UIM claimants should be entitled to the same benefits of the 'discovery-accrual' rule as all other personal injury plaintiffs in Iowa." We do not agree.

As the foregoing discussion demonstrates, after *Hamm* our supreme court reaffirmed the central lesson of *Douglass*, which is that "an insurer may reasonably reduce the ten-year statutory limitations period for contractual claims to a two-year period for filing suit against the insurer." *Faeth*, 707 N.W.2d at 334 n.3. An insurance company thus has the ability to "clearly articulate the applicable limitations period for claims against the tortfeasor and the insurer, and the event upon which the limitations period begins to run." *Hamm*, 612 N.W.2d at 784. Such contractual limitations provisions will be enforced so long as they are reasonable. *Nicodemus*, 612 N.W.2d at 787.

> The reasonableness of a contractual limitations period is determined in light of the provisions of the contract and the circumstances of its performance and enforcement. The policy must provide a reasonable period of time for filing actions to recover under the insurance contract. A contractual limitations provision that would require a plaintiff to bring his action before his loss or damage can be ascertained is per se unreasonable.

Id. (internal quotations and citations omitted).

Here, Nationwide clearly articulated the applicable limitations period for UIM claims against it and the event upon which the limitations period begins to run. *See Hamm*, 612 N.W.2d at 784. The time allowed, within two years after the date of the accident, was "sufficient to allow the plaintiff to investigate and file [the] case within the limitation period" and was not "so short as to amount to a practical abrogation of the right of action." *Douglass*, 508 N.W.2d at 666. Furthermore, unlike the policy in *Nicodemus*, Rolf's policy did not require her to exhaust her remedies against the tortfeasor as a condition precedent to an action

against her insurer for UIM benefits.[2] *Cf. Nicodemus*, 612 N.W.2d at 788 (determining contractual limitations period was unreasonable due to policy's additional requirement that plaintiff exhaust remedies against the tortfeasor before bringing suit against insurer for UIM benefits) *with Douglass*, 508 N.W.2d at 667 (finding policy's limitations period reasonable where exhaustion of plaintiff's remedies against tortfeasor was not a condition precedent to suit against insurer for UM benefits).

Nothing in any of the cases considering the issue suggests that in order for a contractual limitations provision to be reasonable it must incorporate a "discovery rule" as Rolf urges. *See Douglass*, 508 N.W.2d at 667 (rejecting plaintiff's argument that the two-year contractual limitations provision should not bar her UM claim because "she was not aware that the tortfeasors were judgment proof until the two years had passed"). In addition, we agree with Nationwide that even if a discovery rule were applicable, "it would not change the result for Rolf."

"Under the discovery rule, 'the statute of limitations does not begin to run until the injured person has actual or imputed knowledge of all the elements of

[2] Rolf argues that various provisions in her policy are conditions precedent to her bringing suit against Nationwide for UIM benefits, similar to the exhaustion requirement in *Nicodemus* that rendered the contractual limitations provision in that case unreasonable. We have carefully reviewed the provisions relied upon by Rolf and find her argument to be without merit as it is based on mischaracterizations of those provisions. The first provision cited by Rolf in support of her argument is merely definitional and does not contain a condition precedent. Nothing in the next two provisions requires that the duties contained therein be performed before an insured may bring suit against the insurer. Those provisions instead simply instruct an insured to "promptly" provide Nationwide with copies of certain documents, such as the petition "*if* the insured brings an action" against the tortfeasor, in the event the insured seeks UIM coverage under the policy. (Emphasis added.) The final provisions relied upon by Rolf have nothing to do with UIM coverage and instead solely relate to general liability coverage. We therefore reject her arguments to the contrary.

the cause of action.'" *Hook v. Lippolt*, 755 N.W.2d 514, 521 (Iowa 2008) (citation omitted). With respect to imputed knowledge, our supreme court has stated that a "person is charged with knowing *on the date of the accident* what a reasonable investigation would have disclosed." *Id.* The limitations period thus begins when a claimant has knowledge sufficient to put that person on inquiry notice. *Id.*

Here, although Rolf did not discover that McCarty was underinsured until early July 2006, a reasonable investigation following the motorcycle accident on July 29, 2004, would have disclosed that fact to her much earlier. Once Rolf decided to sue McCarty, she was able to learn within approximately two weeks of her attorney's inquiry that McCarty's insurance policy contained a liability limit of $25,000. She then chose not to immediately sue her insurer.

An injured party has a duty to "undertake a reasonably diligent investigation of the nature and extent of her legal rights to recover for an injury." *Id.* at 523. Rolf's failure to conduct a reasonable investigation of the exact parameters of her claim and to bring suit against her insurer within the two-year limitations provision in her insurance policy does not render that provision unreasonable. *See id.* at 524 (stating plaintiff was put on inquiry notice to "ascertain the exact parameters of her claim" at the time of her car accident because she knew then that she had been injured and who had caused her injury).

We thus conclude, in light of the provisions of Rolf's insurance policy and the circumstances of its performance and enforcement, that the contractual limitations provision in this case was reasonable. It provided a sufficient period

of time within which to file an action against the insured to recover UIM benefits and did not require Rolf to bring such an action before her loss or damage was ascertainable. The district court erred in concluding otherwise and in finding a genuine issue of material fact existed as to whether the contractual limitations provision was reasonable. *See Nicodemus*, 612 N.W.2d at 787 (stating such a determination is a question of law for the court to determine); *accord Hamm*, 612 N.W.2d at 778.

IV. CONCLUSION.

We have considered all the issues presented and conclude that the district court's ruling denying Nationwide's motion for summary judgment must be reversed. We accordingly remand this case for entry of an order granting Nationwide's motion for summary judgment.

REVERSED AND REMANDED.