

IN THE COURT OF APPEALS OF IOWA

No. 8-311 / 07-0727

Filed May 14, 2008

BRIAN HOLST,
Plaintiff-Appellant,

vs.

**TOM GORDON AND G&W PAINTING
AND HOME REPAIRS, INC. (formerly
d/b/a G&W PAINTING),**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

Employee appeals from a district court ruling dismissing his common law
action against his employer for bad faith failure to pay workers' compensation
benefits. **AFFIRMED.**

Robert E. Tucker and Patrick W. O'Bryan, Des Moines, for appellant.

Tom Gordon, Des Moines, pro se.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

ZIMMER, J.

Brian Holst appeals from a district court ruling dismissing his common law action against his employer, Tom Gordon and G&W Painting and Home Repairs, Inc., formerly d/b/a G&W Painting, for bad faith failure to pay workers' compensation benefits. He claims the district court erred in concluding he could not bring such a claim against his employer under *Bremer v. Wallace*, 728 N.W.2d 803 (Iowa 2007). We affirm the judgment of the district court.

In November 2003 Holst suffered a work-related injury while working as a painter for G&W Painting. He reported his injury to Gordon, the owner of the company. Gordon informed him that although he had workers' compensation insurance, he did not want to submit Holst's claim to his insurance carrier. He stated "he would rather pay [Holst] under the table so that his insurance rates wouldn't go up." Gordon, however, did not pay Holst any benefits while he was unable to work.

Holst filed a petition with the Iowa Workers' Compensation Commissioner in 2005, seeking workers' compensation benefits from G&W Painting for his November 2003 injury. G&W Painting did not file an answer, and a default judgment was entered against it. The deputy workers' compensation commissioner ordered G&W Painting to pay permanent partial disability benefits, healing period benefits, and penalty benefits. No benefits were paid to Holst. He thereafter obtained a district court judgment against G&W Painting for the workers' compensation award under Iowa Code section 86.42 (2005).

In February 2006 Holst filed suit against Gordon and G&W Painting, claiming damages as a result of their failure “to pay workers’ compensation benefits as ordered by the Iowa Workers’ Compensation Commissioner.” Holst also sought punitive damages based on his employer’s reckless disregard in unreasonably refusing to pay the benefits awarded. Neither Gordon nor G&W Painting filed an answer. The district court granted Holst’s application for entry of a default and scheduled a hearing to determine damages.

Following the hearing, the court determined Holst was not entitled to a judgment on his claim. The court construed the petition as alleging a claim directly against his employer for bad faith refusal to pay workers’ compensation benefits. Citing *Bremer*, the court concluded such a claim was not recognized in Iowa. Holst’s suit against Gordon and G&W Painting was accordingly dismissed.

Holst appeals. He claims the district court erred in finding that he could not bring “a bad faith action against an employer who has workers’ compensation insurance but fails to notify his insurer of the claim.”

Although the decision whether to grant a default judgment rests in the sound discretion of the district court, *Kohorst v. Iowa State Commerce Comm’n*, 348 N.W.2d 619, 622 (Iowa 1984), we review the legal question of whether Iowa recognizes a common law claim against an employer for bad faith refusal to pay workers’ compensation benefits for the correction of errors at law. *Bremer*, 728 N.W.2d at 804.

Our supreme court first recognized an insurer’s tort liability for bad faith conduct relating to a claim made by its own insured in *Dolan v. Aid Insurance*

Co., 431 N.W.2d 790, 794 (Iowa 1988). This common law tort was extended to workers' compensation cases in *Boylan v. American Motorists Insurance Co.*, 489 N.W.2d 742, 744 (Iowa 1992), which determined that "recognition of tort liability on the part of workers' compensation *insurance carriers* guilty of the type of bad-faith conduct for which tort liability was recognized in *Dolan* [was] a logical extension of that decision." (Emphasis added.) The tort was again extended in *Reedy v. White Consolidated Industries, Inc.*, 503 N.W.2d 601, 603 (Iowa 1993), where the court concluded that a self-insured employer¹ could also be held liable for a bad faith failure to pay a workers' compensation claim. This expansion was halted by our supreme court's decision in *Bremer*, 728 N.W.2d at 805, in which the plaintiff sought to further extend *Boylan* by imposing bad faith liability on an uninsured employer.

In concluding such liability should not be imposed, the court determined the "common thread" in its decisions recognizing the common law tort "is the defendant's status as an insurer, or in the case of a self-insured employer, the substantial equivalent of an insurer." *Bremer*, 728 N.W.2d at 805; see also *White v. Nw. Bell Tel. Co.*, 514 N.W.2d 70, 77 (Iowa 1994) ("*Reedy* and its predecessors recognized the tort of bad faith in the context of insurance contracts."). That status "reflects and is consistent with the rationale underlying [the] decision in *Dolan*," which recognized liability based on two considerations: (1) the "belief that 'traditional damages for breach of contract will not always

¹ The term "self-insured employer" refers to an employer who has met precise requirements under Iowa's Workers' Compensation Act to attain that standing. See Iowa Code § 87.4; *Bremer*, 728 N.W.2d at 805. "[S]elf-insured employers are not simply employers who declare they will be responsible for paying workers' compensation benefits owed to their employees." *Bremer*, 728 N.W.2d at 805.

adequately compensate an insured for an insurer's bad faith conduct'; and (2) the fact that 'insurance policies are contracts of adhesion.'" *Bremer*, 728 N.W.2d at 805 (quoting *Dolan*, 431 N.W.2d at 794). Those reasons for imposing tort liability for bad faith conduct are not present outside the traditional insurer/insured relationship. *Id.* at 806. The court in *Bremer* accordingly declined to extend the common law tort for bad faith refusal to pay workers' compensation benefits to an uninsured employer. *Id.*

Although Holst attempts to limit the holding of *Bremer* to uninsured employers, it is clear from that case and its precursors that bad faith tort liability for failing to impose workers' compensation benefits cannot be imposed absent an insurer/insured relationship.² *Id.* at 805-06; see also *Dolan*, 431 N.W.2d at 794 (recognizing a common law cause of action against an *insurer* for bad faith denial of insurance benefits); accord *Boylan*, 489 N.W.2d at 744; *Reedy*, 503 N.W.2d at 603. We agree with the district court that the bad faith claim in this case cannot succeed because it was brought directly against an employer, rather than the employer's workers' compensation insurer.

As our supreme court recognized in *Bremer*, our refusal to extend bad faith liability to the employer in this case does not leave Holst without adequate remedies as he suggests. *Id.* at 806. Holst is "in no different position than any other plaintiff who has an unsatisfied judgment against a person legally liable for the plaintiff's injuries." *Id.* He can obtain, as he has already done, a court

² In addition, although not raised in this case given the employer's default, we question whether the exclusive-remedy defense in section 85.20 would apply to bar Holst's bad faith claim against his employer. See *Reedy*, 503 N.W.2d at 603 (stating the exclusive-remedy defense in section 85.20 is available to an employer with respect to claims involving nonpayment of workers' compensation benefits).

judgment against his employer for the benefits awarded by the deputy commissioner. See Iowa Code § 86.42.

In light of the foregoing, we conclude the district court did not err in dismissing Holst's common law action against his employer for bad faith failure to pay workers' compensation benefits. We therefore affirm the judgment of the district court.

AFFIRMED.