IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LANGERMANN,
Appellant,
vs.
ALLSTATE INSURANCE COMPANY,
Respondent.

No. 46921

FILED

OCT 18 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

The underlying action is the second district court action stemming from an automobile accident involving appellant Robert Langermann and respondent Allstate Insurance Co.'s insured. Initially, Langermann filed an action against Allstate's insured and its claims adjusters.[1] In that action, the sole issue was the amount of damages, as Allstate's insured conceded liability. The case was tried to a jury, which returned a defense verdict, ostensibly determining that, in light of a previous payment by Allstate on Langermann's insurance claim,

[1]The district court subsequently dismissed the claims against the claims adjusters. This court affirmed the dismissal in Langermann v. Shaw II, Docket No. 43209 (Order of Affirmance, August 11, 2005).

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Langermann was not entitled to any further damages. Based on the verdict, the district court entered a judgment in favor of Allstate's insured.

Thereafter, Langermann instituted the underlying action against Allstate seeking compensatory and punitive damages on a variety of theories that were essentially based on Allstate's purported misconduct during, and its mishandling of, Langermann's insurance claim concerning his automobile accident with Allstate's insured. Allstate subsequently moved for summary judgment, primarily arguing that the doctrine of res judicata barred Langermann's claims and that, regardless, Allstate either owed no duty to or lacked the contractual privity with Langermann necessary to support any of his claims. The district court granted summary judgment. This appeal followed.

This court reviews the order granting summary judgment to Allstate de novo.[2] Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to Langermann, demonstrate that no genuine issue of material fact remains in dispute and that Allstate is entitled to judgment as a matter of law.[3]

Having considered the record in light of this standard, we conclude that the district court reached the correct result when it granted summary judgment to Allstate, albeit (to the extent that the court relied

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[2]See Wood v. Safeway, Inc., 121 Nev. __, __, 121 P.3d 1026, 1029 (2005).

[3]Id.

on the doctrine of res judicata) for the wrong reason.[4] In particular, a final judgment against the insured is a precondition to an action against the insurer for any failure to pay.[5] Thus, because Allstate can only be liable for its actions concerning a claim after there has been a judgment against

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[4]See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (stating that this court may affirm rulings of the district court on grounds different from those relied on below). We note that, although the allegations underlying Langermann's complaint as to Allstate's claims adjusters in the first action and as to Allstate in the underlying action are fundamentally identical—and certainly implicate the doctrine of res judicata—because the district court in the first action ostensibly dismissed Langermann's complaint as to the claims adjusters without prejudice, the order does not constitute a final adjudication on the merits for res judicata purposes. See Trustees, Hotel Employers v. Royco, Inc., 101 Nev. 96, 692 Nev. 1308 (1985).

[5]Roberts v. Farmers Insurance Co., 91 Nev. 199, 200, 533 P.2d 158, 159 (1975); accord Hunt v. State Farm Mut. Auto. Ins. Co., 655 F. Supp. 284, 287 (D. Nev. 1987) (recognizing that, in the absence of a judgment against a purported tortfeasor, a claim in contract or tort against the tortfeasor's insurer is not viable). Indeed, in our order affirming the judgment to Allstate's insured, we noted that it appeared that the sole reason Langermann included Allstate's claims adjustors in the action was that Allstate refused to pay him the amount of damages to which he felt he was entitled. See August 11, 2005 order at 2. We noted, therefore, that, because a final judgment against the insured is a precondition to an action against the insurer for failure to pay, the district court did not err when it dismissed Langermann's claims against Allstate's claims adjusters. See August 11, 2005 order at 2 (citing Roberts, 91 Nev. at 200, 533 P.2d at 159).

its insured, and Langermann failed to obtain a judgment against Allstate's insured, Allstate was entitled to judgment as a matter of law.[6]

Further, to the extent that Langermann's claims relate to Allstate's disclosure of Langermann's medical and financial records, having reviewed the record, we conclude that the district court did not err in granting summary judgment to Allstate on these claims. In particular, Allstate ostensibly disclosed Langermann's records in compliance with a subpoena deuces tecum issued in a separate district court action Langermann filed. Compliance with a judicial subpoena is essentially mandated by NRCP 45(e), unless the court by which the subpoena was issued later modifies or quashes the subpoena.[7] And nothing in the record indicates that the subpoena that Allstate complied with was either quashed or modified.

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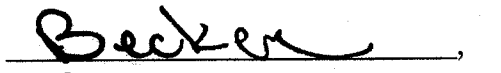
[6]Id. We note further that to the extent that Langermann's claims rely on any alleged duty Allstate owed to him, they are similarly unavailing. See Insurance Co. of the West v. Gibson Tile, 122 Nev. __, __, 134 P.3d 698, 702 (2006) (noting that a cognizable claim for the tortious breach of the covenant of good faith and fair dealing requires a special relationship between the victim and tortfeasor); Gunny v. Allstate Ins. Co., 108 Nev. 344, 345, 830 P.2d 1335, 1335-36 (1992) (recognizing that, because a third party claimant had no contractual relationship with the insurer, the third party claimant lacked standing to assert a bad faith claim against an insurer).

[7]See NRCP 45(c)(3)(A); see generally Humana Inc. v. District Court, 110 Nev. 121, 122-23, 867 P.2d 1147, 1148-49 (1994) (requiring a hospital to release medical records in response to a subpoena because the subpoena had been neither quashed nor modified).

Accordingly, we affirm the district court's judgment.[8]

It is so ORDERED.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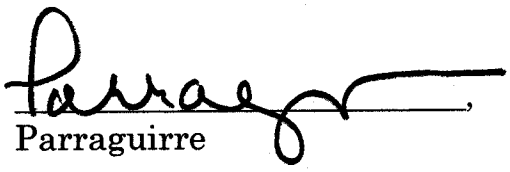
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cc: Hon. Valorie Vega, District Judge
Robert Langermann
Prince & Keating, LLP
Clark County Clerk

[8]Having considered all of the issues raised by Langermann, we conclude that any of his contentions not discussed above lack merit and, therefore, do not warrant reversal of the district court's judgment. Moreover, because the appeal in Docket No. 47010 was dismissed and unconsolidated from this appeal, we do not address any challenges related to the appeal in Docket No. 47010.