IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLIE BECERRA,
Appellant,
vs.
ONE BEACON INSURANCE GROUP; AND ONE BEACON INSURANCE COMPANY, A/K/A HAWKEYE-SECURITY INSURANCE COMPANY,
Respondents.

No. 50708

FILED

OCT 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in an insurance matter. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

FACTS AND PROCEDURAL HISTORY

The parties are in agreement over the basic facts and procedural history of this case. In May 2000, appellant Charlie Becerra was injured in an automobile accident in a construction zone on U.S. Highway 395 in Reno, Nevada. Thereafter, Becerra filed a tort action in district court seeking damages from Accurate Companies, LLC, the construction company working on the portion of the highway where the accident occurred, and from Clinton Harvey Midgley, another driver on the road at the time of the accident. After both defendants failed to appear or otherwise defend against the complaint, a default judgment was entered jointly and severally against Accurate and Midgley. After receiving the default judgment, however, Becerra then learned that apparently neither Accurate nor Midgley had insurance. Becerra then submitted a claim to his own insurance provider, respondents (One Beacon), pursuant to his policy's uninsured motorist provision. This was

the first time that Becerra notified One Beacon of his lawsuit against Accurate and Midgley. After One Beacon denied coverage, Becerra filed an action in district court against One Beacon for breach of contract. One Beacon filed a motion for summary judgment and Becerra opposed the motion. After a hearing, the district court determined that One Beacon was not bound by the default judgment because Becerra had failed to timely notify the company of his suit against Accurate and Midgely. The district court further concluded that, without the benefit of the default judgment, Becerra was not covered because NRS 690B.020 was not applicable to Accurate and the facts, viewed in the light most favorable to Becerra, did not indicate that Becerra's injuries were caused by any negligence on the part of Midgely. The district court therefore entered summary judgment in favor of One Beacon. Becerra now appeals.

DISCUSSION

This court reviews an order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. at 731, 121 P.3d at 1031.

As this court recently acknowledged in Estate of LoMastro v. American Family Ins., 124 Nev. ___, ___, 195 P.3d 339, 347 (2008), all automobile liability insurance policies in Nevada must offer uninsured and underinsured motorist coverage at least to the extent required by NRS 690B.020. The intent behind this requirement is "to compensate an injured insured for injuries caused by the negligence of the owner or operator of an uninsured or underinsured motor vehicle." Id. at ___, 195 P.3d at 348. However, an insurance company will be bound by the result

of an action between its insured and an uninsured motorist when the insurance company had timely notice of the action with an opportunity to intervene. Id. at ___, 195 P.3d at 344; Allstate Insurance Co. v. Pietrosh, 85 Nev. 310, 316, 454 P.2d 106, 111 (1969).

Here, by waiting until after entry of the default judgment, Becerra failed to timely notify One Beacon of its action against Accurate and Midgley, and consequently, One Beacon was not bound by that default judgment. LoMastro at ___, 195 P.3d at 344; Pietrosh, 85 Nev. at 316, 454 P.2d at 111. Also, the district court correctly determined that One Beacon is not responsible for any liability of Accurate, as its negligence was unrelated to the ownership or operation of an uninsured motor vehicle. See LoMastro, 124 Nev. at ___, 195 P.3d at 348.

Thus, in order to determine coverage, the issue of Midgley's alleged negligence must be litigated separately without the benefit of the default judgment. See MFA Mutual Ins. Co. v. Bradshaw, 431 S.W.2d 252, 254 (Ark. 1968), cited with approval in Pietrosh, 85 Nev. at 316, 454 P.2d at 111; In re Koehn, 86 S.W.3d 363, 368 (Tex. App. 2002) (explaining that without a default judgment binding on their insurance company, insureds have to litigate the issue of liability and damages against the insurance company). We reject One Beacon's argument that lack of timely notice effects a complete forfeiture of UIM benefits, but see Cotton States Mutual Insurance Co. v. Torrance, 137 S.E.2d 551 (Ga. Ct. App. 1964) (determining that an insured's suit against an uninsured motorist without the consent of the insurance company resulted in a forfeiture of the insured's right to recover from the insurance company), in light of Nevada's general policy of providing "'maximum . . . protections to the innocent victims of financially irresponsible motorists.'" Grayson v. State

Farm Mut. Auto. Ins., 114 Nev. 1379, 1382, 971 P.2d 798, 800 (1998) (quoting Green v. Selective Insurance Co. of America, 676 A.2d 1074, 1078 (N.J. 1996)). Our rejection of One Beacon's forfeiture argument is further supported by the fact that an insured need not file a suit against a UIM carrier before obtaining a judgment against the tortfeasor. See id. at 1382, 971 P.2d at 799-800. Also, for the purposes of NRS 690B.020, an insured becomes "legally entitled to recover damages" at the time of the accident, and thus, a prior judgment is not required. Id. at 1381 n.3, 971 P.3d at 799 n.3.

As set forth above, under the posture of this case, in order to trigger his UIM coverage, Becerra was required to separately litigate the issue of Midgley's alleged negligence.[1] Having reviewed the parties' briefs and the record on appeal, we conclude that the district court erred in determining that Midgley was not negligent as a matter of law, as this issue was not appropriate for summary judgment. Butler v. Bayer, 123 Nev. 450, 461, 168 P.3d 1055, 1063 (2007) (noting that this court is reluctant to affirm summary judgment in negligence cases because the question of whether a defendant was negligent is generally a question of fact for the jury to resolve); Wood, 121 Nev. at 731, 121 P.3d at 1031. Accordingly, we

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[1]We note that NRS 687B.145(2) does not prohibit recovery of uninsured motorist benefits for single vehicle accidents, LoMastro, 124 Nev. at ___, 195 P.3d at 348-49, and that NRS 690B.020(3)(f)(1)'s physical contact requirement applies only when the identity of the tortfeasor is unknown. LoMastro, 124 Nev. at ___, 195 P.3d at 349-50.

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Leonard I. Gang, Settlement Judge
O'Mara Law Firm, P.C.
Prince & Keating, LLP
Washoe District Court Clerk