

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAULIDI BELL,
Appellant,
vs.
AMERICAN FAMILY MUTUAL
INSURANCE CO.,
Respondent.

No. 50162

MAULIDI BELL,
Appellant,
vs.
AMERICAN FAMILY MUTUAL
INSURANCE CO.,
Respondent.

No. 54090

FILED

MAR 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These consolidated appeals arise from a district court summary judgment in an insurance action and a district court order in an insurance action. Eighth Judicial District Court, Clark County; Susan Johnson, Judge (Docket No. 50162); Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge (Docket No. 54090).

These appeals arise out of an automobile accident in which Andre Bailey injured appellant Maulidi Bell. Respondent American Family Mutual Insurance Company insured Bailey with liability limits of \$15,000 per person/\$30,000 per occurrence. Bell sued Bailey, and American Family provided counsel and a defense for Bailey. However, Bailey refused to cooperate with insurance defense counsel or to provide discovery. Bailey's refusal to provide discovery led to entry of a sanctions-based judgment against him and in favor of Bell for \$1,000,000.

Order modified per order filed 4-12-11. SY

The judgment in the Bell v. Bailey liability action was not appealed. However, that action spawned two separate insurance actions, which led to the judgments before us in these consolidated appeals.

In the direct action appeal, Docket No. 50162, Bell sued American Family for breach of contract, bad faith, and violation of NRS 686A.310.¹ The district court granted summary judgment in favor of American Family and against Bell, ruling “as a matter of law that Bell is a third-party claimant with no contractual relationship with American Family [and] that, because Bell has no contractual relationship with American Family, Bell has no direct action against American Family.” This is a correct statement of Nevada law. See Gunny v. Allstate Ins. Co., 108 Nev. 344, 345-46, 830 P.2d 1335, 1336 (1992) (rejecting standing of third-party claimant in insurance bad faith case).

Bell tries to distinguish Gunny by arguing that ~~her~~^{his} status as Bailey’s judgment creditor gave ~~her~~^{his} standing that Mr. Gunny lacked. See Hall v. Enterprise Leasing Co., 122 Nev. 685, 693, 137 P.3d 1104, 1109 (2006); Knittle v. Progressive Casualty Ins. Co., 112 Nev. 8, 908 P.2d 724 (1996). But at no time prior to entry of final judgment in Docket No. 50162 did Bell garnish, execute, or obtain a voluntary assignment of Bailey’s rights, such as they were, against American Family. Without an

¹Inexplicably, Bell’s counsel named Bailey as a co-plaintiff on the direct action complaint. After American Family moved for summary judgment but before decision on its motion, Bell moved to withdraw Bailey as co-plaintiff, claiming Bell did not intend to add Bailey to the complaint and that Bell’s lawyer lacked authority to sue in Bailey’s name. However, the district court did not hear that motion until after it granted summary judgment against both Bell and Bailey, whereupon it dismissed the motion as moot.

assignment, voluntary or forced, Bell still lacked standing to proceed directly against American Family for extracontractual liability or bad faith. See Pasina v. California Cas. Indem. Exchange, 2008 WL 5083831, at *4 (D. Nev. 2008) (applying Nevada law and holding that “without proper assignment of rights, Nevada does not recognize a right of action by a third-party claimant against an insurance company for bad faith”).² We thus affirm the judgment in Docket No. 50162.

The second appeal, Docket No. 54090, is more complicated but comes out the same. Docket No. 54090 began as a declaratory judgment action by American Family against Bailey, seeking a declaration that Bailey’s lack of cooperation invalidated coverage. Bailey did not respond, and American Family secured a default judgment against Bailey, declaring the insurance contract unenforceable. Bell then moved to intervene, to set aside the default judgment, and for leave to file an answer and counterclaim-in-intervention against American Family. The district court granted Bell’s motion, set aside the default judgment against Bailey—but not Bailey’s default—and allowed Bell to file an answer and

²As to Bell’s claim as Bailey’s judgment creditor to the \$15,000 in benefits provided by the American Family policy, the issue is moot because, after the appeal in Docket No. 50162 was filed, “American Family paid Bell the \$15,000, as reflected in the record in Docket No. 54090. We therefore do not reach the issue of whether Bell’s judgment against Bailey, alone and without an assignment or execution, gave Bell standing under Hall and Knittle to benefits available on an indemnity as opposed to tort theory.

without waiving any claims or defenses and without an admission of liability, rendered Bailey’s policy limits of \$15,000 to Bell,”

counterclaim asserting essentially the same third-party claims against American Family as ~~she~~^{he} asserted in Docket No. 50162.

American Family moved for summary judgment against Bell on ~~her~~^{his} answer and counterclaims, reprising the arguments we accept above as adequate to support the judgment in Docket No. 50162, among others. For the same reasons that we affirm summary judgment in Docket No. 50162, we affirm the summary judgment in Docket No. 54090: When the district court entered summary judgment, Bell had a judgment against, but no assignment from, Bailey; thus, Bell lacked standing to sue American Family directly for extra-contractual liability or bad faith. See also supra note 2.

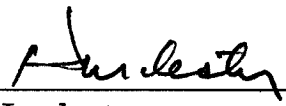
After the district court granted summary judgment in favor of American Family in Docket No. 54090, Bell filed a second answer and counterclaim-in-intervention, in which ~~she~~^{he} asserts that she finally executed on her judgment against Bailey and thereby acquired Bailey's rights against American Family. However, Bell failed to seek or obtain leave to file an amended answer and counterclaim as required under NRCP 15 and this pleading was properly stricken on motion by American Family. The issue Bell invites us to address—whether this court should follow Denham v. Farmers Ins. Co., 262 Cal. Rptr. 146, 148 (Ct. App. 1989), as Bell urges, or State Farm Mut. Auto. Ins. Co. v. Estep, 873 N.E.2d 1021, 1028 (Ind. 2007), as American Family urges, in the matter of a third-party claimant's ability to obtain by execution direct action rights against the tortfeasor's insurer—thus was not presented to or decided by the district judge before he decided American Family's motion for summary judgment. It thus is not properly before us on this appeal. See

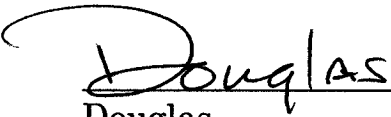
Schuck v. Signature Flight Support, 126 Nev. ___, ___, 245 P.3d 542, 544 (2010).

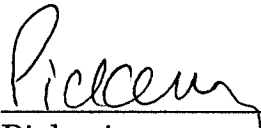
In granting summary judgment for American Family and against Bell, the district court that entered the judgment in Docket No. 54090 also denied Bell's competing motion for summary judgment and to set aside Bailey's default and, thereafter, reinstated the default judgment against Bailey. At the same time, American Family ^{tendered} ~~paid~~ Bell the \$15,000 in benefits provided by its policy. Whatever rights Bell may have acquired by virtue of its execution of ^{his} ~~its~~ judgment against Bailey were not asserted until the district court entered summary judgment against Bell and even then, only in a pleading that was stricken; no appeal was taken by or on behalf of Bailey. Thus, the default judgment against Bailey stands.

Accordingly, we

ORDER the judgments of the district courts AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Susan Johnson, District Judge
Hon. Douglas W. Herndon, District Judge
Christensen Law Offices, LLC
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk