IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBYN WILLIAMS,
Appellant,
vs.
HARTFORD ACCIDENT AND INDEMNITY COMPANY,
Respondent.

No. 35175

FILED

JUL 10 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Appellant Robyn Williams appeals from an order granting respondent Hartford Accident and Indemnity Company (Hartford) summary judgment in an action alleging contract and tort claims. On appeal, Williams challenges the district court's order, arguing that the district court erroneously concluded that Hartford did not have a duty to defend, and that Williams' remaining claims, breach of covenant of good faith and fair dealing and civil conspiracy, were moot. We conclude that Hartford did not have a duty to defend Williams. However, we also conclude that the district court erroneously ruled that the remaining claims were moot.

An appeal from an order granting summary judgment is reviewed de novo.[1] After viewing all evidence and taking every reasonable inference in the light most favorable to the nonmoving party, summary judgment is appropriate when there are no genuine issues of material fact

[1]Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

and the moving party is entitled to summary judgment as a matter of law.[2]

Williams contends that even though Sharry Skalla's tort claims were dismissed with prejudice, Hartford had a duty to defend Williams because Skalla's suit raised factual information that gave rise to potential liability under the policy. We disagree. Generally, once it is determined that an insurer has a duty to defend, that duty continues throughout the lawsuit. However, an insurer can withdraw from a defense after all [potentially] covered claims have been extinguished.[3] We conclude that once Williams stipulated to Skalla's amendment that dismissed Skalla's tort claims with prejudice, the only potentially covered claims, Hartford's duty to defend was eliminated.[4]

The district court concluded that because there was no duty to defend, the remaining claims, bad-faith breach and conspiracy, were moot. We conclude, however, that the district court was incorrect and that the remaining claims could survive independent of the duty to defend. First, this court has "recognized a cause of action in tort for the breach of an

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[2]Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993); see also NRCP 56(c).

[3]Cf. Nevada VTN v. General Ins. Co. of America, 834 F.2d 770, 773 (9th Cir. 1987) (stating that an insurer has a duty to defend a lawsuit against its insured if the complaint alleges claims that are "potentially covered" by the insurance policy).

[4]See Snow v. Pioneer Title Ins. Co., 84 Nev. 480, 485, 444 P.2d 125, 128 (1968) (holding that there is no duty to defend where there is no coverage). Cf. Lindauer v. Allen, 85 Nev. 430, 436-37, 456 P.2d 851, 855 (1969) (noting that dismissal of a complaint with prejudice bars another action against the same defendants); NRCP 41(a)(1) (stating that a stipulation of dismissal with prejudice operates as an adjudication of the merits).

implied covenant of good faith and fair dealing where an insurer fails to deal fairly and in good faith with its insured."[5] Second, "[a]n actionable civil conspiracy is a combination of two or more persons who, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another which results in damage."[6] These claims are not dependent on the duty to defend issue because Hartford could have acted in bad faith and conspired by deliberately eliminating the claims that gave rise to its duty to defend. Because the district court did not rule on either of these claims nor did it give Williams an opportunity to argue either claim, we remand this case to the district court for resolution of these issues.

Finally, Williams contends on appeal that she is entitled to an adverse inference against Hartford, arising from Hartford's selective purging of the marketing file related to Skalla. Because the district court did not address this issue and will have the opportunity to do so on remand, we need not consider it.

In summary, we conclude that Hartford did not have a duty to defend the causes of action remaining after Skalla's tort claims were dismissed. However, we conclude that the district court erroneously ruled that the remaining claims were moot. Accordingly we,

ORDER the judgment of the district court AFFIRMED IN

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[5]Aluevich v. Harrah's, 99 Nev. 215, 217, 660 P.2d 986, 987 (1983).

[6]Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Jennifer Togliatti, District Judge
James J. Lee
Pearson, Patton, Shea, Foley & Kurtz
Clark County Clerk