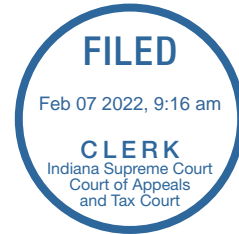


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

American Family Mutual
Insurance Company, S.I.,
Appellant-Defendant,

v.

Gail Lewis Hicks and Larry
Hicks,
Appellees-Plaintiffs,

and

February 7, 2022

Court of Appeals Case No.
21A-CT-1441

Appeal from the Lake Superior
Court

The Honorable Calvin D.
Hawkins, Judge

Trial Court Cause No.
45D02-2007-CT-727

Keith Head¹

Appellee-Defendant.

Bradford, Chief Judge.

Case Summary

- [1] Gail and Larry Hicks (collectively, “the Hickses”) filed suit against Keith Head and American Family Mutual Insurance Company, S.I. (“American Family”) after Gail was involved in a traffic collision with a vehicle owned by Head and insured by American Family. American Family filed a motion for summary judgment, arguing that there was no legal basis for the Hickses’ claims against it. The trial court denied American Family’s motion on June 10, 2021, and certified the issue for interlocutory appeal, and we accepted jurisdiction. Concluding that the trial court erred in denying American Family’s motion for summary judgment, we reverse and remand to the trial court with instructions to enter summary judgment in favor of American Family.

¹ Keith Head does not participate in this appeal. However, pursuant to Indiana Rule of Appellate Procedure 17(A), a party of record in the trial court shall be a party on appeal.

Facts and Procedural History

[2] On July 20, 2020, the Hickses filed suit against Head and American Family. In their complaint, the Hickses alleged that on July 22, 2018, Pamela Dickerson was driving a vehicle owned by Head “in a careless and negligent manner and struck the vehicle” being driven by Gail, causing property damage to Gail’s vehicle and bodily injury to Gail and her daughter Diamond. Appellant’s App. Vol. II p. 12. The Hickses alleged that at the time of the accident, Head’s vehicle was insured by American Family. With respect to American Family, the Hickses further alleged:

7. That, [American Family] had a legal responsibility to, in good faith, settle the complete claim which – to date – [American Family] has not, causing financial harm to the plaintiffs due to the medical expenses incurred from the medical services provided for the physical bodily injury to [the Hickses] for loss of consortium and to physical injury to her daughter, Diamond Lewis.

8. That, [American Family] settled the claim for damages to plaintiffs vehicle but left the claims for physical bodily injury and medical expenses incurred to [Gail] and loss of consortium to [Larry], as set forth above, unsettled and it remains unsettled to this date – almost two (2) years later.

9. That, [American Family] had a legal responsibility to settle all claims in good faith, which [American Family] did not, thus causing financial hardship and burden to [Gail] for the unpaid medical expenses and which has adversely affected [Gail’s] credit standing.

10. That, [Gail] spoke with agents of [American Family] on

several occasions and Attorney John H. Davis, attorney for plaintiffs, communicated with agents of [American Family] about the medical expenses and loss of consortium of [the Hickses] and was informed that the expenses would be settled – two (2) years later this has not been done....

13. That, [American Family] can be held liable for insurance carried by their insured [Head], in allowing [Dickerson] to drive [Head's] vehicle, for the purposes of *third party beneficiaries* which, in the instant case, covers both [the Hickses]....

19. [American Family] was under a legal requirement to use good faith in a timely and reasonable settlement under [Gail's] third party beneficiary of the insurance policy held by [Head] for bodily injuries caused by the permitted driver of [Head's] vehicle on or about July 22, 2018....

WHEREFORE, [the Hickses] pray for Judgment against [Head], when he (defendant) permitted [Dickerson] to drive [his] vehicle and for damages and Judgment against [American Family], including punitive damages for bad faith in settlement, attorney's fees and for all other just and proper relief in the premises.

Appellant's App. Vol. II pp. 13–16, 19, 20 (emphasis in original).

[3] On May 18, 2021, American Family filed a motion for summary judgment, arguing that because the Hickses were not parties to Head's insurance contract and were not third-party beneficiaries under the insurance policy, they have no basis for their breach-of-contract, bad-faith, or punitive-damages claims.² The

² We acknowledge that the parties filed numerous documents and that the trial court issued various orders in the time between when the Hickses' complaint was filed and when American Family filed its motion for summary judgment. However, given that the only question before us on appeal is whether the trial court

Hickses responded, claiming that their cause of action should proceed because they qualified as third-party beneficiaries under Head’s insurance policy. The trial court conducted a hearing on American Family’s motion on June 9, 2011. The next day, on June 10, 2021, the trial court issued an order denying American Family’s motion for summary judgment. The trial court certified the matter for interlocutory appeal, and we accepted jurisdiction.

Discussion and Decision

[4] American family contends that the trial court erred in denying its motion for summary judgment.

When reviewing a grant or denial of a motion for summary judgment our well-settled standard of review is the same as it is for the trial court: whether there is a genuine issue of material fact, and whether the moving party is entitled to judgment as a matter of law. The party moving for summary judgment has the burden of making a prima facie showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Once these two requirements are met by the moving party, the burden then shifts to the non-moving party to show the existence of a genuine issue by setting forth specifically designated facts. Any doubt as to any facts or inferences to be drawn therefrom must be resolved in favor of the non-moving party. Summary judgment should be granted only if the evidence sanctioned by Indiana Trial Rule 56(C) shows there

erroneously denied American Family’s motion for summary judgment, we omit these other filings from our recitation of the procedural history as they are not relevant to the instant appeal.

is no genuine issue of material fact and that the moving party deserves judgment as a matter of law.

Goodwin v. Yeakle's Sports Bar & Grill, Inc., 62 N.E.3d 384, 386 (Ind. 2016) (internal citations omitted). “We review questions of law de novo and owe no deference to the trial court’s legal conclusions.” *Floyd Cnty. v. City of New Albany*, 1 N.E.3d 207, 213 (Ind. Ct. App. 2014). The party appealing the grant or denial of summary judgment has the burden of persuading this court on appeal that the trial court’s ruling was improper. *Id.*

[5] American Family contends that the trial court erred in denying its motion for summary judgment because, as a matter of law, the Hickses cannot recover directly from American Family. For their part, the Hickses contend that they are third-party beneficiaries of Head’s insurance policy and, therefore, are entitled to sue American Family directly for redress from American Family’s alleged failure to negotiate a settlement with them in good faith. In raising these contentions, the parties dispute whether the Hickses qualify as third-party beneficiaries under the terms of Head’s insurance contract.

[6] The Indiana Supreme Court has held that “a third-party beneficiary may sue the insurer directly to enforce the contract between the insurer and the insured.” *Cain v. Griffin*, 849 N.E.2d 507, 514 (Ind. 2006). The record is clear that American Family has actively defended and moved to indemnify Head in response to the Hickses lawsuit and a reading of the Hickses complaint does not indicate that the Hickses are alleging that American Family has not done so. In addition, the designated evidence does not appear to create a material issue of

fact as it clearly shows that American Family has taken steps to defend and indemnify Head in the suit brought by the Hickses against him. The Hickses claims instead seem to indicate their belief that American Family has not resolved the entire case in the manner/timeframe preferred by the Hickses.

[7] Furthermore, in *Cain*, the Indiana Supreme Court went on to hold that “a third-party beneficiary cannot sue an insurer in a tort action for the insurer’s failure to deal in good faith with a third-party beneficiary.” *Id.* at 515. While the Hickses argue on appeal that their claims against American Family are contractual in nature, a plain reading of their claims against American Family demonstrates that by suing American Family, they are seeking to recover damages directly from American Family. Such claims fall under the type of direct claim that was disallowed by *Cain*.

[8] Given the Indiana Supreme Court’s decision in *Cain*, the Hickses cannot sue American Family directly on a claim that American Family failed to negotiate a settlement with the Hickses in good faith regardless of whether they qualify as third-party beneficiaries.³ *See id.* American Family is therefore entitled to judgment as a matter of law and the trial court erred in denying American Family’s motion for summary judgment.

³ We acknowledge that the Hickses cited to *Donald v. Liberty Mutual Ins. Co.*, 18 F.3d 474 (7th Cir. 1994) in support of their assertion that they could bring their claims directly against American Family. Their reliance on *Donald*, however, is misplaced given that the Indiana Supreme Court’s decision in *Cain* expressly rejected *Donald* on this point. *See Cain*, 849 N.E.2d at 515.

[9] The judgment of the trial court is reversed, and the matter is remanded with instructions to enter summary judgment in favor of American Family.

Crone, J., and Tavitas, J., concur.