MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Diann Adams,
Appellant-Defendant

v.

Canal Insurance Company,
Appellee-Plaintiff

February 23, 2024
Court of Appeals Case No.
23A-CT-2155

Appeal from the Marion Superior Court

The Honorable John M. T. Chavis, II, Judge

Trial Court Cause No.
49D05-2202-CT-5542

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Diann Adams filed a complaint against her nephew Cedrick Edwards and Edwards's trucking business, Stop N Go Transport, LLC ("SNG"), alleging fraud, criminal conversion, and unjust enrichment with respect to a semi-truck trailer ("the truck"). Adams had given $31,000 to her son, Anthony Anderson, to purchase the truck. Edwards used that money to buy and title the truck in his name. Adams's complaint also sought a declaratory judgment that she is the rightful owner of the truck.

[2] After Anderson took possession of the truck without permission, Edwards filed a claim with his insurance company, Canal Insurance Company ("Canal"), alleging that Anderson and Adams had stolen the truck. And in response to Adams's complaint, Edwards filed a counterclaim against Anderson and Adams. Because Canal approved his theft claim, Edwards moved to join Canal as a necessary party to the litigation. Ultimately, Canal filed a third-party complaint naming Adams, Anderson, Edwards, and SNG as third-party defendants.

[3] Adams appeals the Marion Superior Court's entry of summary judgment in favor of Canal on its third-party complaint against her, and she presents a single issue for our review, namely, whether the trial court erred when it entered summary judgment for Canal.

[4] Canal cross-appeals and presents a single issue for our review, namely, whether the trial court abused its discretion when it denied Canal's motion to strike certain evidence Adams designated in opposition to summary judgment.

[5] We reverse the trial court's denial of Canal's motion to strike, and we affirm the entry of summary judgment for Canal.

Facts and Procedural History

[6] In August 2021, Anderson asked Adams for money to "buy[] him a truck." Appellant's App. Vol. 5, p. 36. Anderson told her that he planned on driving a truck for SNG, and he told Adams that "whatever money that [she] spent for the truck, he would make sure [she got] it back. . . ." *Id.* Adams agreed and gave Anderson $31,000 in cash. Adams told Anderson to put the title to the truck in his name and that they would later add her name to the title as co-owner.

[7] Anderson and Edwards found the truck for sale in Florida, and they used Adams's $31,000 to buy it. But Anderson did not put his name on the title as Adams had instructed. Instead, Edwards put his name on the title. When Adams found out that Anderson had not put his name on the title to the truck, she told him to drive the truck to Wisconsin, where she lives. Anderson complied, and, on September 25, Edwards reported the truck stolen. Edwards told the investigating IMPD officer that Anderson had stolen the truck. Edwards also filed his claim with Canal.

[8] When Adams learned about Edwards's claim with Canal, she called a representative with Canal to report a prior fraudulent claim[1] Edwards had made with Canal and to advise the representative that she was the true owner of the truck. But Adams was unable to connect with a Canal employee who would talk to her.[2]

[9] Canal ultimately paid Edwards $47,150 for the theft of the truck, and Canal currently holds title to the truck. Canal asked Adams and Anderson to relinquish the truck, but they refused. Canal then submitted a "Request for Recovery Notification & Restitution for Stolen Vehicle" with IMPD. Appellant's App. Vol. 6, p. 193.

[10] On February 21, 2022, Adams filed a complaint against Edwards and SNG alleging fraud, criminal conversion, and unjust enrichment. Adams also sought a declaratory judgment that she is the owner of the truck. Edwards filed an answer and a counterclaim against Adams and Anderson alleging conversion and unjust enrichment. Edwards also filed a motion for joinder alleging that Canal was a necessary party to the litigation. In May, Canal joined as a third-party plaintiff.

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[1] Edwards had told Adams that he owned a truck that was inoperable and that he planned to set it on fire and make a claim with Canal.

[2] Adams also alleges that "[a] few of the Canal representatives she talked to listen[ed] to her," but whether anyone at Canal listened to Adams is of no moment. Appellant's Br. at 12.

[11] In August, Canal filed a third-party complaint against Adams, Anderson, Edwards, and SNG. Specifically, Canal alleged that Adams and Anderson committed conversion when Anderson drove the truck to Wisconsin without permission. Canal also sought replevin and a declaratory judgment that it is the rightful owner of the truck. On October 3, Canal obtained default judgments against Anderson, Edwards, and SNG.

[12] On May 12, 2023, Canal filed a motion for summary judgment on its claims against Adams. Canal designated evidence showing that it owns the truck and that Anderson and Adams have refused to relinquish the truck to Canal. Adams designated contrary evidence, including admissions made by Edwards after he had failed to respond to her request for admissions. Canal moved to strike Edwards's admissions, but the trial court denied that motion. Nevertheless, following a hearing, the trial court granted Canal's summary judgment motion. This appeal ensued.

Discussion and Decision

Cross-Appeal—Motion to Strike

[13] Because our resolution of the issue on cross-appeal informs our analysis of Adams's appeal from the entry of summary judgment, we address the cross-appeal first.

[14] Canal contends that the trial court abused its discretion when it denied its motion to strike Edwards's admissions, which Adams designated in opposition to summary judgment. Edwards admitted in relevant part that: he "used Diann

Adams's $31,000 to purchase the [truck] and fraudulently signed his name on the title as the owner even though he knew Diann Adams was the owner"; and "[a]t no time did [he] own the [truck]." Appellant's App. Vol. 6, pp. 211-12. Canal argues that "admissions apply to and bind the answering party, not a completely different party." Appellee's Br. at 24. Thus, Canal maintains that Edwards's admissions cannot be used against Canal in its summary judgment motion. We agree.

[15] Trial Rule 36 provides in relevant part that

> [a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. . . . Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

Our Supreme Court has held that, under that rule,

> admissions apply to and *bind only the answering party*, not a co-defendant. *Shoup v. Mladick* (1989), Ind. App., 537 N.E.2d 552. Likewise, the propounding of a request for admission does not constitute an admission by the requesting party. It does not have the legal effect of a stipulation, but rather is binding only as to the party admitting the request.

Gen. Motors Corp., Chevrolet Motor Div. v. Aetna Cas. & Sur. Co., 573 N.E.2d 885, 890 (Ind. 1991) (emphasis added).

[16] In *Shoup*, the plaintiffs sued two doctors for medical malpractice, Dr. Mladick and Dr. Miller. Dr. Miller admitted to certain facts under Trial Rule 36, including that Dr. Mladick was negligent and that his negligence proximately caused the plaintiffs' injuries. After the trial court granted Dr. Mladick's summary judgment motion, the plaintiffs appealed and argued that Dr. Miller's admissions established genuine issues of material fact regarding Dr. Mladick's negligence to preclude summary judgment. *Shoup*, 537 N.E.2d at 553. We rejected that argument and held that

> [r]equests for admission of facts addressed to one defendant are not binding upon a co-defendant. T.R. 36 admissions apply to and bind the answering party, not a co-defendant. Dr. Miller's admissions of negligence for Dr. Mladick are inapplicable to counter the summary judgment motion. The Shoups' failure to provide admissible expert opinion contrary to a unanimous medical panel finding defeats their medical malpractice claim against Dr. Mladick.

Id.

[17] Likewise, here, Edwards's admissions bind only Edwards, not Canal, and the trial court abused its discretion when it denied Canal's motion to strike Edwards's admissions from Adams's designated evidence.[3] Accordingly, we

[3] To the extent Adams argues that *Shoup* is distinguishable and Edwards's admissions are binding on Canal because they are not codefendants, we reject that argument. Our precedent explicitly holds that: an admission is not a stipulation; admissions bind only the answering party; codefendants are not bound thereby; and the requesting party is not bound thereby. *See Gen. Motors Corp., Chevrolet Motor Div.*, 573 N.E.2d at 890. There is no basis in the law or in logic to hold that Edwards's admissions are binding on Canal for purposes of its summary judgment motion.

hold that the trial court abused its discretion when it denied Canal's motion to strike, and we do not consider Edwards's admissions in our review of the summary judgment.

Appeal—Summary Judgment

[18] Adams contends that the trial court erred when it entered summary judgment for Canal. Our standard of review is well settled.

> When this Court reviews a grant or denial of a motion for summary judgment, we "stand in the shoes of the trial court." *Burton v. Benner*, 140 N.E.3d 848, 851 (Ind. 2020) (quoting *Murray v. Indianapolis Public Schools*, 128 N.E.3d 450, 452 (Ind. 2019)). Summary judgment is appropriate "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Campbell Hausfeld/Scott Fetzer Co. v. Johnson*, 109 N.E.3d 953, 955-56 (Ind. 2018) (quoting Ind. Trial Rule 56(C)). We will draw all reasonable inferences in favor of the non-moving party. *Ryan v. TCI Architects/Engineers/Contractors. Inc.*, 72 N.E.3d 908, 912-13 (Ind. 2017). We review summary judgment de novo. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014).

Arrendale v. Am. Imaging & MRI, LLC, 183 N.E.3d 1064, 1067-68 (Ind. 2022).

[19] Adams does not dispute that Canal designated evidence sufficient to make a *prima facie* case that it is the legal owner of the truck. But Adams argues that summary judgment is inappropriate because she designated evidence showing that "Canal's interest in the [truck] is dependent upon what title Edwards possessed in the tractor, an issue that remains contested and unresolved by the

trial court." Appellant's Br. at 17. Adams maintains that Edwards never took valid title to the truck because he either stole it or obtained it by fraud. Thus, Adams asserts that Edwards was "unable to pass good title to Canal and Canal would not be entitled to judgment as a matter of law." *Id.* at 18. We do not agree.

[20] Having excluded Edwards's admissions for purposes of Canal's motion for summary judgment, the only designated evidence upon which Adams relies to show genuine issues of material fact regarding the validity of Edwards's title are excerpts from her own deposition testimony. While Adams often refers to the truck as "my truck" in her deposition, she also explicitly testified that: she agreed to buy *Anderson* a truck "and the only thing [she] wanted was [her] money back"; she gave $31,000 in cash *to Anderson* to buy the truck; she instructed *Anderson* to "[p]ut [Anderson's] name on" the title; and she intended to later add her name to the title, which she never did. Appellant's App. Vol. 7, pp. 32, 35, 42.

[21] Adams's deposition testimony does not call into question the validity of Edwards's title. Rather, the undisputed designated evidence shows that Anderson used Adams's $31,000 to buy the truck, but Anderson did not put the title to the truck either in his name or in Adams's name. Instead, Edwards put the title in his name. Thus, Edwards was the owner of the truck when Anderson drove the truck to Wisconsin without Edwards's permission and when Adams retained the truck without Edwards's permission, and Edwards was entitled to make a claim with Canal for the loss of the truck.

[22] Thus, Adams has not satisfied her burden as summary judgment nonmovant to show a genuine issue of material fact regarding her alleged ownership of the truck vis-à-vis Canal. *See Hughley*, 15 N.E.3d at 1003. However, to the extent Adams alleges that Edwards breached a contract between them regarding the use of the $31,000 to purchase the truck, her claims against him remain pending.

[23] We affirm the trial court's entry of summary judgment for Canal on its third-party complaint against Adams.

[24] Reversed in part and affirmed in part.

Tavitas, J., and Weissmann, J., concur.

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