

STATE OF MICHIGAN
COURT OF APPEALS

METROPOLITAN GROUP PROPERTY &
CASUALTY INSURANCE COMPANY,

UNPUBLISHED
June 20, 2006

Plaintiff-Appellant,

v

GARY T. PRATT, Trustee of the AUGUSTUS V.
PRATT Trust, and Personal Representative of the
Estate of AUGUSTUS V. PRATT,

No. 267444
Wayne Circuit Court
LC No. 05-508805-CK

Defendant-Appellee.

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Plaintiff (“Metropolitan”) appeals as of right from a circuit court order granting summary disposition to defendant (“Pratt”) and dismissing the case. Pratt’s motion for summary disposition was brought pursuant to MCR 2.116(C)(8), but the trial court’s ruling was based on the pendency of another action in Florida involving the same parties and same claim for underinsured motorist benefits arising from the wrongful death of Augustus Pratt. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Pratt’s father, Augustus Pratt (“the decedent”) established a trust in March 1991, which named Pratt as successor trustee. Metropolitan provided an automobile insurance policy to the decedent. The coverage included uninsured/underinsured motorist (UIM) coverage with a \$100,000 limit. The decedent was killed in an automobile accident in Florida on January 26, 2004. The other driver’s insurer paid its policy limits, \$100,000, to Pratt as successor trustee.

Metropolitan brought this declaratory action asserting that Pratt was not entitled to UIM benefits because Metropolitan was entitled to set off the payment received from the other driver’s insurer. Metropolitan named as a defendant Pratt, “as successor trustee of the TRUST OF AUGUSTUS V. PRATT, deceased.”

Pratt moved for summary disposition pursuant to MCR 2.116(C)(8). He argued first that he was not the proper party to the action in his role as trustee; rather, a personal representative was the appropriate person to represent an estate pursuant to MCL 700.3715. According to Pratt, no probate estate was open on the date the complaint was filed, and it was only after the

complaint was filed that he was appointed in Florida as personal representative. Secondly, he argued that, in his role as personal representative, he had properly filed an action in Florida for uninsured motorist benefits and wrongful death concerning the accident. He asserted that the instant action should be litigated in Florida because the underlying action was governed by Florida's wrongful death statute and insurance law, a personal representative had been appointed in Florida, the accident occurred there, and the decedent owned assets there.

Metropolitan filed a motion for leave to file an amended complaint so that Pratt could be named as a defendant in his capacity as personal representative as well as trustee. The trial court granted Metropolitan's motion for leave to file an amended complaint and authorized the issuance of a new summons. The first amended complaint named Pratt in his capacity as successor trustee and as personal representative.

In response to Pratt's motion for summary disposition, Metropolitan argued Pratt's motion was moot in light of the amendment of the complaint.

The trial court granted Pratt's motion and explained:

I think under the circumstances here, I think the better approach here would be to let the Florida matter proceed. We're talking about a circumstance where they would, they've had the most involvement with regard to this case. A partial settlement occurred in the jurisdiction of Florida. And we have a remaining portion left as it relates to your client. And I think the lower, well, geographically lower court, should decide this, the Florida Circuit Court.

What I'm looking at was this case of [*Wakefield Leasing Corp v Transamerica Ins Co*, 213 Mich App 123; 539 NW2d 542 (1995).] There, the Court seems to suggest that would have discretion in terms of a dismissal here to let the other matter proceed. And that is the ruling of the Court.

The matter will be dismissed. The parties have every opportunity to resolve this matter. We're talking about a national insurance carrier. We're not talking about a local individual that would have to be, that would be involved in litigating a matter that far away. And for those reasons, then, I don't see any reason why all of these issues could not be resolved there in the circuit court in Florida.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The trial court's reliance on *Wakefield, supra*, is misplaced. That decision indicates that a court may decline to determine an insurer's duty to indemnify until a personal injury action is resolved. It offers no point of comparison that is useful in determining whether an action for insurance benefits pending in another state is an appropriate basis for dismissal of an action involving the same claim and same parties in Michigan.

Nonetheless, we are satisfied that the trial court correctly concluded that Florida was the more appropriate and convenient forum to litigate this case. See *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999).

Affirmed. Defendant may tax costs.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette