IN THE COURT OF APPEALS OF IOWA

No. 1-033 / 10-1130
Filed April 27, 2011

WARREN AMLING and
ROBIN AMLING,
Plaintiffs-Appellants,

vs.

STATE FARM INSURANCE CO.,
and DENNIS BAUMHOVER,
Defendants-Appellees.

Appeal from the Iowa District Court for Dubuque County, Lawrence Fautsch, Judge.

Plaintiffs appeal the district court order granting summary judgment on their claims of negligence, negligent misrepresentation, bad faith, and punitive damages against their insurer and their insurance agent. **AFFIRMED.**

Susan M. Hess of Hammer, Simon & Jensen, East Dubuque, Illinois, for appellants.

Brenda K. Wallrichs and J. Michael Weston of Lederer Weston Craig, P.L.C., Cedar Rapids, for appellees.

Heard by Vogel, P.J., Vaitheswaran, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.

I. Background Facts & Proceedings.

In 1988 Warren and Robin Amling purchased a home on forty-two acres near LaMotte, Iowa, for $34,000. Over the next ten years they spent $40,000 renovating the home. Warren is a contractor, and he performed the labor himself. In October 1998 they obtained a farm/ranch policy from State Farm Insurance with $90,000 coverage for the house and $53,000 for personal property. The policy had inflation protection. Their insurance agent was Dennis Baumhover.

In 2004 the Amlings added a sunroom to the home. Their insurance coverage increased each year due to the inflation protection, and they did not otherwise increase their coverage amounts. On March 9, 2006, the Amlings' home burned down and was considered a total loss. Under their insurance policy, they were entitled to receive the replacement cost for their property, up to the policy limits. The insurance adjuster for the Amlings' claims was Timothy Hernandez. Hernandez approved payments to the Amlings for the policy limits for their house and personal property, plus State Farm paid for debris removal. State Farm also paid additional living expenses, which were the Amlings' expenses while living elsewhere while their home was rebuilt.

The Amlings filed suit on March 6, 2008, against State Farm and Baumhover raising claims of negligence, negligent misrepresentation, bad faith, and requesting punitive damages. The Amlings alleged their losses from the fire

exceeded their recovery from the insurer.[1] They claimed they relied upon defendants to properly assess their insurance needs and they were not adequately insured. They also claimed the insurer denied some of their claims without a reasonable basis.[2]

Defendants filed a motion for summary judgment, and the Amlings resisted the motion. The district court granted summary judgment to defendants, finding the Amlings could not prevail in their claims of negligence or negligent misrepresentation because they had not shown an expanded agency agreement, which would have created a greater duty. Furthermore, the Amlings' claims were fairly debatable, and the insurer did not engage in bad faith by denying them. The court found there was no basis for a claim for punitive damages. The court denied the Amlings' motion pursuant to Iowa Rule of Civil Procedure 1.904(2). The Amlings appeal the district court's grant of summary judgment to defendants.

II. Standard of Review.

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the nonmoving party. *Frontier Leasing*

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[1] According to the Amlings' answers to interrogatories, they were paid $142,007 from State Farm for the home, but it cost them $173,039 to rebuild. They also stated they were paid $70,462 for personal property, but sustained losses of $91,255.

[2] The Amlings requested to be reimbursed $1878 in additional living expense benefits, $16,995 for landscaping, $257 for medical expenses, and unspecified amounts for farm tools and mileage reimbursement. State Farm denied some claims because there was no coverage under the policy and others because the Amlings did not provide adequate receipts.

Corp. v. Links Eng'g, L.L.C., 781 N.W.2d 772, 775 (Iowa 2010). In determining whether there is a genuine issue of material fact, the court affords the nonmoving party every legitimate inference the record will bear. *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008).

III. Negligence.

The Amlings state defendants were negligent because Baumhover failed to fulfill his obligation to provide full coverage for them on their house and personal property. In his deposition, Baumhover stated he told Warren to add $50,000 of coverage for the home, but the Amlings did not take his advice. In Warren's deposition he stated he did not remember any conversations about increased coverage for the house.[3]

In granting summary judgment to defendants on the issue of negligence, the district court relied upon *Sandbulte v. Farm Bureau Mutual Insurance Co.*, 343 N.W.2d 457, 464 (Iowa 1984), which held that unless an insurance agent held "himself out as an insurance specialist, consultant or counselor and is receiving compensation for consultation and advice apart from premiums paid by the insured," the agent did not have a duty to provide advice about coverage. The case of *Sandbulte*, however, was recently overruled by the Iowa Supreme Court. *Langwith v. Am. Nat'l Gen. Ins. Co.*, 793 N.W.2d 215, 223-24 (Iowa 2010) ("[W]e overrule our *Sandbulte* decision to the extent it limits an expanded duty to those cases in which the agent holds himself out as an insurance specialist,

[3] Warren stated that he dealt with the couple's insurance needs and Robin only participated in a few conversations about insurance after the fire.

consultant, or counselor and receives compensation for additional or specialized services.”).

In *Langwith*, 793 N.W.2d at 222, the supreme court held as follows:

> Therefore, we hold that it is for the fact finder to determine, based on a consideration of all the circumstances, the agreement of the parties with respect to the service to be rendered by the insurance agent and whether that service was performed with the skill and knowledge normally possessed by insurance agents under like circumstances. Some of the circumstances that may be considered by the fact finder in determining the undertaking of the insurance agent include the nature and content of the discussions between the agent and the client; the prior dealings of the parties, if any; the knowledge and sophistication of the client; whether the agent holds himself out as an insurance specialist, consultant, or counselor; and whether the agent receives compensation for additional or specialized services.

(Citation omitted.) The court also stated, “The client bears the burden of proving an agreement to render services beyond the general duty to obtain the coverage requested.” *Id.* at 223. “In the absence of circumstances indicating the insurance agent has assumed a duty beyond the procurement of the coverage requested by the client, the insurance agent has no obligation to advise a client regarding additional coverage or risk management.” *Id.*

Baumhover did not hold himself out as an insurance specialist, consultant, or counselor. He did not receive compensation for additional or specialized services from the Amlings. There was evidence the Amlings had been dealing with Baumhover since 1998, and they had several different policies through him. In his deposition, Warren stated he could not remember how the policy limit of $90,000 for the house was selected. There is no evidence he ever asked Baumhover how much coverage the Amlings should have on the house, or

whether the coverage they had was adequate.[4] Warren stated Baumhover advised him to have more coverage for his tools, and he did not take this advice. Warren's testimony was that Baumhover's statement about "full coverage" was made after the fire.

We determine the Amlings have not met their burden to show an agreement for Baumhover to render services beyond the general duty to obtain the coverage requested. There is no evidence they made a specific inquiry about additional coverage or whether they had adequate coverage, or in fact sought Baumhover's assistance in assessing their insurance needs. *See Merriam v. Farm Bureau Ins.*, 793 N.W.2d 520, 524 (Iowa 2011). There is no evidence of a direct or implied agreement that Baumhover would advise the Amlings with respect to insurance coverage. *See Langwith*, 793 N.W.2d at 226. Where the evidence does not indicate the insurance agent has assumed a duty beyond the procurement of the coverage requested, "the insurance agent has no obligation to advise a client regarding additional coverage or risk management." *See id.* at 223.

Summary judgment may be granted where the plaintiffs have failed to establish a genuine issue of material fact concerning whether an insurance agent had a duty to advise plaintiffs about additional coverage. *See Merriam*, 793 N.W.2d at 525. We conclude the district court properly granted summary judgment to Baumhover and State Farm on the issue of whether defendants

[4] Warren stated that in 2004 Baumhover came out to the house because the Amlings had made a claim based on wind damage to a picture window. At the time Warren was working on building the sunroom. He stated he believed Baumhover observed the house and should have told him if he needed more coverage.

were negligent in failing to advise the Amlings to obtain additional coverage on their house or personal property. The record is clear the district court based its summary judgment decision on the negligence claims on the *Sandbulte* case. However, the outcome is the same using the less restrictive factors outlined in *Langwith*. There is no evidence of an expanded agency agreement sufficient to withstand the grant of summary judgment. It is true there is a factual dispute concerning whether Baumhover actually advised them to increase coverage on their home. But, said dispute does not rise to the level of a genuine issue of material fact.

The Amlings also assert Baumhover failed to properly figure the square footage of their home, which resulted in reduced coverage. Their claims are based on two documents produced by State Farm after the fire.[5] In his deposition Warren stated that if the square footage for the house was calculated at 670 square feet, this was about 1800 square feet too low. There is no evidence showing what square footage for the house was used at the time the Amlings obtained coverage of $90,000 in 1998, and thus no evidence the wrong figure was used.

Additionally, the Amlings assert Baumhover made negligent misrepresentations by stating they were "fully covered." As noted above, in his deposition Warren stated Baumhover first made this statement after the fire. Therefore, the Amlings could not have relied upon the statement in assessing whether they needed more coverage prior to the fire. We conclude summary

[5] The first is a document dated March 13, 2006, of unknown origin or purpose, that states among other numbers, "Square Footage: 670." The second is an e-mail dated July 4, 2006, which includes a notation "Roof: T 670."

judgment was proper on the claims involving the square footage of the house and the claim of negligent misrepresentation.

IV. Bad Faith.

The Amlings claim the district court should not have granted summary judgment to defendants on their bad faith claims. They assert State Farm never explained to them why some of their claims were denied and from this they conclude State Farm did not have a reasonable basis for denying the claims. They assert Hernandez admitted a letter should have been sent to them.

To establish a first-party claim of bad faith, a plaintiff must show (1) the insurer had no reasonable basis for denying benefits under the policy and (2) the insurer knew, or had reason to know, that its denial was without basis. *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007). There is a reasonable basis to deny benefits if the claim is fairly debatable. *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005). "A claim is 'fairly debatable' when it is open to dispute on any logical basis." *Id.* Generally, whether a claim is fairly debatable may be determined as a matter of law by the court. *Id.*

The district court found, "As to the claims that are denied by State Farm, State Farm has detailed a reasonable basis for denying each claim identified by Plaintiffs as giving rise to their allegation of bad faith." State Farm denied claims for landscaping and medical expenses because these claims involved items not covered by their policy. The claim regarding farm tools was denied because there was no proof the tools had been damaged in the fire. The claims regarding additional living expenses and mileage reimbursement were denied because the Amlings did not provide receipts to show what these expenses had been.

Whether or not Hernandez adequately explained the reasons for the denial to them, State Farm had a reasonable basis for its actions. We agree with the district court that State Farm has provided a reasonable basis for denying the claims in question. The claims were fairly debatable, and the Amlings are unable to establish a bad faith claim as a matter of law. We affirm the district court's grant of summary judgment on this issue.

V. Punitive Damages.

Finally, the Amlings assert summary judgment on the issue of punitive damages was inappropriate. Punitive damages may be awarded where there is clear, convincing, and satisfactory evidence supporting a finding that the defendants willfully and wantonly disregarded the rights of the plaintiff. *See Van Sickle Constr. Co. v. Wachovia Commercial Mtg., Inc.*, 783 N.W.2d 684, 689 (Iowa 2010). Plaintiffs presented no evidence that the defendants willfully and wantonly disregarded their rights. We find no error in the district court's decision granting summary judgment to defendants on the Amlings' claim for punitive damages.

We affirm the decision of the district court granting summary judgment to defendants.

AFFIRMED.