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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000495-MR

WARREN L. SCHROEDER APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
ACTION NO. 04-CI-002915

KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

** ** ** ** **

BEFORE: DIXON, STUMBO, AND WINE, JUDGES.

STUMBO, JUDGE: This appeal comes from the Jefferson County Circuit Court's decision to admit into evidence a doctor's report and to allow that report to be taken into the jury deliberation room, and from an order granting partial summary judgment in favor of Kentucky Farm Bureau (Appellee). The order granting partial summary judgment held that Warren Schroeder's (Appellant) claims for recovery of damages under bad faith and the Unfair Claims and Settlement Practices Act (UCSPA) were not allowed because the Motor Vehicle Reparations Act (MVRA) contained the exclusive remedy. We find

that the MVRA does indeed contain the exclusive remedy for Appellant's case and that while the doctor's report was properly introduced into evidence, it should not have been allowed into the jury deliberation room. For these reasons, we affirm the trial court as to the partial summary judgment, but reverse and remand this case back for a new trial due to the doctor's report being improperly allowed into the jury room.

Appellant was involved in a motor vehicle accident on April 26, 2001. He had insurance issued by Appellee. Appellant visited his family doctor, Dr. Hammer, because of accident-related injuries on May 4, 2001. Appellant submitted a no-fault application in order for that doctor bill to be paid, which it was.

Two years later, Appellant made further appointments with Dr. Hammer and Dr. John Lach. He then made claims to Appellee for payment of these visits. Due to the two-year gap in treatment for accident-related injuries, Appellee sought a peer review. Dr. David Knapp reviewed the other doctors' records and the bills submitted and reported that none of the treatment was accident-related. Because of this report, Appellee denied to pay these additional doctors' bills. This lawsuit then followed.

As stated above, Appellant sought damages under a bad faith theory, the UCSPA, and the MVRA. Appellee filed a motion for partial summary judgment arguing that Appellant was limited to the MVRA and the remedies contained therein. The circuit court granted that motion, which is part of this current appeal. We have reviewed the case law on this subject and find that the remedies contained in the MVRA are the sole remedies available to Appellant. "The Kentucky Motor Vehicle Reparation Act, KRS 304.39, et seq., provides an exclusive remedy where an insurance company wrongfully delays or denies payment of no-fault benefits." *Foster v. Kentucky Farm Bureau Mut.*

Ins. Co., 189 S.W.3d 553, 557 (Ky. 2006); *see also Phoenix Healthcare of Kentucky, L.L.C. v. Kentucky Farm Bureau Mut. Ins. Co.*, 120 S.W.3d 726 (Ky. App. 2003); *Hartley v. GEICO Casualty Co.*, 2006 WL 2786929 (Ky. App. 2006).

"Where the statute both declares the unlawful act and specifies the civil remedy available to the aggrieved party, the aggrieved party is limited to the remedy provided by the statute." *Grzyb v. Evans*, 700 S.W.2d 399, 401 (Ky. 1985). The MVRA deals specifically with the payment of no-fault benefits and allows for the payment of interest on the denied benefits and the payment of legal fees if an insurer unreasonably denies payment. The MVRA sets forth the unlawful act and the remedy. We find no reason to deviate from the case law set forth in *Foster* and affirm the Jefferson Circuit Court's order granting partial summary judgment.

Appellant also claims that the report of Dr. Knapp should not have been allowed into evidence. Under the MVRA, if the insurer does not have reasonable grounds for delaying or denying payment of no-fault benefits, then the insured can be allowed to collect 18% interest on the benefits as opposed to only 12%. KRS 304.39-210(2). Appellee argues it introduced Dr. Knapp's report stating that the 2003 medical examinations were not due to the 2001 accident in order to show that there were reasonable grounds for denying the claim. Appellant argues that the report should not be allowed into evidence because it is hearsay. He claims it is hearsay because it states that the 2003 examinations were not connected to his car accident and he believes that is what it was introduced to prove.

We believe that the report was not hearsay. Kentucky Rule of Evidence 801(c) defines hearsay as a "statement other than one made by the declarant while

testifying at the trial or hearing, offered into evidence to *prove the truth of the matter asserted*." (Emphasis added). The report was not introduced into evidence to prove Appellant was not suffering from accident-related injuries when he visited the doctors in 2003, but to show that the Appellee had reasonable grounds to deny the claim.

Appellant's other argument concerning Dr. Knapp's report does give us some concern. He claims that the report should not have been allowed into the jury deliberation room. Appellee makes no comment on this issue in its brief. Kentucky case law sides with Appellant on this issue. Testimonial documents and reports, like Dr. Knapp's, are generally not allowed into jury deliberation rooms because jurors tend to give more weight to written rather than spoken words. *Wright v. Premier Elkhorn Coal Co.*, 16 S.W.3d 570, 572 (Ky. App. 1999). The rationale behind this is that "the written words are readily before them physically while the spoken words uttered at trial can only be conjured up by memory." *Id*; *see also Welborn v. Commonwealth*, 157 S.W.3d 608, 614 (Ky. 2005); *Berrier v. Bizer*, 57 S.W.3d 271, 277 (Ky. 2001).

Allowing Dr. Knapp's report into the jury room may have resulted in undue emphasis on its contents. Additionally, the report contained evidence concerning Appellant's claims of accident-related injuries that was not subjected to cross-examination. Because this report, which did contain such evidence, was allowed into the jury deliberation room, the jury could have been biased in believing Dr. Knapp's report over the oral testimony provided in court. This issue forces us to reverse the judgment against Appellant and remand the case to the Jefferson Circuit Court for a new trial.

For these reasons, we affirm in part, reverse in part and remand for a new trial to be held in accordance with this opinion.

ALL CONCUR.

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