

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000942-MR

PATRICIA MCGRANNAHAN, EXECUTRIX
OF THE ESTATE OF WILLIAM GREENE,
DECEASED

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 04-CI-02620

GARY E. BOMAR AND INTERLAKE
MATERIAL HANDLING, INC.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: □ FORMTEXT □ □ACREE, DIXON, AND TAYLOR□, JUDGES.

TAYLOR, JUDGE: Patricia McGrannahan, Executrix of the Estate of William Greene, Deceased, (the Estate) brings this appeal from a June 15, 2006, summary judgment dismissing negligence claims against Gary E. Bomar and Interlake Material Handling, Inc. We affirm.

William Greene was involved in a motor vehicle accident in which Greene suffered severe injuries that ultimately caused his death. Greene's vehicle collided with a motor vehicle driven by Bomar. Bomar's vehicle was insured by State Farm Mutual Automobile Insurance Company, and Greene's vehicle was insured by Safeco Insurance Company.

Following the accident, State Farm, Bomar's insurance carrier, offered to the Estate the policy liability limit of \$50,000 as settlement of all claims against Bomar. Safeco elected to preserve its subrogation rights against Bomar and substituted payment of the \$50,000 policy limit under the procedure outlined in *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895 (Ky. 1993). Thereafter, the Estate settled its underinsured motorist (UIM) claim against its carrier, Safeco, for \$90,000.

Safeco and the Estate initiated an action against Bomar in the Fayette Circuit Court. Safeco and the Estate initially filed the action to pursue Safeco's subrogation claim. During the course of litigation, it was revealed that at the time of the accident Bomar was acting within the course and scope of his employment with Interlake Material Handling, Inc. Upon this information, Safeco and the Estate moved for leave to file an amended complaint. Therein, Safeco and the Estate asserted a vicarious liability claim against Interlake. The motion was granted.

Subsequently, Bomar and Interlake both filed motions for summary judgment. Therein, they argued that the Estate's claims were barred under *Coots*,

853 S.W.2d 895 and *True v. Raines*, 99 S.W.3d 439 (Ky. 2003). Specifically, they contended that the Estate accepted Bomar's liability policy limit of \$50,000 as settlement of all liability claims. As Safeco elected to tender a substitute payment thereof, the only claim remaining was a subrogation claim.

By summary judgment, the circuit court granted the motions and dismissed all negligence claims against Bomar and Interlake. The court reasoned:

The Court finds that the claims of Patricia McGrannahan, Executrix of the Estate of William Greene, deceased[,] against Defendant Gary E. Bomar are barred as a result of *True v. Raines*, 99 S.W.3d 439 (Ky. 2003). As a result, the Court further finds that the claims by Patricia McGrannahan, Executrix of [the Estate of] William Greene, deceased, against Interlake Material Handling, Inc. are barred since they are based solely on a theory of respondeat superior. The claims of the Plaintiff, Patricia McGrannahan, Executrix of the Estate of William Greene, deceased, against the Defendants are dismissed with prejudice.

This appeal follows.¹

The Estate contends that the circuit court erred by entering summary judgment dismissing its negligence claims against Bomar and Interlake.

Specifically, the Estate argues:

The Estate of William Greene was presented with a situation in which the Executor was confronted with an obligation to settle the affairs of the Estate, which included resolving any claims of the Estate against the tortfeasor, Gary Bomar, and his insurer, State Farm. The only information available to the Estate was that Bomar's limits of liability coverage with State Farm was [sic] \$50,000, which the insurer offered to the Estate. The

¹ A final order that adjudicated all the rights of all the parties was entered on April 10, 2007. Thereafter, a timely notice of appeal was filed by the Estate challenging the summary judgment.

Estate then brought a claim against Greene's own insurer, Safeco, on the Underinsured Motorist (UIM) coverage on the policy. Eventually, the UIM claim of the Estate were [sic] resolved by settlement with Safeco, which also advanced to the Estate the limits of coverage on Bomar's policy with State Farm, in order to protect its subrogation rights under the guidelines of *Coots v. Allstate, supra*. However, at no time was it ever disclosed by Bomar or his insurer, State Farm, to the Estate or Greene's insurer, Safeco, until after the lawsuit was filed, that Bomar was acting within the scope of his employment at the time of the accident, and that his employer might be vicariously liable.

. . . .

[T]he evidence of record is clear that the Estate had no disclosure of information as to Bomar acting within the scope of an employment relationship with Interlake that might impose vicarious liability on Bomar's employer. Had the Estate been in possession of such knowledge, certainly no settlement would have been entered into for Bomar's limits, nor would the lawsuit have been filed solely against Bomar. As noted, [sic] above, it was only after the Estate subsequently learned that Bomar was acting within the scope and the course of his employment with Interlake that the Estate sought to amend the complaint to seek vicarious liability against Interlake.

The Estate's Brief at 4 and 7. The Estate maintains that no "settlement" occurred because there was no writing evidencing same and that even if a settlement did occur under *Coots*, the Estate never intended to release Bomar's employer, Interlake. In support thereof, the Estate points out that it was unaware that Bomar was acting within the scope of his employment at the time of the accident when it accepted Bomar's policy liability limit of \$50,000. Thus, the Estate argues that summary judgment was improper.

Summary judgment is proper where there exist no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). For the reasons hereinafter elucidated, we believe the circuit court properly entered summary judgment dismissing the Estate's negligence claims against Bomar and Interlake.

In *Coots*, 853 S.W.2d 895, the Supreme Court established a mechanism where an injured party could settle for the tortfeasor's liability policy limit and still maintain a claim for UIM coverage against his motor vehicle insurance carrier. Thereunder, the injured party, tortfeasor, and tortfeasor's liability insurance carrier may agree to settle in exchange for the tortfeasor's policy liability limit. In such a case, the injured party must give notice to his UIM carrier, and the UIM carrier may then substitute payment by paying the injured party the tortfeasor's liability policy limit amount. If the UIM carrier substitutes payment, the UIM carrier protects its subrogation right. If, however, the UIM carrier elects not to substitute payment and the tortfeasor's liability insurance carrier pays the policy limit to the injured party, the UIM carrier forfeits its subrogation rights. Under either scenario, the tortfeasor is released from any further liability to the injured party. *True*, 99 S.W.3d 439.

In the case *sub judice*, the Estate admits that it "entered an agreement with Greene's insurer, Safeco, that allowed Safeco to advance Bomar's liability limits and protect its subrogation rights pursuant to the guideline of *Coots v.*

Allstate.” Under *Coots*, 853 S.W.2d 895 and *True*, 99 S.W.3d 439, it is clear that a tortfeasor’s liability insurance carrier’s offer to tender policy liability limits to an injured party is conditioned upon release of the tortfeasor from additional liability, and the injured party’s acceptance operates as a release of the tortfeasor from additional liability:

We hold, therefore, that, under *Coots*, a tortfeasor's liability carrier's settlement offer is conditioned upon a release of its insured from any further liability to the injured party, and the injured party's acceptance of the UIM insurer's payment of the contemplated settlement is an acceptance of that condition and a release of the tortfeasor from any further liability to the injured party. The injured party's UIM insurer, however, preserves its subrogation claim against the tortfeasor for any amount that it is thereafter required to pay its insured under its UIM coverage.

True, 99 S.W.3d at 448.

Accordingly, we hold that State Farm’s offer to tender the liability policy limit of \$50,000 to the Estate was conditioned upon release of Bomar from additional liability and the Estate’s acceptance of the substituted payment by Safeco operated as an acceptance of the condition and a release of Bomar from additional liability. As the Estate’s claim in the amended complaint against Interlake rested upon vicarious liability, these claims were, a fortiori, released by the Estate’s acceptance of the policy liability limit of \$50,000. *See Copeland v. Humana*, 769 S.W.2d 67 (Ky.App. 1989). In sum, we are of the opinion that the circuit court properly entered summary judgment.

For the foregoing reasons, the summary judgment of the Fayette

Circuit Court is affirmed.

ALL CONCUR.

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