

2009 Ga. App. LEXIS 151,*

ADAMS v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.

A08A2315.

COURT OF APPEALS OF GEORGIA, SECOND DIVISION

2009 Ga. App. LEXIS 151

February 17, 2009, Decided

NOTICE:

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BY THE COURT.

DISPOSITION: [*1]

Judgment affirmed.

JUDGES: JOHNSON, Presiding Judge. Barnes and Phipps, JJ., concur.

OPINION BY: JOHNSON

OPINION

Johnson, Presiding Judge.

This appeal addresses the amount State Farm Mutual Automobile Insurance Company owes in uninsured motorist benefits to Randolph Adams, an insured who was seriously injured in a car wreck with Hilde Orheiu. The facts are undisputed. Adams sued Orheiu to recover for injuries sustained in the car wreck. During the course of the underlying litigation, Nationwide Insurance Company, Orheiu's automobile liability insurer, made two payments that exhausted its \$ 25,000 policy limits: (1) payment in the amount of \$ 9,217.66 to Grady Hospital to compromise its hospital lien for Adams' medical services, and (2) payment in the amount of \$ 15,782.34 to Adams for a limited release. Adams then sought additional compensation for his injuries from State Farm, which insured Adams for \$ 100,000 uninsured motorist coverage. However, a dispute arose as to the applicable amount of State Farm's coverage.

State Farm contended it should be able to set off or take credit for the entire \$ 25,000 that Nationwide had paid as its total liability coverage. Adams contended that State Farm should only get credit [*2] for the \$ 15,782.34 paid to him personally, and not the \$ 9,217.66 paid by Nationwide directly to Grady Hospital. Both parties filed motions for summary judgment. The trial court denied Adams' motion and granted State Farm's motion, allowing State Farm credit for the entire \$ 25,000 paid by Nationwide. We find no error and affirm the trial court's order.

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. n1 We review the grant of summary judgment de novo and view the evidence, and all reasonable conclusions and inferences drawn from them, in the light most favorable to the nonmovant. n2

----- Footnotes -----1

OCGA § 9-11-56 (c).2

See Matjoulis v. Integon Gen. Ins. Corp., 226 Ga. App. 459 (1) (486 SE2d 684) (1997).

----- End Footnotes-----

Both parties agree that this case is controlled by OCGA § 33-7-11 (b) (1) (D) (ii), which defines an uninsured motor vehicle as one in which the tortfeasor has liability insurance but the "available coverages" are "less than the limits of the uninsured motorist coverage provided under the [tortfeasor's] insurance policy." n3 The statute goes on to define "available coverages" as the policy limits "less any amounts by [*3] which the maximum amounts payable under such limits of coverage have, by reason of payment of other claims or otherwise, been reduced below the limits of coverage." n4 The amount of uninsured motorist coverage to be paid is determined by subtracting the available liability coverage from the available uninsured motorist coverage. The question before us is whether the payment made by Orheiu's liability insurer to Grady Hospital to satisfy the hospital lien constituted "payment of other claims or otherwise," thereby reducing the "maximum amounts payable under [the] limits of coverage."

----- Footnotes -----3

We note that this statute was substantially amended in 2008, but those amendments do not apply in this case.4

OCGA § 33-7-11 (b) (1) (D) (ii).

----- End Footnotes-----

We agree with the trial court that State Farm was entitled to set off its \$ 100,000 uninsured motorist coverage by the full \$ 25,000 paid from the tortfeasor's liability policy. Adams' election to voluntarily divert part of the \$ 25,000 liability payment to satisfy his hospital bill did not reduce the available liability coverage below \$ 25,000 or increase his uninsured motorist coverage.

A cardinal rule of statutory construction is that "the courts shall look diligently [*4] for the intention of the General Assembly." n5 Once the legislative intent is discerned, courts should never construe the language employed in a statute to render the purpose of the General Assembly futile, unenforceable, or ineffectual. n6 Rather, language must be given a reasonable and sensible interpretation in order to carry out legislative intent. n7

----- Footnotes -----5

OCGA § 1-3-1 (a).6

See Bd. of Trustees &c. v. Christy, 246 Ga. 553, 554 (1) (272 SE2d 288) (1980), ov'd in part on other grounds, Mayor & Alderman of Savannah v. Stevens, 278 Ga. 166, 167-168 (2) (598 SE2d 456) (2004).7

See Mayor & Council, City of Hapeville v. Anderson, 246 Ga. 786, 787 (272 SE2d 713) (1980).

----- End Footnotes-----

Here, contrary to Adams' assertions, the legislative intent of the uninsured motorist statute is not to make insureds whole, but "to place insureds in the same position they would be in relation to coverage if the tortfeasors causing the injuries had obtained at least the minimum prescribed liability insurance." n8 The legislative intent of the General Assembly is not served by reducing the amount of "available coverage" by the amount of a hospital bill or lien. If the payment of hospital bills or liens constituted a payment of "other [*5] claims or otherwise" such that it reduced limits of available coverage, uninsured motorist coverage would automatically be increased in every instance where an injured insured receives treatment at a hospital and the hospital receives payment for such treatment under the liability policy. In this case, Adams received \$ 25,000 from the tortfeasor's insurance carrier and chose to use \$ 9,217.66 to pay off his hospital bill. We find no error in the trial court's grant of summary judgment to State Farm.

----- Footnotes -----8

(Citation and punctuation omitted.) Crafter v. State Farm Ins. Co., 251 Ga. App. 642, 644 (554 SE2d 571) (2001); see also Young v. Maryland Cas. Co., 228 Ga. App. 388, 390 (1) (491 SE2d 839) (1997).

----- End Footnotes-----

Adams' argument that Thurman v. State Farm Mutual Automobile Ins. Co. n9 requires a different result is not persuasive. Thurman addressed a situation involving federal claims on an injured party's settlement, where reimbursement of the federal claims was mandatory regardless of whether or not the injured party had been fully compensated. n10 The Georgia Supreme Court noted that the federal policies directly contradicted Georgia law on the issue, and to mitigate the financial harm inflicted by the [*6] federal policies, the Thurman Court held that the amount reimbursed to the federal benefits providers constituted a reduction in liability coverage. n11 The Georgia Supreme Court, however, carefully limited Thurman to apply only when a federal employee is required by federal law to reimburse benefit providers, resulting in the federal employee not receiving full compensation. n12

----- Footnotes -----9

278 Ga. 162 (598 SE2d 448) (2004).¹⁰

The purpose of the federal policies' provision of reimbursement upon the insured's receipt of insurance proceeds is to minimize the cost of the federal programs to the federal government, not to ensure that the insured has been fully compensated. Thurman, *supra* at 164.¹¹

Id. at 164-165.¹²

Id.

----- End Footnotes-----

Similarly, *Toomer v. Allstate Ins. Co.* n13 addressed a situation involving the repayment of a federal Medicare lien, where Medicare paid for the collision-related medical payments. In that case, we again noted that federal law specifically required the injured party to repay the provider of benefits without regard to whether the injured party had been fully compensated: "No court, insurer, attorney, or other person shall pay or distribute to the beneficiary of Medicare payments the proceeds [*7] of any suit or settlement without first satisfying or assuring satisfaction of the interest of the United States." n14 As in Thurman, Georgia's public policy of complete compensation could only be furthered by holding that "available coverages" under the uninsured motorist statute are reduced by reimbursements to federal benefits providers.

----- Footnotes -----13

292 Ga. App. 60 (663 SE2d 763) (2008).¹⁴

(Citation and punctuation omitted.) *Toomer*, *supra* at 63.

----- End Footnotes-----

Here, unlike in Thurman or *Toomer*, neither federal nor state law required payment to the benefits provider. Although the Georgia hospital lien statute provides that a lien arises upon a cause of action, it does not employ the mandatory payment language contained in the federal laws applicable in Thurman and *Toomer*. n15 Here, Nationwide, with Adams' consent, voluntarily paid a claimant whose repayment was not mandatory. Thurman and *Toomer* do not control this case.

----- Footnotes -----15

OCGA § 44-14-470.

----- End Footnotes-----

Judgment affirmed. Barnes and Phipps, JJ., concur.