

RECENT DEVELOPMENTS

INSURANCE

AN INSURED CANNOT RECOVER FEES UNDER CHAPTER 542A WHEN AN INSURER PAYS AN APPRAISAL AWARD AND ALL POSSIBLE TPPCA INTEREST PRETRIAL

Kester v. State Farm Lloyds, No. 02-22-00267-CV, 2023 WL 4359790 (Tex. App. July 6, 2023)
<https://caselaw.findlaw.com/court/tx-court-of-appeals/114559974.html>

FACTS: Appellant Paige A. Kester (“Kester”) maintained an insurance policy providing coverage for property damage through Appellee State Farm Lloyds (“Lloyds”). Following the submission of a property damage claim, disputes arose between the two parties regarding the extent of the loss, prompting the initiation of an appraisal procedure. Concurrently with the appraisal proceedings, Kester filed suit against Lloyds. Before the trial commenced, a resolution was reached in favor of Kester through an appraisal award, which Lloyds expeditiously satisfied by disbursing the full award, including any potential interest as stipulated under the Texas Prompt Payment of Claims Act (TPPCA).

Following the disbursement to Kester, Lloyds moved for summary judgment on the suit. The court subsequently granted summary judgment in favor of Lloyds. Despite receiving the appraisal award and pretrial TPPCA interest, Kester lodged an appeal against the summary judgment, with the aim of securing attorney’s fees under Chapter 542A of the Texas Insurance Code.

HOLDING: Affirmed.

REASONING: The court upheld the summary judgment favoring Lloyds, affirming that Kester was not entitled to attorney’s fees. In its evaluation, the court examined Chapter 542A of the Texas Insurance Code, which delineates the circumstances governing an insured party’s potential entitlement to attorney’s fees as a component of their recovery. The court placed particular emphasis on a pivotal facet of Chapter 542A: the awarding

The pivotal requirement of a judgment amount to seek recovery under Chapter 542A, was not fulfilled.

of attorney’s fees is explicitly linked to the existence of a definitive judgment amount. Within this context, the court construed Chapter 542A to signify that the grant of attorney’s fees can solely transpire when a judgment has been rendered, thereby determining the quantum of policy benefits owed to the insured, *and* if these benefits have not been timely disbursed by the insurer.

Here, a definitive judgment amount was absent, because the claim did not proceed to trial. Consequently, the pivotal requirement of a judgment amount to seek recovery under Chapter 542A, was not fulfilled. The court upheld the decision of the trial court, affirming that the absence of a judgment amount favoring Kester precluded her from recovering attorney’s fees under Chapter 542A of the Texas Insurance Code.

VIOLATIONS OF THE INSURANCE CODE AND DTPA ACCRUE AT THE TIME OF THE PURCHASE OF POLICY.

IF ALLEGED INJURIES ARE NOT “INHERENTLY UNDISCOVERABLE” THE DISCOVERY RULE DOES NOT APPLY

Wooten v. The Nw. Mut. Life Ins. Co., No. 05-20-00798-CV (Tex. App.—Dallas 2023).
<https://casetext.com/case/wooten-v-the-nw-mut-life-ins-co>

FACTS: Appellant Wrenn Wooten purchased insurance policies from Northwestern Mutual Life Insurance Company through its employee and agent Jim Zara and Patrick Matthews (collectively “Appellees”). The policies included three disability income policies and four whole-life policies. Over a decade later, Wooten filed a lawsuit against Appellees for fraud, negligent misrepresentation, breach of fiduciary duty, and violations of the Texas Insurance Code and the DTPA. Wooten asserted that he filed his claims within a reasonable time after discovering his injury, so the applicable statute of limitations did not bar his claim under the discovery rule.

Appellees filed motions for summary judgment and the trial court granted the motions. Wooten appealed.

HOLDING: Affirmed.

REASONING: Wooten argued that the discovery rule delayed the accrual of his claims. The court rejected this argument, stating that Wooten’s injury was not “inherently undiscoverable,” and that the discovery rule did not apply because the policies did not provide the coverage or the payout appellees allegedly misrepresented. Summary judgment evidence demonstrated that Wooten had reviewed the policies, indicating that he knew or should have known at the time he bought the policies that they did not provide the coverage or benefits Appellees allegedly misrepresented.

Wooten also argued that he relied on Appellees, who were under their formal and informal fiduciary duties. The formal fiduciary argument failed because Wooten was responsible for ascertaining when an injury occurred. When Wooten purchased the policies, Wooten “knew, or exercising reasonable diligence, should have known of the facts giving rise to the cause of action.” Additionally, Wooten’s evidence of a long-standing business relationship with Appellees was not evidence of an informal fiduciary relationship of trust and confidence.

Wooten argued that the limitation provisions of the Texas Insurance Code and the DTPA allowed him to apply the discovery rule to his statutory claims. Although the statutes did not require the alleged injury to be “inherently undiscoverable” for the discovery rules to apply, the court concluded that Wooten “discovered” or by “the exercise of due diligence, should have discovered” the alleged misrepresentations when he received and reviewed the policies.

The court concluded that Wooten’s claims accrued at the time Wooten purchased each policy. The court emphasized that an insured has a duty to read the policy and must be charged with knowledge of its terms and conditions if the insured failed to do so.

RECENT DEVELOPMENTS

PAYMENT OF AN APPRAISAL AWARD AND ANY CONCEIVABLE INTEREST ON THAT AWARD HAS FULLY COMPENSATED INSURED FOR HER LOSS.

BY PAYING THE APPRAISAL AWARD IN FULL, INSURER FULLY COMPLIED WITH ITS CONTRACT.

INSURED MUST SHOW EVIDENCE DEMONSTRATING AN INDEPENDENT INJURY TO SUSTAIN ANY EXTRA-CONTRACTUAL CLAIMS.

McCall v. State Farm Lloyds, 2023 U.S. Dist. LEXIS 144089 (N.D. Tex. 2023).

<https://cases.justia.com/federal/district-courts/texas/txndce/3:2022cv01712/365882/32/0.pdf?ts=1692375174>

FACTS: Plaintiff Connie Brooks McCall filed a claim with Defendant State Farm Lloyds for her property damage caused by a fallen tree. State Farm paid McCall based on its initial inspection. McCall hired a public adjuster for a second inspection, leading to an additional payment from State Farm. Nevertheless, McCall disputed State Farm's decision and invoked the appraisal process under the terms of her policy. While the appraisal was pending, McCall filed a suit, alleging breach of contract, violations of Chapters 541 and 542 of the Texas Insurance Code, violations of the DTPA, bad faith insurance practices, and fraud. State Farm issued an appraisal award and interest payment to ensure it met the time requirements in Chapter 542. State Farm explicitly stated that these payments were not an admission of liability. State Farm filed a motion for summary judgment.

HOLDING: Granted.

REASONING: State Farm argued that its payment of the appraisal award estopped McCall from maintaining a breach of contract claim. McCall countered that the payment conclusively established its liability under the policy, entitling her to recover interest and attorney's fees. The court disagreed with McCall.

In re Allstate Ins. Co., 85 S.W.3d 193, 195 (Tex. 2002), made clear that an appraisal did not determine the rights and liabilities of the parties, and payment of an appraisal award did not

Attorney's fees and costs incurred in the prosecution or defense of a claim were not damages under Texas law.

determine liability. Moreover, McCall's insurance policy expressly stated that appraisers had no authority to decide any other questions of fact, law, or coverage. As such, because State Farm expressly disclaimed any liability when paying the appraisal award, its payment did not affect its liability under the claim. The court also emphasized that attorney's fees and costs incurred in the prosecution or defense of a claim were not damages under Texas law. Even if McCall prevailed on her claim and was entitled to attorney's fees, Chapter 542 of the Texas Insurance Code would limit her attorney's fees to zero.

State Farm argued that McCall's extra-contractual claims must fail because McCall did not allege any damages independent of her claim for policy benefits. McCall claimed she was entitled to actual damages other than the policy benefits, specifically attorney's fees and possibly additional interest. The court explained that McCall failed to show an injury independent of the benefits owed under her policy for two reasons. First, McCall's extra-contractual claims were all based on State Farm's alleged mishandling of her claim, and she already received all the benefits to which she was entitled under the claim through the appraisal. Second, the only damages McCall asserted were attorney's fees and additional interest under Chapter 542 of the Insurance Code, which could not constitute independent injury. Even if State Farm was found liable under McCall's policy, her claim became moot because State Farm had already paid her potential interest, covering the period from State Farm's initial inspection. McCall did not explain why State Farm's interest payment was not sufficient. In addition, the court noted that because McCall was not entitled to attorney's fees, she could not use this as a basis for her interest claim.

Ultimately, the court concluded that McCall could not maintain a breach of contract claim against State Farm because she had received all owed benefits. Further, her extra-contractual claims failed because she presented no evidence of an injury independent of the recovered policy benefits.