2011 IL App (1st) 091947-U

FIRST DIVISION
November 28, 2011

No. 1-09-1497

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EUGENE ANTHONY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	07 CH 7002
	)	
GUIDEONE ELITE INSURANCE,	)	Honorable
	)	Daniel A. Riley,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
JUSTICES Karnezis and Rochford concurred in the judgment.

ORDER

HELD: Order in which a court finds a defendant liable to a plaintiff, but in which the court leaves undetermined the amount of the defendant's liability, is not a final order on any claim, and therefore the addition of a finding of no just reason to delay enforcement or appeal fails to confer jurisdiction on this court.

¶ 1 Eugene Anthony notified his insurer, Guideone Elite Insurance Company, that he had suffered injuries in a car accident. When Guideone denied coverage, Anthony sued for breach of

contract. Both parties moved for summary judgment. The trial court entered an order in which it held that Guideone owed Anthony compensation for his injuries, but the court did not decide how much Guideone owed. The trial court added to its order a finding of no just cause to delay enforcement or appeal. Guideone filed a notice of appeal. We hold that we lack jurisdiction to consider the appeal, because the order did not finally determine the rights of the parties on any separate claim.

¶ 2 BACKGROUND

¶ 3 On January 22, 2005, Anthony suffered severe injuries when his car went off a road, rolled over and hit the bottom of a ditch. In the claim Anthony filed with Guideone, he asserted that he veered off the road to avoid a collision with another vehicle. He sought coverage under the uninsured motorist provision. The policy defines uninsured motorists to include hit-and-run drivers whose cars the insured cannot identify.

¶ 4 Guideone denied coverage because the unidentified vehicle did not hit Anthony's car. Anthony filed a complaint in two counts, seeking compensation for breach of contract and a judgment declaring that the policy provided coverage when an unidentified car caused an accident, even if that car did not hit Anthony's car. Guideone moved for summary judgment based on Anthony's admission, in his deposition, that his car did not hit the car he swerved to avoid, and his car hit no other object before it left the roadway.

¶ 5 The trial court denied Guideone's motion for summary judgment and certified for immediate appellate review, under Supreme Court Rule 308 (Ill. S. Ct. R. 308 (eff. Feb. 26, 2010)) the question of whether the insurance policy's hit-and-run coverage required, at a

minimum, physical contact between the insured's car and some object that the hit-and-run car set in motion. This court denied the petition for leave to appeal.

¶ 6 The parties then filed cross-motions for summary judgment. On May 28, 2009, the trial court entered an order in which it construed the policy in favor of Anthony, so that Guideone owed Anthony compensation in accord with the policy. The court did not determine the amount of Guideone's liability on the breach of contract claim. To the order granting Anthony summary judgment on the issue of liability, the court added a finding, pursuant to Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)), of no just cause to delay enforcement of the order. Guideone promptly filed a notice of appeal.

¶ 7 ANALYSIS

¶ 8 Guideone claims that Supreme Court Rules 301 and 303 (Ill. S. Ct. Rs. 301 (eff. Feb. 1, 1994), 303 (eff. June 4, 2008)) give this court jurisdiction to consider the appeal. Those rules govern appeals from judgments that finally resolve all of the parties' claims. "To be final, an order must conclude the litigation between the parties on the merits so that only execution remains to be accomplished if affirmed on appeal." *Kulins v. Malco, Inc.*, 79 Ill. App. 3d 982, 985 (1979). The order at issue here leaves undecided the amount of Guideone's liability. Anthony cannot obtain execution of the judgment, to complete his relief, until the court determines the amount of the award for breach of contract. Because the order does not completely determine the rights of the parties on the claims in the complaint, Rules 301 and 303 do not confer on this court jurisdiction to decide the appeal.

¶ 9 The trial court's order suggests that Supreme Court Rule 304 might give this court

jurisdiction to decide the appeal. Rule 304(a) establishes that, in a lawsuit with multiple separate claims, this court has jurisdiction to decide an appeal that finally determines the rights of the parties on one of those claims, even if other claims remain undecided, as long as the trial court expressly finds no just cause to delay enforcement or appeal.

¶ 10 Anthony's lawsuit involves only one claim, as he seeks payment of the amount provided in the insurance policy as compensation for his injuries. The statement of the claim in two different ways in two counts does not change the nature of the case, which involves only one claim. See *Davis v. Loftus*, 334 Ill. App. 3d 761, 766 (2002); *Viirre v. Zayre Stores, Inc.*, 212 Ill. App. 3d 505, 511-12 (1991). Because this case involves only one plaintiff, only one defendant and only one claim, Rule 304(a) does not apply.

¶ 11 We find useful guidance in *Kulins*, 79 Ill. App. 3d 982. In *Kulins*, the trial court held that a particular severance plan applied to the employment of the plaintiffs, so the plan controlled the compensation the defendant owed the plaintiffs. All of the parties asked the court to review the holding as a final judgment, although the trial court had not computed the amount of the defendant's liability to each plaintiff. The appellate court held that it lacked jurisdiction to consider the appeal, because the trial court needed to make further findings to determine the amount of relief to award the plaintiffs. The trial court had made only an unreviewable interlocutory ruling, not a final judgment. *Kulins*, 79 Ill. App. 3d at 985; see also *Leopold v. Levin*, 45 Ill. 2d 434, 436 (1970); *Wilson-Jump Co. v. McCarthy-Hundrieser & Assocs.*, 85 Ill. App. 3d 179, 182-83 (1980).

¶ 12 The order entered here similarly resolves the issue of liability without resolving the

amount of the defendant's liability. Because the trial court issued only an interlocutory order, and not a final judgment on any separate claim, Rule 304(a) does not confer jurisdiction on this court to decide this appeal. Accordingly, we must dismiss the appeal.

¶ 13 Appeal dismissed.