NOTICE
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2012 IL App (4th) 110995-U

Filed 9/5/12

NOS. 4-11-0995, 4-12-0157 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: the Estate of RICHARD R. HENRY, Deceased, | ) | Appeal from |
| COUNTRY MUTUAL INSURANCE COMPANY, | ) | Circuit Court of |
| Petitioner-Appellant, | ) | Macon County |
| v. | ) | No. 10MR412 |
| SUSAN D. McGEE, JOHN R. HENRY, and DAVID K. | ) | |
| HENRY, Independent Coexecutors, | ) | Honorable |
| Respondents-Appellees. | ) | Albert G. Webber, |
| | ) | Judge Presiding. |

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PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held*: Where Illinois law, rather than Florida law, applies in this insurance case, the trial court did not err in granting respondents' motion for summary judgment and denying petitioner's motion for summary judgment.

¶ 2 In October 2010, petitioner, Country Mutual Insurance Company, filed a declaratory judgment action seeking a determination that the law of Florida governed the damages to which respondents, Susan D. McGee, John R. Henry, and David K. Henry, were legally entitled to recover for the wrongful death of their father in an underinsured motorist arbitration. In September 2011, the trial court granted respondents' motion for summary judgment, finding Illinois law applied. The court also denied petitioner's motion for summary judgment.

¶ 3 On appeal, petitioner argues the trial court erred in granting summary judgment in

favor of respondents and denying summary judgment in its favor. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Petitioner is an insurance company authorized to issue policies of automobile insurance in the State of Illinois. On April 1, 2009, Richard R. Henry suffered injuries in a car driven by his wife, Georgetta Henry, in an accident in Avon Park, Florida. Richard eventually passed away on April 7, 2009. On the date of the accident, petitioner had an automobile policy in effect with Georgetta (Georgetta policy), which insured the vehicle she was driving at the time of the accident. The policy had liability limits of $100,000 and medical payment limits of $25,000. Petitioner paid $25,000 of medical payments and offered $75,000 of the remaining liability limits. The Georgetta policy is not involved in this dispute.

¶ 6 At the time of the accident, petitioner also had in effect with Richard an automobile policy (Richard policy) insuring a 2003 Chrysler, which was not involved in the accident. The policy had liability limits of $500,000, plus a death benefit of $5,000. Because of the contractual relationship between petitioner and Richard and Georgetta, respondents presented a claim for benefits to petitioner as independent coexecutors of Richard's estate and his heirs.

¶ 7 In October 2010, petitioner filed a complaint for declaratory judgment against respondents pursuant to section 2-701 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-701 (West 2010)). Petitioner alleged resolution or settlement of respondents' claims "could not be achieved because the parties have differing and opposing views as to whether the damages available to [respondents] are controlled by the damages statutes of the State of Illinois or the State of Florida."

¶ 8 The parties did agree the underinsured motorist coverage of the Richard policy

was reduced by the $75,000 paid under the Georgetta policy and the $25,000 in medical payments, which left a maximum of $400,000 of remaining underinsured motorist limits plus the $5,000 death benefit. Respondents claimed they were entitled to $405,000 of underinsured motorist coverage and death benefits under the Richard policy. Petitioner, however, contended no sums were available under the policy.

¶ 9 Respondents made a demand for underinsured motorist arbitration and named an arbitrator. Petitioner responded the policy only allowed arbitration on the questions of liability and damages. Thus, petitioner asked the trial court to determine whether there was a legal right under the policy to any underinsured motorist benefits under the facts of the claim and accident. In doing so, petitioner asked the court to find and declare that Florida law applies in determination of damages and respondents are not entitled to any sums under the policy in connection with the accident.

¶ 10 In November 2010, respondents filed an answer and a counterclaim. Respondents admitted they would be entitled to a maximum recovery of $405,000 under the Richard policy in the event their recovery was limited to $100,000 under the Georgetta policy. Respondents sought a declaratory judgment that the law of Illinois applied for purposes of determining the available causes of action and elements of recoveries arising out of the accident.

¶ 11 Respondents also set forth a counterclaim, seeking a determination that they were entitled to $100,000 of bodily injury liability coverage, not $75,000, under the Georgetta policy. Respondents later accepted the sum of $75,000 and voluntarily dismissed their counterclaim.

¶ 12 In July 2011, respondents filed a motion for summary judgment pursuant to section 2-1005 of the Procedure Code (735 ILCS 5/2-1005 (West 2010)). In disputing peti-

tioner's claim that Florida law applied, respondents claimed, based on Georgetta's deposition testimony and John Henry's affidavit, Illinois law should apply because Richard and Georgetta had been domiciled in Illinois for all of their lives; petitioner had its corporate headquarters and regional claims office in Bloomington, Illinois; the insured vehicle was titled, registered, and principally kept in Illinois; the policies were both issued in Illinois; and the only contact the Henrys had with Florida was for vacation purposes "when they would travel there for a few months in wintertime to stay in a trailer they owned on a rented lot in a campground near Avon Park, Florida."

¶ 13 In August 2011, petitioner filed a response and a cross-motion for summary judgment. In arguing Florida law should apply, petitioner noted the accident occurred in Florida and the Henrys were staying at their second residence in Florida.

¶ 14 In September 2011, the trial court heard arguments on the motions for summary judgment. The court found the case was "really more of a contract issue than a tort issue." As the policies were issued in Illinois by an Illinois company to Illinois residents, the court concluded Illinois law should apply even though the accident took place in Florida. The court granted respondents' motion for summary judgment and denied petitioner's motion.

¶ 15 Petitioner filed a timely notice of appeal (No. 4-11-0995). After respondents' counterclaim was voluntarily dismissed without prejudice in February 2012, petitioner filed a timely notice of appeal (No. 4-12-0157). This court allowed petitioner's motion to consolidate the appeals.

¶ 16 II. ANALYSIS

¶ 17 A. Standard of Review

¶ 18 "Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Ioerger v. Halverson Construction Co., Inc.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). Where, as here, cross-motions for summary judgment were filed, the parties "agree only a question of law is involved, and the court should decide the issue based on the record." *Farmers Automobile Insurance Ass'n v. Danner*, 2012 IL App (4th) 110461, ¶ 30, 967 N.E.2d 836, 842. On appeal from a trial court's decision granting a motion for summary judgment, our review is *de novo*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007). We also review *de novo* a trial court's choice-of-law determination. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 153, 879 N.E.2d 893, 897 (2007).

¶ 19 B. Choice of Law

¶ 20 Petitioner argues the trial court erred in granting summary judgment in favor of respondents where Florida substantive law applied to a Florida accident involving part-time Florida residents. We disagree and hold Illinois law applies in this case.

¶ 21 In *Townsend*, 227 Ill. 2d at 155, 879 N.E.2d at 898, our supreme court stated "the forum court applies the choice-of-law rules of its own state." The court also stated "a choice-of-law analysis begins by isolating the issue and defining the conflict." *Townsend*, 227 Ill. 2d at 155, 879 N.E.2d at 898. "A choice-of-law determination is required only when a difference in law will make a difference in the outcome." *Townsend*, 227 Ill. 2d at 155, 879 N.E.2d at 898.

¶ 22 In the case *sub judice*, petitioner agreed to "pay damages which an insured is legally entitled to recover from the owner or operator of an uninsured or underinsured motor

vehicle because of bodily injury sustained by an insured and caused by an accident." Thus, it must be determined whether respondents, as independent coexecutors of their father's estate, are legally entitled to recover wrongful death and survival damages.

¶ 23 The State of Florida does not recognize an action for personal injuries that survives the decedent's death. See Fla. Stat. § 768.20 (2009) (providing that "[w]hen a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate"). Under Florida's wrongful death statute, a survivor, including children of the decedent, may recover the value of lost support and services. Fla. Stat. § 768.21(1) (2009). "Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury." Fla. Stat. § 768.21(3) (2009). However, adult children are not entitled to recover these damages. Fla. Stat. § 768.21(8) (2009).

¶ 24 In Illinois, actions to recover damages for an injury to the person survive the death of that person and become an asset of the estate. 755 ILCS 5/27-6 (West 2010). Under the Illinois wrongful death statute, the surviving next of kin may recover damages suffered as a result of the death, including damages for grief, sorrow, and mental suffering. 740 ILCS 180/2 (West 2010). As Florida and Illinois law conflict as to the damages recoverable for survival and wrongful death, a determination as to the choice of law is required.

¶ 25 As it did in the trial court, petitioner argues the dispute over what damages may be recovered from the underinsured motorist is decided on the principles of tort law rather than contract choice-of-law rules. Illinois follows the Restatement (Second) of Conflict of Laws

(1971) when analyzing choice-of-law issues. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 61, 879 N.E.2d 910, 919 (2007). If a tort claim is raised, courts utilize "the most significant relationship test." *Safeco Insurance Co. v. Jelen*, 381 Ill. App. 3d 576, 579, 886 N.E.2d 555, 558 (2008) (citing Restatement (Second) of Conflict of Laws § 145 (1971)). Under that test, "the law of the state of the place of the injury controls unless another state has a more significant relationship to the occurrence." *Safeco Insurance*, 381 Ill. App. 3d at 580, 886 N.E.2d at 558. "When applying the most significant relationship test, a court should consider (1) where the injury occurred; (2) where the injury-causing conduct occurred; (3) the domicile of the parties; and (4) where the relationship of the parties is centered." *Esser v. McIntyre*, 169 Ill. 2d 292, 298, 661 N.E.2d 1138, 1141 (1996).

¶ 26 If a contract claim is raised, courts utilize "the most significant contacts test." *Safeco Insurance*, 381 Ill. App. 3d at 580, 886 N.E.2d at 558 (citing Restatement (Second) of Conflict of Laws § 188 (1971)); see also *United Farm Family Mutual Insurance Co. v. Frye*, 381 Ill. App. 3d 960, 965, 887 N.E.2d 783, 788 (2008) ("Under Illinois choice-of-law rules for insurance contracts, Illinois courts use the 'most significant contacts' test"). Under this test, "[i]nsurance policies 'are " 'governed by the location of the subject matter, the place of delivery of the contract, the domicile of the insured or of the insurer, the place of the last act to give rise to the contract, the place of performance, or other place bearing a rational relationship to the general contract.' " ' [Citations.]" *United Farm*, 381 Ill. App. 3d at 965, 887 N.E.2d at 788.

¶ 27 As stated, petitioner argues tort law should govern this choice-of-law analysis and cites our supreme court's decision in *Townsend*. However, *Townsend* did not involve a dispute over a policy of insurance or an action for declaratory judgment. Where, as here, the issue

centers on the rights of the parties under an insurance policy and the applicable state law, the matter is more in line with the contract line of cases involving insurance disputes cited by respondents. See *Costello v. Liberty Mutual Fire Insurance Co.*, 376 Ill. App. 3d 235, 240-41, 876 N.E.2d 115, 120-21 (2007); *Western States Insurance Co. v. Zschau*, 298 Ill. App. 3d 214, 223, 698 N.E.2d 198, 204 (1998); *Allen v. State Farm Mutual Automobile Insurance Co.*, 214 Ill. App. 3d 729, 735, 574 N.E.2d 55, 59 (1991).

¶ 28 As we find the claim raised here is based in contract, we will apply the most-significant-contacts test.

> "The factors considered under this approach should be 'evaluated in light of the relevant policies of the forum and other interested [s]tates and those [s]tates' interest in the issue [citation].' [Citation.] 'Unless some other state has a more significant relationship to the transaction, an automobile policy will be governed by the state where the car was intended to be principally located, even if the car is occasionally located somewhere else.' [Citation.]" *Costello*, 376 Ill. App. 3d at 241, 876 N.E.2d at 120-21.

¶ 29 In this case, the facts indicate Illinois has more significant contacts to the policy than Florida. The Henrys were residents of Illinois, and petitioner has its corporate headquarters and regional offices in Illinois. The vehicle was titled, registered, and principally kept in Illinois. The policy was also issued in Illinois. Although the accident occurred in Florida and the Henrys had a winter residence in Florida, the parties entered into the policy in Illinois to cover a vehicle principally located in Illinois. See *Zschau*, 298 Ill. App. 3d at 223, 698 N.E.2d at 204 ("an

automobile policy will be governed by the law of the state where the car was intended to be principally located, even if the car is occasionally located elsewhere"). The State of Florida had no contact with any aspect of the policy, and it cannot be said to have had a more significant relationship to the transaction. As Illinois has more significant contacts to the policy, Illinois law controls. Accordingly, the trial court did not err in granting summary judgment in favor of respondents and holding Illinois law applies in any arbitration proceedings between the parties for uninsured or underinsured motorist coverage benefits.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.