

2017 IL App (2d) 170134-U  
No. 2-17-0134  
Order filed January 2, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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COUNTRY PREFERRED INSURANCE COMPANY,	)	Appeal from the Circuit Court of Du Page County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-MR-206
	)	
SUSAN C. BADRI-MONAGHAN,	)	Honorable Paul M. Fullerton,
	)	Judge, Presiding.
Defendant-Appellee.	)	

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JUSTICE BURKE delivered the judgment of the court.  
Justices McLaren and Birkett concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly denied plaintiff a declaratory judgment that defendant's underinsured-motorist claim was barred for her failure to submit a timely demand for arbitration: the court's ruling that plaintiff was estopped from enforcing the arbitration requirement was not against the manifest weight of the evidence, as the evidence showed that defendant reasonably relied on plaintiff's agent's assurance that her claim required no further action.
- ¶ 2 Plaintiff, Country Preferred Insurance Company (Country), appeals the denial of its complaint for a declaratory judgment that defendant, Susan C. Badri-Monaghan (Badri), was barred from making an underinsured-motorist claim because she failed to submit a timely written

demand for arbitration. The trial court found that Country was estopped from asserting its claim. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On July 10, 2009, Badri was seriously injured in an automobile accident that was the fault of another motorist, Ashley Byrne. Badri was insured by Country, and her policy required that, in order to make a claim for underinsured-motorist coverage, she submit a written demand for arbitration within two years. Badri did not submit a written demand until December 10, 2013, but asserted that she did not do so because she relied on statements made by her Country agent, Brett Romine, who had set up the claim for her. Country filed a complaint for a declaratory judgment that Badri was time-barred from making her claim. Badri filed an answer, contending that she was entitled to coverage for various reasons, including on the basis of estoppel. The trial court denied motions from both parties for summary judgment. In August 2016, a bench trial was held.

¶ 5 Evidence at trial showed that, shortly after the accident, Badri called Romine and told him that she had significant medical bills and needed a claim filed. She and Romine discussed the need for an underinsured-motorist claim because most likely the medical bills would exceed Byrne's policy limits. Badri testified that Romine told her that he was filing an underinsured-motorist claim and was going to make sure that everything was set up. Romine did not mention arbitration. A few days to a week later, Romine called Badri and told her that he had set up the underinsured-motorist claim and that she did not need to do anything else. Badri did not read her policy before talking to Romine. She testified that she relied on what Romine told her because he was the agent and a professional.

¶ 6 Badri later hired an attorney, Marc Taxman, to represent her on a medical malpractice claim and her insurance claims. She told Taxman that Romine had already set up the underinsured-motorist claim for her. When asked whether, when she retained Taxman, she provided medical bills to Country, Badri stated that she had not, but that she was not aware that she needed to provide any bills.

¶ 7 Romine's deposition was introduced into evidence. Romine had received training from Country about insurance, insurance policies, and insurance claims. It was not unusual for insureds to call their Country agent when they had a claim, and Romine would then collect as much information as possible and, if the insured were unable to contact the claims department, he would relay the information to the claims department for them. Part of Romine's training was to provide customer service by trying to help insureds with claims as much as possible. The declaration page of any policy told the insureds that their Country agent would welcome their call if they had any questions, and Romine testified that answering questions about policies was part of his job.

¶ 8 In regard to Badri's claim, Romine testified that, after speaking with Badri, he called Country's claims department for the purpose of satisfying the notice provisions of the policy and to assist Badri as much as possible. He specifically asked a Country claims person to set up an underinsured-motorist claim and believed that he was successful in establishing that. Romine was aware of the underinsured-motorist policy limits, but was not aware of the requirement for a written demand. He confirmed that he told Badri that he requested an underinsured-motorist claim on her behalf, that he would take care of it, and that she would not have to worry about it. He said that he expected her to rely on those representations. The record shows that the claim was opened on August 25, 2009, and that a reserve was established to cover it.

¶ 9 Taxman testified that he was retained in January 2010 to represent Badri in a malpractice action and ultimately to represent her interests with her insurance claims. The focus of his initial retention, however, was the malpractice claim. Badri told him that Romine had set up the underinsured-motorist claim and had done everything that was needed. In December 2013, when an underlying case against Byrne was getting ready to settle, Taxman contacted Country and was told that the underinsured-motorist claim was pending. He was given a claim number and told that the adjuster was Chad Angel. Taxman then spoke to Angel, who said that the reserve for the claim had been closed because there was never a written demand for arbitration. This was the first time Taxman was aware that there was a defect in the claim, because he and Badri had previously relied on what Romine had said about the claim. Taxman then filed a demand for arbitration and wrote a letter to Angel pointing out that Romine had already opened an underinsured-motorist claim in 2009.

¶ 10 Timothy Higham, a liability specialist for Country in 2009, initially worked on Badri's claim. He testified that he never received any medical bills for Badri's file and that it did not contain a written demand for arbitration. He stated that he requested medical bills and did not receive them. However, Higham was shown an exhibit with information from the claim-activity log showing amounts from medical bills and admitted that his previous testimony that he had no information regarding Badri's bills was not exactly true.

¶ 11 Angel testified that the claim was reassigned to him from Higham. Angel had been unsuccessful in attempts to contact Badri. He authorized payments under the medical-payment provisions of Badri's policy on medical bills that were sent in from providers. He did not receive bills from Badri or Taxman, and he believed that other information about additional expenses shown in the claim-activity log was sent in by Romine. He did not have actual bills for them.

Angel spoke to Taxman in March 2011 about a medical malpractice claim, but there was no mention of underinsured-motorist coverage or medical bills. After that, he unsuccessfully attempted to call Taxman about the underinsured-motorist claim. He spoke with Taxman in December 2013 about underinsured-motorist coverage, at which time Angel told him that the file had been closed. Angel said that it would not be unusual for an insured to contact her agent in regard to questions about policy coverage.

¶ 12 The trial court found that Country was estopped from asserting that the underinsured-motorist claim was time-barred. The court found that Badri, Taxman, and Romine testified honestly and credibly. The court found the other witnesses credible as well, but noted that their testimony did not shed much light on the issue of estoppel. The court found clear and convincing evidence that Country misled Badri to believe that the underinsured-motorist claim was taken care of and that she did not need to do anything further, and that she reasonably relied on the misrepresentation to her detriment. The court also found that Taxman was hired primarily to handle the malpractice case and also reasonably relied on Romine's assurance that he had set up the underinsured-motorist claim. Accordingly, the court denied Country's request for a declaratory judgment. Country's motion to reconsider was denied, and it appeals.

¶ 13

## II. ANALYSIS

¶ 14 Country contends that the trial court erred in finding clear and convincing evidence of estoppel. In doing so, Country misstates the standard of review, focusing solely on the definition of clear and convincing evidence. However, we apply the manifest-weight-of-the-evidence standard.

¶ 15 Where factual findings must be made by clear and convincing evidence in the trial court, the appellate court employs the manifest-weight-of-the-evidence standard of review despite the

elevated burden of proof in the court below. *Roadside Auto Body, Inc. v. Miller*, 285 Ill. App. 3d 105, 113 (1996). The trial court's factual finding under the clear-and-convincing evidentiary burden is against the manifest weight of the evidence “ ‘where, upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent’ or the factual finding is ‘palpably erroneous and wholly unwarranted, is clearly the result of passion or prejudice, or appears to be arbitrary and unsubstantiated by the evidence.’ ” *In re Estate of Cuneo*, 334 Ill. App. 3d 594, 598 (2002) (quoting *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613 (1997)). In a nonjury case, the trial court's judgment will be sustained if there is evidence in the record to support it. *Id.*

¶ 16 To establish estoppel, an insured must show by clear and convincing evidence that (1) he or she was misled by the acts or statements of the insurer or its agents; (2) reliance by the insured on the representations of the insurer; (3) the reliance was reasonable; and (4) the reliance was to the detriment of the insured. *Meier v. Aetna Life & Casualty Standard Fire Insurance Co.*, 149 Ill. App. 3d 932, 938 (1986). Estoppel implies prejudicial reliance by the insured upon some action or nonaction of the insurer and may be found even though the insurer intended neither to mislead the insured nor to relinquish its own rights. *Id.*

¶ 17 Here, the trial court's findings were well supported by the evidence. It is undisputed that Romine was an agent of Country. Both Romine and Badri testified that Romine told Badri that he was setting up an underinsured-motorist claim for her and that she did not need to do anything else. Badri specifically stated that she relied on Romine's assurance that she did not need to do anything else to submit her claim, and Romine testified that he intended Badri to rely on his statements. Badri's reliance was also reasonable. As the trial court noted, the evidence demonstrated that Country encouraged its insureds to contact their agents with questions and

trained its agents to assist its insureds. Romine was Badri's agent with Country, and it was reasonable for her to rely on his representations about her coverage. Finally, Badri clearly was prejudiced by the misinformation, as it caused Country to deny her claim.

¶ 18 Country contends that Badri's reliance was unreasonable because she and Taxman failed to return phone calls or submit medical bills. But, given that Badri was told that she did not need to do anything further to assert her claim, any delay in providing bills or returning calls is immaterial. Further, the record shows that some information about her medical expenses was in her file.

¶ 19 Relying on a number of cases involving the Chicago Transit Authority, Country also contends that Badri's representation by Taxman precludes her estoppel claim. See, e.g., *Niziolek v. Chicago Transit Authority*, 251 Ill. App. 3d 537 (1993); *Sanders v. Chicago Transit Authority*, 220 Ill. App. 3d 505 (1991); *Murphy v. Chicago Transit Authority*, 191 Ill. App. 3d 918 (1989). In those cases, the plaintiffs failed to comply with a statutory provision requiring them to file a notice of intent to sue when they were represented by counsel. But, in each case, neither the plaintiff nor counsel was actively misled. Instead they relied on vague assertions that everything would be taken care of. See, e.g., *Murphy*, 191 Ill. App. 3d at 923. Although an insured's representation by counsel may be considered in determining issues of estoppel, it is not conclusive, especially in light of affirmative misleading conduct. See *Sponemann v. Country Mutual Insurance Co.*, 120 Ill. App. 3d 211, 221 (1983). Here, Badri was specifically told that the underinsured-motorist claim was taken care of and that she did not need to do anything else. When Badri later retained Taxman primarily for the purpose of pursuing the malpractice claim and told him that the underinsured-motorist claim had been taken care of, he too was entitled to

rely on that. Accordingly, the trial court's determination that there was clear and convincing evidence of estoppel was not against the manifest weight of the evidence.

¶ 20

### III. CONCLUSION

¶ 21 The judgment of the circuit court of Du Page County is affirmed.

¶ 22 Affirmed.