



GREENBRIAR GROUP, L.L.C., Plaintiff-Appellant, vs. TIMOTHY HAINES, Defendant-Appellee, and E

2014 | Cited 0 times | Court of Appeals of Iowa | January 9, 2014

IN THE COURT OF APPEALS OF IOWA

No. 3-983 / 13-0569 Filed January 9, 2014 Amended August 1, 2014

GREENBRIAR GROUP, L.L.C., Plaintiff-Appellant,

vs.

TIMOTHY HAINES, Defendant-Appellee,

and

ELKCO PROPERTIES, INC., and INDIAN HARBOR INSURANCE COMPANY as subrogee of
ELKCO PROPERTIES, INC., Third-Party Defendants-Appellants.

Appeal from the Iowa District Court for Pottawattamie County, James M.

Richardson and Mark J. Eveloff, Judges.

Indian Harbor Insurance Company, as subrogee of Elkco Properties, Inc.,

and order granting summary

AFFIRMED.

Brian D. Nolan and Kathryn L. Hartnett of Nolan, Olson, & Stryker, P.C.,

L.L.O., Omaha, Nebraska, and Stanley W. Kallmann and Mark L. Antin of

Gennet, Kallmann, Antin & Robinson, P.C., Parsippany, New Jersey, for

appellants. Jeffrey L. Goodman , West Des Moines, for

appellee.



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Heard by Vogel, P.J., and Potterfield and McDonald, JJ. MCDONALD, J.

order

granting summary judgment in favor of Timothy Haines

motion to dismiss. We affirm the judgment of

the district court.

I.

This case arises out of a fire occurring at an apartment complex owned by Greenbriar. The property was managed by Elkco, which is also a majority owner of Greenbriar. The property was insured by Indian Harbor. The Greenbriar parties allege that the fire started when Haines, a maintenance worker leased from Oasis , negligently soldered a water valve located in the shower of an apartment at the complex. The fire damage was fairly extensive, and Indian Harbor paid \$1,163,434.66 o claim.

The Greenbriar parties initiated this suit in November 2010, asserting a single claim of negligence against Haines and Oasis. On February 14, 2011, Haines filed a voluntary petition in bankruptcy under Chapter 7 of the Bankruptcy Code, thereby staying this action. The Greenbriar parties sought relief in the

bankruptcy court. They filed a motion to lift stay and for leave to proceed prosecute a property damage claim against the debtor, Timothy J. Haines, and to

proce The Greenbriar parties believed that Haines, as a leased employee of Oasis, might be covered under

commercial general liability policy issued by Lexington Insurance



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The bankruptcy court request for relief . Subject to the order allowing the Greenbriar parties to proceed to the extent of any applicable insurance, Haines received a discharge order in the bankruptcy proceeding. Having obtained relief from the bankruptcy court to prosecute their claim against Haines, the Greenbriar parties reengaged in this proceeding. After a flurry of procedural feints, thrusts, and parries, the parties realigned themselves and ended up with claims, counterclaims, and third-party claims against each other. As relevant here, in its second amended petition, Greenbriar asserted claims against Haines for negligence and *res ipsa loquitur*. Haines asserted a declaratory judgment counterclaim against Greenbriar and third-party claim against Indian Harbor, as subrogee of Elkco. In his declaratory judgment counterclaim and third-party claim, Haines sought a determination on the issue of whether he was an employee of Greenbriar or Oasis and a determination of whether he was a insurance policy issued by Lexington. Because the Lexington policy was at issue, Lexington attempted to intervene in the action, but the Greenbriar parties successfully motion to intervene on the grounds that Lexington did not meet the substantive requirements for intervention as a matter of right or permissive intervention under Iowa Rule of Civil Procedure 1.407. Haines and the Greenbriar parties filed motions for summary judgment.

The district court initially denied both motions. With respect to the Greenbriar



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he district court found that there were disputed issues of material

fact regarding both negligence and a potential intervening cause giving

found that it

was not ripe for adjudication because established. The district court held that only after liability had been established

would the issue of whether an insurer must indemnify its insured arise. Despite

this ruling, the district court noted that when the issue was properly before it, it

would find that Haines was not an employee of Oasis, and, therefore, Haines

would not be an insured within the meaning of the Lexington policy.

Haines filed a motion to reconsider and/or enlarge findings. In ruling on

this motion, the district court, relying on

declaratory judgment action was ripe for resolution prior to any liability

determination being made. The court declaratory judgment action and held that Haines was not an employee of Oasis

and, therefore, was not an insured within the meaning of the Lexington policy.

Because the bankruptcy court order allowed the Greenbriar parties to proceed

only to the extent of any applicable insurance, and because the district court

determined that Haines was not covered by the Lexington policy or any other

insurance policy, the district court then dismissed against Haines. II.

The court first turns its attention to the district court order granting summary

judgment for corrections of errors at law. See *Boelman v. Grinnell Mut. Reins.*

Co., 826 N.W.2d 494, 500 (Iowa 2013)



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summary judgment when the moving party demonstrates there is no genuine

issue of material fact and that he or she is entitled to judgment as a matter of

Id. at 501 nonmoving party. . . . [and] [w]e afford the nonmoving party every legitimate

inference that can be reasonably deduced from the evidence . . . Id. (citations

and internal quotation marks the issue should be resolved, a fact question is generated, and the district court

Id. (citations and internal quotation marks

omitted).

A.

The Greenbriar parties first contend that the district court erred in holding

that Haine . Iowa Coal Mining Co., Inc. v. Monroe Cnty., 555 N.W.2d 418, 432 (Iowa 1996).

A case is ripe for adjudication when it presents an actual, present controversy,

State v. Wade,

757 N.W.2d 618, 627 (Iowa 2008). prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements Abbott Labs. v. Gardner, 387 U.S.

136, 148 (1967) (abrogated on other grounds by Califano v. Sanders, 430 U.S.

99, 105 (1977)).

Haines filed his counterclaim and third-party claim for declaratory relief

pursuant to Iowa Rule of Civil Procedure 1.1102. As relevant here, Rule 1.1102

rights, status or other legal relations are affected by any . . . contract . . . may

have any question of the construction or validity thereof or arising thereunder

determined, and obtain a declaration of rights, status or legal relations



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Here, Haines sought a declaration of his rights, status, and legal relationships in two respects. First, he sought a declaration of whether he was an employee of Greenbriar or Oasis under the service agreements between Greenbriar and Oasis. Second, Haines sought a determination of whether he was within the meaning of the Lexington policy, which turned on his employment status. The relevant language of the Lexington policy provides as follows:

Each of the following is also an insured: to the conduct of you for acts within the scope of their employment by you or while

performing duties related to the conduct of your business. . . . his or her work and acts at the

direction of and within the scope of duties determined by you, and is not paid a fee, salary, or other compensation by you or anyone else for their work performed for you. . does means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business.

seasonal or short term workload conditions.

Although not dispositive of the issue before us, it should be noted that at no point

declaratory relief on the grounds that the claims were not ripe. The ripeness

motion for

summary judgment.

The mere filing of a declaratory judgment action does not, in and of itself, create a justiciable controversy. This is because the declaratory judgment rules do not create substantive rights; instead, they merely provide a mechanism to secure judicial relief in an expeditious manner. Thus, even in a declaratory



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judgment action there still must exist a justiciable controversy between the parties. Determining whether a claim presents a justiciable controversy ripe for review is particularly difficult in the declaratory judgment context. Indeed, our supreme c olne of the most troublesome questions in this field of law is, when does a justiciable controversy arise, as distinguished from a mere abstract question? Citizens for Responsible Choices v. City of Shenandoah, 686 N.W.2d 470, 474 (Iowa 2004) (quoting Wesselink v. State, 80 N.W.2d 484, 486 (Iowa 1957)). The supreme court has articulated the answer to this question in di he

basic question is said to be whether the facts alleged show there is a substantial controversy between parties having adverse legal interests of sufficient

immediacy and reality to warrant a declaratory judgment. Id. at 474 (quoting Katz Inv. Co. v. Lynch, 47 N.W.2d 800, 805 (Iowa 1951)). Somewhat differently: e search, then, for an antagonistic assertion and denial of right and, if found and other proper allegations appear, the court may then entertain the question of whether the plaintiffs claim is proper and justified. Id. at 474 (quoting Wesselink, 80 N.W.2d at 487)). The upshot: the court must make a practical, common sense determination as to whether judicial action is proper. In making this determination, the court must consider the interest in expeditious resolution of the claim, whether future factual development might affect the resolution of the claim, the need to conserve judicial resources



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and avoid rendering advisory opinions, and whether declaratory relief will bring

finality to the controversy between the parties. Taking all of these factors into

this case is an antagonistic assertion of his right to relief under the Bankruptcy

C right. Haines availed himself of the protections afforded by the Bankruptcy Code

and obtained a discharge order. Generally, a debtor for prepetition liabilities. 11 U.S.C. § 524(a)(2). A discharge order

advances one of the primary purposes of the Bankruptcy Code: to permit the

field for future effort, unhampered the obligations of preexisting liabilities. Local Loan Co. v.

Hunt, 292 U.S. 234, 244 (1934). The Greenbriar parties obtained relief to

proceed against Haines despite the mandatory stay and subsequent discharge

order, solely to the extent of any applicable insurance. The Greenbriar

unhampered by his past. Haines thus has a sufficient, real, and immediate

interest in ending the litigation between himself and the Greenbriar parties.

Haines request for a determination that he is not an employee of Oasis and that

he is not a covered insured under the Lexington policy thus raises real,

substantial, and contested issues among the parties: do the Greenbriar parties

have the authority to proceed against Haines, and does the district court have the

authority to proceed. The resolution of these issues rise to the proce R. Civ. P. 1.1105, thereby demonstrating that there was, in fact, a real

controversy between the parties. rights under the Bankruptcy Code is sufficient to create a justiciable controversy,

we will also



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The Greenbriar parties argue that an action to determine coverage under an indemnity policy cannot be ripe until such time as liability of the insured is established and the duty to indemnify arises. The Greenbriar parties rely on *Travelers Insurance Cos. v. Penda Corp.*, 974 F.2d 823 (7th Cir. 1992). In that [the insurer] has a duty to indemnify is not ripe until the underlying litigation is *Travelers Ins.*, 974 F.2d at 833. That case is not controlling here.

Further, and more important, Travelers statement regarding Illinois law is incomplete. While it is generally true under Illinois law that the duty to indemnify does not arise until the liability of the insured has been established, Illinois law also provides that a declaratory judgment action to determine coverage under an indemnification policy is proper so long as the factual issue or issues in the coverage proceeding are separable from those at issue in the liability proceeding. See *Home Ins. Co. of Illinois v. Hooper*, 691 N.E.2d 65, 69 (Ill. App. Ct. 1998) (stating that a duty to indemnify issue may not be premature even before liability is incurred in the underlying claim the question of coverage can appropriately be decided in a declaratory judgment action where the issues in the underlying suit are separable from those

The rule allowing a coverage action to proceed prior to the resolution of the related liability action where the issues in each case are separable is well accepted. See *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 643 (Iowa 2000) (noting a majority of courts have adopted the rule); see also *Scottsdale Ins. Co.*



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v. Universal Crop Prot. Alliance, L.L.C., 620 F.3d 926, 934 (8th Cir. 2010)

(holding that under Minnesota law declaratory judgment action is ripe irrespective of whether the underlying

litigation is ongoing or resolved); Ins. Co. v. United Fire & Cas.

Co., 571 F.3d 749, 752 (8th Cir. 2009) (finding coverage dispute to be ripe in a

case involving Arkansas law even though no liability suit had been filed); Am. States Ins. Co. v. Bailey, 133 F.3d 363, 368 (5th Cir. 1998) (finding an actual

underlying state court suit had not reached final judgment ; Aetna Cas. & Sur.

Co. v. Gen. Dynamics Corp., 968 F.2d 707, 711 (8th Cir. 1992) (finding a dispute

to be ripe in a case involving Missouri law even though no suit had been filed).

Although the rule has not been explicitly adopted in Iowa, it is consistent

with Iowa law. For example, in Iowa Mutual Insurance Co. v. McCarthy, 572

N.W.2d 537 (Iowa 1997), the insurer commenced a declaratory judgment action

against its insured and the injured party seeking a ruling that an employee

exclusion provision in the policy precluded coverage for the claims. See

McCarthy, 572 N.W.2d at 538. At the same time, the injured party filed a liability

claim against the insured. See id. at 538-39. As in this case, the coverage

status an issue separate and distinct from the liability determination. The

district court stayed the liability action and tried the coverage action first. The

supreme was sufficient to create a justiciable controversy between the injured party and

the insurer. See id. at 541. Although Lexington is not a party to this proceeding,

the district court found that Haines was a



in

this litigation.

The rationale underlying the majority rule is that the coverage action

should be allowed to proceed in the interest of judicial economy unless the facts developed in the coverage action could prejudice the insured in the liability

action. See, e.g., *Wells Dairy, Inc. v. Travelers Indem. Co. of Illinois*, 241 F.

Supp. 2d 945, 976 (N.D. Iowa 2003) (discussing rationale). This typically occurs

when the insurer and the insured have conflicting interests. When the material

facts in each case are wholly separable, however, the insured is not at risk of

being disadvantaged in the liability proceeding by the conduct of the insurer in

the coverage proceeding. In this case, Haines and Lexington have no conflict of

interest. Their interests are aligned. In this case, the factual issues on the

liability claims and the claims for declaratory relief are wholly separable. As the

Greenbriar parties note, the only issues to be litigated in the liability proceeding

are the facts and circumstances surrounding the fire. Haines employment status

is not at all relevant to those factual issues. Whether Haines is an insured under

the Lexington policy turns only on his employment status. The facts and

circumstances surrounding the fire are not material to the coverage question.

There is no reason that the coverage determination cannot or should not

proceed.

The Greenbriar parties also Lexington was not a party to this proceeding. The Greenbriar parties argue they



were and are prejudiced by not having the opportunity to conduct discovery

related to Lexington. We conclude that

proceeding was unnecessary for the district court to determine whether Haines

was an insured within the meaning of the policy. The policy was in the summary

judgment record before the court. The service agreements governing the relationship between Haines, Greenbriar, and Oasis were before the court. The

Greenbriar parties and Haines had adverse interests in the determination of the

issues presented, and they had incentive to, and did in fact, fully litigate the

same. There was and is no further factual development regarding Lexington

necessary to resolve declaratory judgment action. To the extent that any

additional discovery was necessary, the Greenbriar parties failed to request

additional time to conduct such discovery. See Iowa R. Civ. P. 1.981(6) (setting

forth procedure to conduct additional discovery related to adjudication of

summary judgment motion); *Bitner v. Ottumwa Sch. Dist.*, 549 N.W.2d 295, 302

(Iowa 1996) (holding that party waived right to conduct additional discovery in

support of resistance to motion for summary judgment where party failed to file a

properly supported affidavit requesting such relief).

Additionally, the Greenbriar parties cannot now complain that Lexington is

not at the table when they are the ones who pulled away the chair. Lexington

sought to intervene in this proceeding, but the Greenbriar parties successfully

resisted the motion, arguing that Lexington did not meet the requirements for

intervention as a matter of right or permissive intervention under Rule 1.407. The district court interest was adequately repres thus contrary to its current position, and they are precluded from now reversing course. See State v. Duncan on in judicial id. at 43-44 (stating that preclusion of inconsistent positions , designed to protect the integrity of the judicial that can be raised by the court on its own motion).

B.

We next address whether the district court erred in declaring that Haines was an employee of Greenbriar and Elkco. When the question concerning the nature of the employment relationship concerns co-employment, leased McCarthy, 572 N.W.2d at 542. The intent of the parties can be determined by the nature of the relationship between the parties as expressed in the agreement or agreements between each other, if any, and by the nature of the employment relationship created with the employee at issue. The nature of the employment relationship Heinz v.

Heinz, 653 N.W.2d 334, 343 (Iowa 2002)Id. Relvant

factors include:

(1) the right of selection, or to employ at will; (2) responsibility for the payment of wages by the employer; (3) the right to discharge or terminate the relationship; (4) the right to control the work; and (5) is the party sought to be held as the employer the responsible authority in charge of the work or for whose benefit the work is performed. Gabrielson v. State, 342 N.W.2d 867, 870 (Iowa 1984). After careful review of

the summary judgment record, we conclude that the district court did not err in concluding that there was no genuine issue of material fact regarding Haines



employment status.

Oasis is a professional employer organization that provides administrative support related to payroll, taxes, insurance, and benefits. Pursuant to the service agreements entered into between Oasis and Greenbriar/Elkco, Oasis provided payroll and benefits management services that included the management of payroll, , and health insurance. When Oasis provides services for a company, all employees of that company are reassigned to Oasis from an administrative standpoint. This allows Oasis to manage the employees original companies for work purposes. Oasis refers to employees that they Haines was administratively reassigned from Greenbriar to Oasis and nominally intent was for Haines to remain an employee of Greenbriar and to outsource all of the administrative human resource functions related to his employment from Greenbriar to Oasis. An analysis of the traditional indicia of an employment relationship confirms that conclusion.

Generally, the right of control is the principal test for determining whether an employee-employer relationship exists. *Wolf v. DaCom, Inc.*, 499 N.W.2d

728, 731 (Iowa Ct. App. 1993). Pursuant to the service agreements, Oasis provided payroll and benefits management services to Greenbriar and Elkco that

included the management of payroll, , and health

insurance. There is nothing in the record to suggest that Oasis had any further

involvement with the individuals who worked at Greenbriar or Elkco. Oasis had

never selected individuals to work at the apartment complex; rather, Greenbriar and Elkco had the right of selection. Likewise, Oasis did not have authority to terminate individuals that worked for Greenbriar or Elkco. If Greenbriar or Elkco terminated their service agreements with Oasis, all individuals working for Greenbriar or Elkco would continue to be employed with Greenbriar or Elkco. Furthermore, Oasis did not pay the wages of any individual who worked for Greenbriar or Elkco; rather, Greenbriar or Elkco provided the funds to Oasis, who then prepared the payroll checks from those funds. While the service s requirement to pay workers minimum wage, the agreements also clearly state that the primary responsibility to pay workers remained with Greenbriar and Elkco. In addition, there is no evidence that Oasis had ever paid Haines or other employees at the apartment complex from funds not provided by Greenbriar or Elkco. There is also no evidence that Oasis ever exercised control over any individual who worked at Greenbriar or Elkco, including Haines, and there is no evidence that anyone from Oasis ever visited the site of the apartment complex. There is nothing in the record to suggest that Oasis benefitted from the work performed by Haines when Haines was performing maintenance work, it was for the benefit of Greenbriar or Elkco. Additionally, Haines stated in his deposition that he believed he was an employee of Greenbriar, not Oasis. Greenbriar and Elkco have offered no evidence that the parties intended for



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Haines to be considered an employee of Oasis.

Because the district court correctly found that Haines was not an employee of Oasis, Haines would not be covered under s insurance policy.

C.

The Greenbriar parties contend that even if Haines is not a covered insured within the meaning of the policy, Lexington is estopped from denying coverage due to their involvement in the litigation as attorneys for Haines. wn to estop an insurer from denying coverage Westfield Ins. Cos. v. Economy Fire & Cas. Co., 623 N.W.2d 871, 880 (Iowa 2001). Upon our careful review of the summary judgment record, we conclude that the district court did not err in concluding that the Greenbriar parties failed to generate a disputed issue of material fact on this issue.

III.

The standard for reviewing motions to dismiss is for corrections of errors at law. Sierra Club Iowa Chapter v. Iowa Dep t of Transp., 832 N.W.2d 636, 640 (Iowa 2013) petition in the light most favorable to the plaintiff, the plaintiff's claim could not be Id. (citations and internal quotation marks omitted). The relief afforded the Greenbriar parties by the bankruptcy court was the permission to proceed against Haines but only to the extent of any applicable insurance. The authority to proceed pursuant to the order is a threshold issue; in the absence of any applicable



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insurance, neither the Greenbriar parties nor the district court had the authority to

proceed against Haines. See . of St. Croix Condo. Owners v. St. Croix

Hotel Corp., 682 F.2d 446, 449 (3d Cir. 1982). Because the district court did not

adjudication, and because the court properly determined that Haines was an

employee of Greenbriar, and thus not covered under s insurance policy,

IV.

summary judgment in favor of Haines and adverse to the Greenbriar parties. We

also affirm the order and judgment of the district court dismissing the Greenbriar

AFFIRMED.

