MAINES v. HILL

190 F. Supp.2d 1072 (2002) | Cited 0 times | W.D. Tennessee | March 14, 2002

ORDER GRANTING H.S. CARRIERS, INC.'S MOTION FOR SUMMARY JUDGMENT

Before the Court is M.S. Carriers Inc.'s ("Carriers") Motion forSummary Judgment, which was filed on December 20, 2001.[1] Based on thefollowing discussion, the Court hereby GRANTS Carriers' motion.

I. Background

This case arises from an automobile accident which occurred on August12, 2000, in Shelby County, Tennessee. (M.S. Carriers, Inc.'s Statementof Undisputed Facts, ¶ 4; Pl.'s Resp. to DeL M.S. Carriers' Statementof Facts, ¶ 4; Compl., ¶ 7.)[2]plaintiffs Names and McElvain assert that they were parked legally in aFreighthner Classic facing South near an intersection in Shelby County atabout 10:10 a.m. (Compl., ¶ 9.) Plaintiffs contend that a Freighthnerowned by Defendant Wer-Mac Express, Inc., and operated by its employee,Defendant Hill, was traveling East as it approached this sameintersection. Id. Plaintiffs maintain that the Freighthner hit a vehiclewhich was being driven by Defendant Ellis with the knowledge and consentof the owner of the vehicle, Defendant Nunley. Id. Plaintiffs contendthat the Freighthner driven by Defendant Hill forced the vehicle drivenby Defendant Ehis into the parked Freighthner occupied by Plaintiffs.Id. Plaintiffs assert that the resulting impact caused them severe andpermanent injuries. Id. at 10.

Plaintiffs assert that the gross, willfull negligence of Defendant Hillwas the actual and proximate cause of the accident and resultinginjuries. Id. at ¶ 14. Plaintiffs allege that Defendant Wer-MacExpress, Inc. is liable for the actions of its employee, Defendant Hill,under the theory of respondeat superior. Id. at ¶ 15. Plaintiffscontend that the negligence of Defendant Ehis was also a proximate causeof the accident and resulting injuries. Id. at ¶¶ 17-21. Plaintiffsmaintain that Defendant Nunley is liable for the accident and injuriesbecause she allowed Defendant Ellis to operate her vehicle. Id. at ¶20.

At the time of the accident, Plaintiff Maines was an owneroperator wholeased his truck to Carriers. (M.S. Carriers, Inc.'s Statement ofUndisputed Facts, ¶ 5; Pl.'s Resp. to Def. M.S. Carriers' Statementof Facts, ¶ 5.) In August of 2000, Carriers was the named insured onan insurance policy issued by The Insurance Company of the State ofPennsylvania. Id. at ¶ 1. Plaintiffs served Carriers with a copy ofthe Complaint to put it on notice of a possible uninsured/underinsuredmotorist ("UM") insurance coverage claim. Id. at ¶ 6.

II. Summary Judgment Standard

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper"if . . . there is no genuine issue as to any material fact and . . . themoving party is entitled to judgment as a matter of law." Fed.R. Civ.P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Solong as the movant has met its initial burden of "demonstratting] theabsence of a genuine issue of material fact," Celotex, 477 U.S. at 323,and the nonmoving party is unable to make such a showing, summaryjudgment is appropriate, Emmons v. McLaughlin, 874 F.2d 351, 353 (6thCir. 1989). In considering a motion for summary judgment, "the evidenceas well as all inferences drawn therefrom must be read in a light mostfavorable to the party opposing the motion." Kochins v. Linden-Alimak,Inc., 799 F.2d 1128, 1133 (6th Cir. 1986); see also Matsushita Elec.Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

III. Analysis

Carriers makes two arguments in its motion for summary judgmentregarding Plaintiffs' claim that Plaintiff Names is covered by aninsurance policy held by Carriers. First, Carriers contends that it doesnot carry UM insurance coverage under its general commercial liabilityinsurance policy because, pursuant to Tennessee law, it validly rejectedsuch coverage by a signed, written, rejection form. (M.S. Carriers,Inc.'s Mem. in Supp. of Not. for Summ. Judg., p. 2.) Second, Carriersargues that Plaintiff Names did not have UM insurance coverage under anyother insurance policy owned by Carriers. Id. at 3.

Plaintiffs respond that the policy referred to by Carriers as generalcommercial liability insurance, is actually excess or umbrellainsurance. (Pl.'s Resp. to Def. M.S. Carriers Inc.'s Not. for Summ.Judg., ¶ 1.) Plaintiffs do not contest that Carriers attempted towaive UM coverage under that policy, but argue that under the terms ofthe hauling agreement, Carriers did not have "the right to bind the other(plaintiff) by contract, oral or written, express or implied, or otherwise. . ." (Pl.'s Mem. in Resp. to Def. M.S. Carriers Inc.'s Not. for Summ.Judg., p. 5-6.) Plaintiffs argue, in the alternative, that Carriers isself insured, "with a $1, 000, 000.00 liability limit." (Pl.'s Resp. toDef. M.S. Carriers Inc.'s Not. for Summ. Judg., ¶¶ 2, 3.) BecausePlaintiff Maines did not execute a waiver for UM coverage as is requiredunder Tennessee law, Plaintiffs argue, Carriers is the insurer "for the$1, 000, 000.00 uninsured motorist coverage available to" Plaintiffs.Id. at ¶¶ 4, 5.

Under Tennessee law, "[e]very automobile liability insurance policydelivered, issued for delivery or renewed in this state . . . shallinclude uninsured motorist coverage . . ." Tenn. Code Ann. §56-7-1201(a). The State permits a named insured, however, to reject inwriting such coverage completely or to select lower limits of suchcoverage. Tenn. Code Ann. § 56-7-1201(a)(2).

In this case, Carriers was insured by a general commercial liabilityinsurance policy issued by The Insurance Company of the State ofPennsylvania. (Aff. of Lisa Ayotte, ¶ 3.) Although Carriers was

giventhe option of accepting UM coverage, it rejected such coverage inwriting. (Aff. of Lisa Ayotte, ¶¶ 4, 5; Exh. A; Exh. B.) It is clear,therefore, that Carriers validly rejected UM coverage under the insurancepolicy issued by The Insurance Company of the State of Pennsylvania.

Plaintiffs argue that even if the Court finds the rejection of UMcoverage under that policy to be valid, Plaintiff Names was not bound bythat rejection. specifically, Plaintiffs point to a Contract HaulingAgreement, and assert that in order to bind Plaintiff Maines bycontract, Carriers needed to have specifically provided authority. (Pl.sNem. in Resp. to Def. N.S. Carriers Inc.'s Mot. for Summ. Judg., p.4-5.)

The Court need not address the terms of the Hauling Agreement becausePlaintiffs' argument is incorrect under Tennessee law. "Any documentsigned by the named insured or legal representative which initiallyrejects [uninsured motorist coverage] shall be binding upon every insuredto whom such policy applies . . . Tenn. Code Ann. § 56-7-1201(a)(2).In construing this section of the Tennesse Code, the Supreme Court ofTennessee determined that the "rights of an additional or omnibus insuredcan rise no higher than, but are clearly controlled by, the choices andselections of coverage made by the named insured . . ." Burns v. AetnaCasualty & Surety Co., 741 S.W.2d 318, 323 (Tenn. 1987). Therefore,despite Plaintiffs' protestations to the contrary, Plaintiff Names, as anadditional or omnibus insured of the named insurer, Carriers, was boundby Carriers' rejection of UM coverage under the insurance policy issuedby The Insurance Company of the State of Pennsylvania.

Carriers argues next that it is not required to provide UM coveragewith respectto its self-insured retention. Under Tennessee law, as was set forthabove, every "automobile liability insurance policy" issued in the Statemust provide UM coverage. Tenn. Code. Ann. § 56-7-1201(a). Theinsurance policy issued by The Insurance Company of the State ofPennsylvania provided coverage for liability claims in excess of onemillion dollars ($1, 000, 000), while Carriers had a self-insuredretention of up to one million dollars ($1, 000, 000) per occurrence.(N.S. Carriers, Inc.'s Reply to Pl.'s Resp. to Not. for Summ. Judg.,Exh. A, E.) The issue is whether the self-insured retention held byCarriers is an automobile liability insurance policy, making it subjectto the provisions of Section 56-7-1201 of the Tennessee Code.

Unfortunately, no Tennessee court has addressed the issue of whether aself-insured retention is subject to the UM coverage requirement setforth in Section 56-7-1201 of the Tennessee Code. Carriers citesdecisions from numerous other jurisdictions with similar statutorylanguage as persuasive authority for its contention that a self-insuredretention is not governed by Section 56-7-1201. The majority of thosedecisions hold that self insurance is not an "automobile liabilityinsurance policy." See e.g. O'Sullivan v. Salvation Army,147 Cal.Rptr. 729, 731-32 (Cal. Ct. App. 1978); Hoffman v. Yellow CabCo. of Louisville, 57 S.W.3d 257, 261 (Ky. 2001); Grange Mutual Cas. Co.v. Refiners Transp. & Terminal Corp., 487 N.E.2d 310, 313-14 (Ohio1986). The Court is persuaded by the reasoning set forth in thosedecisions. The Court is also persuaded by Carriers' assertion that thelegal definition of self insurance does not fit within the definition ofa "contract of

insurance" or "motor vehicle liability policy" as setforth in the Tennessee Code. See Blacks' Law Dictionary at 806 (6th ed.1991); c.f. Tenn. Code Ann. §§ 56-7-101(a), 55-12-202(7). Moreover,"To read [a rejection requirement] into the law under the pretext ofpublic policy would be to impose a greater burden on a self-insured thanis imposed on the named insured of an insurance policy." Hoffman, 57S.W.2d at 261.

The Court therefore determines that Carriers' one million dollar ($1,000, 000) self-insured retention is not subject to Section 56-7-1201 ofthe Tennessee Code. As a result, Carriers was not obligated underTennessee law to provide UM coverage as part of its self-insuredretention. With respect to Tennessee, Carriers did not possess any UMcoverage under any insurance policy. (Aff. of Lisa Ayotte, ¶ 6.)

Because there is no genuine issue of material fact that Carriers doesnot possess any UM insurance coverage in the State of Tennessee, theCourt hereby GRANTS summary judgment to Carriers with respect toPlaintiffs' claim of UM insurance coverage.

IV. Conclusion

For the foregoing reasons, the Court GRANTS Carriers' Notion forSummary Judgment. Accordingly, the Court DISMISSES Carriers from thiscase.

1. Under Tennessee law, an "insured intending to rely on [uninsuredmotorist] coverage . . . shall, if any action is instituted against theowner and operator of an uninsured motor vehicle, serve a copy of theprocess upon the insurance company issuing the policy in the mannerprescribed by law, as though such insurance company were a partydefendant. Such company shall thereafter have the right to file pleadingsand take other action allowable by law in the name of the owner andoperator of the uninsured motor vehicle or it its own name . . ." Tenn.Code Ann. § 56-7-1206(a).

In this action, because Plaintiffs contend that Defendants Ellis andNunley are uninsured motorists and Carriers is either the named insuredon a policy carrying uninsured motorist coverage or the insurer providingsuch coverage, they served carriers with the Complaint. (M.S. Carriers,Inc.'s Mem. in Supp. of its Mot. for Summ. Judg., p. 2.) Having beenserved with the Complaint, Carriers rightfully filed this pleading in itsown name.

The Court notes that it considers itself bound by this section of theTennessee Code because the determination of the nature of the interest ofa party not named in a complaint by a plaintiff appears to be a matter ofsubstantive rather than procedural law. See Erie Railroad v. Tompkins,304 U.S. 64 (1938); Collins v. Hamby, 803 F. Supp. 1302 CE.D. Tenn.1992); Hillis v. Garner, 685 F. Supp. 1038 (E.D. Tenn. 1988).

2. Plaintiffs assert that this Court has jurisdiction over this casepursuant to 28 U.S.C. § 1331 because there is complete diversity ofcitizenship and the amount in controversy exceeds $75, OOOO. (Compl.,¶¶ 1-8.)