COURT OF APPEALS
DECISION
DATED AND FILED

January 8, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2005AP1874 **Cir. Ct. No. 2003CV3**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

KIMBERLY WAMBOLT AND WADE WAMBOLT,

PLAINTIFFS-APPELLANTS,

V.

WEST BEND MUTUAL INSURANCE CO., CHONG AE JONES AND AMERICAN FAMILY MUTUAL INSURANCE CO.,

DEFENDANTS,

ILLINOIS FARMERS INSURANCE CO.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Burnett County: MICHAEL J. GABLEMAN, Judge. *Reversed and cause remanded.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Kimberly and Wade Wambolt appeal a summary judgment dismissing their action against Illinois Farmers Insurance Company (Farmers) in which the Wambolts allege underinsured motorist (UIM) coverage for injuries Kimberly suffered in a traffic accident. The trial court initially denied Farmers' motion for summary judgment, concluding that the plain language of the policy created primary coverage and UIM coverage on a pro rata basis. On reconsideration, the court concluded that a portion of the Minnesota no fault insurance law applies and mandates only excess UIM coverage. Because the amount of coverage available under the Illinois Farmers' policy was the same as the amount available from primary insurers, the court concluded that the Wambolts have no viable claim against Illinois Farmers. We reverse the judgment and remand because we conclude Wisconsin law should be applied and the plain language of the policy should be enforced.

¶2 The accident occurred in Wisconsin when a vehicle in which Wambolt was a passenger was struck from behind by a vehicle driven by Chong Ae Jones, a Wisconsin resident. The vehicle Wambolt occupied was owned by Connie Hunt and operated by Denell Belle-Isle, a Minnesota resident insured by Farmers. The Wambolts pursued UIM coverage under policies issued to Hunt, Belle-Isle and Wambolt's policy with West Bend Mutual Insurance. Each of the three policies provides $100,000 UIM coverage per person. The Wambolts settled their claims with the other insurers.

¶3 Illinois Farmers does not challenge the trial court's ruling that the plain language of its policy creates primary coverage on a pro rata basis. If Wisconsin law applies, the Wambolts can recover because our goal is to give effect to the intent of the parties as expressed in the language of the insurance

policy. *See* ***Folkman v. Quamme***, 2003 WI 116, ¶12, 264 Wis. 2d 617, 665 N.W.2d 857.

¶4 Farmers argues Wambolt agreed Minnesota law would apply. That argument overstates the concession. The Wambolts' attorney agreed Minnesota law would apply "in regard to interpretation and construction of the Illinois Farmers' policy." The Wambolts' concession was only that Minnesota law would be used to interpret the Farmers' policy, an issue on which the Wambolts prevailed. The Wambolts never conceded that the Minnesota no fault insurance law could be used to extinguish benefits unambiguously granted by the policy or that Minnesota law would determine the priority of coverage.

¶5 Applying the factors set out in ***Drinkwater v. American Family Mut. Ins. Co.***, 2006 WI 56, ¶40, 290 Wis. 2d 642, 714 N.W.2d 568, we conclude Wisconsin law should apply. The factors are:

(1) Predictability of results;

(2) Maintenance of interstate and international order;

(3) Simplification of the judicial task;

(4) Advancement of the forum's governmental interests; and

(5) Application of the better rule of law.

Predictability of results deals with the parties' expectations. ***Id.***, ¶46. While the Farmers policy was issued in Minnesota to a Minnesota resident, the parties to the contract should have realized that Minnesota drivers would be involved in traffic accidents in other states. When an accident occurs in Wisconsin involving an underinsured Wisconsin driver, the victim of a tort could reasonably expect Wisconsin law to determine whether the plain language of an insurance policy is

enforceable. Farmers is in a superior position to calculate the risks associated with the possibility that another state's law will apply.

¶6 Maintenance of interstate order is not implicated by this decision. This factor requires a jurisdiction that is minimally concerned to defer to a jurisdiction that is substantially concerned. ***Id.***, ¶50. Wisconsin is substantially concerned because the tort occurred in this state, the underinsured driver was a Wisconsin resident, and two of three other insurance policies were issued and delivered in Wisconsin. Application of Wisconsin law would not impede state-to-state commerce and it is highly unlikely that travelers would change their itinerary to avoid falling under Wisconsin law. *See* ***id.***, ¶¶51-52.

¶7 Simplification of the judicial task is accomplished by application of Wisconsin law. A judicial task is rarely simplified when lawyers and judges must apply foreign law. ***Id.***, ¶53.

¶8 Advancement of the forum's governmental interest is also accomplished by applying Wisconsin law. Wisconsin has an interest in fully compensating tort victims for injuries that occurred in this state.

¶9 Finally, we conclude that application of the better rule of law supports this decision. Assuming, without so holding, that the Minnesota no fault law overrules coverage unambiguously provided to the insured, we conclude the better rule of law is to enforce contracts that provide insurance coverage and compensate tort victims.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).