

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DIANE L. KURTZ,)
) C.A. No. 01C-07-012 JTV
Plaintiff,)
)
v.)
)
ALLEN J. KURTZ,)
)
Defendant.)

Submitted: January 4, 2002
Decided: January 15, 2002
Order Filed February 8, 2002

William D. Fletcher, Jr., Esq., Dover, Delaware. Attorney for Plaintiff.

Jeffrey Young, Esq., Dover, Delaware. Attorney for Defendant.

Collin M. Shalk, Esq., Wilmington, Delaware. Attorney for Intervener.

Upon Consideration of
Motion to Intervene
GRANTED in Part

VAUGHN, Resident Judge

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ORDER

Upon consideration of the motion to intervene filed by State Farm Insurance Company (“State Farm”), the plaintiff’s and defendant’s opposition thereto, and the record of the case, it appears that:

1. The plaintiff, Diane L. Kurtz, was injured when a car occupied by her and her husband, Allen J. Kurtz, collided with a tree. She alleges that her husband was driving and that he negligently ran off the road and hit the tree. Mr. Kurtz admits that he was driving the vehicle. The defendant is represented by counsel provided for him by State Farm as required by the liability policy covering the automobile.

2. State Farm has filed a motion through its own attorney to intervene in the action as a party pursuant to Civil Rule 24(b)¹. In support of its motion, State Farm contends that there is evidence that the injured party, the plaintiff, was driving the vehicle when the accident occurred, not the defendant; that there is also evidence that the plaintiff and defendant were in the process of switching places from the husband driving and the wife being the passenger to the wife driving and the husband being the passenger, while the vehicle was in motion just before it ran off the road; that because of this evidence there are, in fact, issues regarding the liability of its insured, the defendant, for his wife’s injuries, and comparative negligence on her part; and that these issues will be not be adequately addressed if it is not permitted to intervene.

3. The plaintiff and the defendant contend, in response, that it is well-settled law that issues of liability insurance are not litigated as part of a liability claim; that if State Farm believes it has a basis for denying coverage to its insured, Mr. Kurtz, it

¹ Rule 24(b) allows for permissive intervention where a movant’s claim or defense and the main action have a question of law or fact in common.

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should do so through a separate declaratory judgment action; and that intervention would unfairly disrupt and delay the progress of this case.

4. Both the plaintiff and the defendant have made sworn statements that the husband was driving. Counsel for the plaintiff and defendant have indicated that at trial the husband's negligence and proximate cause will not be disputed and the trial will focus on the nature and extent of the plaintiff's injuries. The Delaware Paramedic Report prepared by the paramedic who responded to the accident, however, states that the plaintiff was the "unrestrained driver" of the vehicle. Apparently this conclusion was based upon an inference drawn by the paramedic based upon the fact that the wife was removed from the driver's side. In addition, the accident report by the investigating state trooper indicates that the defendant told the trooper that he, the defendant, was driving, but, because he had been drinking and came up behind a state trooper (not the investigating officer), he started to switch places with his wife while the automobile was in motion, and that while they were in the process of switching the car went out of control and hit a tree. The defendant pled guilty to reckless driving. Neither the plaintiff nor the defendant plan to present to the jury the paramedic's evidence or the evidence of the defendant's statement to the officer; and neither party apparently plans to inquire into those matters in the examination or cross-examination of either the plaintiff and defendant.

5. The trial court and jury have an obligation to determine the true facts, and any jury verdict for or against a party should rest upon a sound evidentiary basis.² In this case, if State Farm's motion is not granted, known, documented evidence

² *Williams v. Williams*, Del. Supr., 369 A.2d 669 (1976)

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relevant to the defendant's liability for the plaintiff's injuries will apparently not be presented to the trier of fact in this proceeding. Under these circumstances, I am persuaded that the motion should be granted. However, at this time the motion is granted only as to the liability issues which State Farm raises in its motion.

7. Trial will go forward on the scheduled trial date, limited, however, to liability issues only. The fact that the jury will be aware of State Farm's presence can be addressed through appropriate jury instructions. If the jury renders a verdict which entitles the plaintiff to an award of damages, those damages can be determined by a second jury at a subsequent hearing. This process will not unduly delay a final determination of the plaintiff's case.

IT IS SO ORDERED.

Resident Judge

oc: Prothonotary
cc: Counsel
File