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Summary of Progressive Gulf Ins. Co. v. Faehnrich, 130 Nev. Adv. Op. 19

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Progressive Gulf Ins. Co. v. Faehnrich, 130 Nev. Adv. Op. 19 (March 27, 2014)[1]

CONTRACTS: CHOICE OF LAW

Summary

The Court determined whether Nevada public policy precludes giving effect to a choice-of-law provision in an insurance contract made by parties residing outside Nevada that would deny Nevada residents injured in Nevada recovery under NRS 485.3091.

Disposition

Giving effect to a choice-of-law provision in an insurance policy made and delivered outside of Nevada that precludes recovery under NRS 485.3091 by a Nevada resident injured in Nevada does not violate Nevada's public policy.

Factual and Procedural History

The Faehnrichs obtained and renewed an automobile liability insurance policy with Progressive while residing in Mississippi. The policy's choice-of-law provision provided it would be governed under Mississippi law. The day after moving to Nevada, Toni Faehnrich, rolled the insured vehicle in a single-car accident with her two sons in the vehicle. Their father, Randall, filed claims for his sons against Progressive who denied the claims under the policy's household exclusion clause that eliminated coverage for family members.

Progressive then filed suit in Federal district court asking for declaratory judgment that the policy's Mississippi choice-of-law provision precluded the minimum coverage required under NRS 485.3091. The district court denied summary judgment for Progressive holding that Nevada's public policy precluded enforcing the choice-of-law provision. Progressive appealed and the Ninth Circuit certified above question to the Court.

Discussion

Although Nevada tends to follow the Restatement (Second) of Conflict of Laws for insurance contracts,[2] Nevada also allows parties broad discretion to choose the governing law of an agreement as long as the situs chosen has a substantial relationship to the transaction and the agreement is not contrary to public policy.[3]

Because the parties chose Mississippi law in good faith while residing in Mississippi and not to evade Nevada law, the choice-of-law provision is valid, absent contrary public policy. Public policy requires rejection of a chosen law only the state asserting a public policy interest has a materially greater interest on the particular issue than the state whose law was chosen.[4] The

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[2] The Restatement denies effect to choice-of-law provisions that afford less protection than the otherwise applicable law. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 192, cmt. e (1971); Daniels v. Nat'l Home Life Assurance Co., 103 Nev. 674, 677–78, 747 P.2d 897, 899–900 (1987).

[3] Ferdie Sievers & Lake Tahoe Land Co. v Diversified Mortgage Investors, 95 Nev. 811, 815, 603 P.2d 273 (1979).

[4] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 187, cmt. g (1971).

Court previously considered a similar matter and applied the majority rule to uphold a California choice-of-law provision in a policy issued in California to a California resident who paid for the premiums in California on a vehicle maintained in California and only the accident occurred in Nevada.[5] The Faehnrichs argued that the majority rule should not apply because it would leave the injured children with no recovery from any source.[6] The Court rejected the *Williams* suggestion as *obiter dictum*.

The Court considered the Faehnrichs' Nevada residency, a binding finding under the Circuit Court's certification despite its short duration, a more relevant distinction from *Sotirakis* and turned to Nevada statutes to glean the legislature's intent on whether public policy should be applied to this matter. Although findings stated the Faehnrichs became Nevada residents on the day prior to the accident, the compulsory insurance law,[7] and in turn the minimum coverage law,[8] do not apply until a vehicle must be registered in Nevada under NRS 482.385(3). The applicable version of NRS 482.385(3) did not require registration of the vehicle until the former nonresident either 1) attains thirty days of residency or 2) obtains a Nevada driver's license. Because Toni moved to Nevada only one day prior and still possessed a Mississippi license, the Court could not conclusively hold that these statutes applied to the policy and, therefore, held they do not technically control.

Moreover, in 1990, the legislature enacted NRS 687B.147 that permits household exclusions in Nevada insurance policies. This statute changed Nevada to a state that expressly permits household exclusions from one that invalidates them. As a result Nevada public policy does not preclude a choice-of-law provision giving effect to a household exclusion clause governed by another state's law.

Conclusion

Because the parties chose Mississippi law in good faith while residing in Mississippi and not to evade Nevada law, the choice-of-law provision is valid absent contrary public policy.

Because the Faehnrichs where not yet obligated to register the vehicle in Nevada, the mandatory insurance statute did not yet apply. Further, Nevada's statutes allow for household exclusion clauses in insurance so applying another Mississippi law to the household exclusion clause in the Faehnrichs' policy did not violate Nevada's public policy.

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[5] Sotirakis v. USAA, 106 Nev. 123, 126, 787 P.2d 788, 790–91 (1990).

[6] *Williams v. USAA*, 109 Nev. 333, 335, 849 P.2d 265, 266–67 (1993) (dictum) (Nevada public policy applies "only where other states' law would preclude **all** recovery.").

[7] Nev. Rev. Stat. § 485.185 (2013).

[8] Nev. Rev. Stat. § 485.3091(1) (2013).