Unpublished Opinion

Doug Schipper, et al., Appellants,
v.
Dahl Trucking, Inc., et al., Respondents.

No. A06-666.

Court of Appeals of Minnesota.

Filed June 26, 2007.

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

Appeal from the District Court, Martin County, File No. 46-CV-05-821.

Amy J. Doll, Fluegel, Helseth, McLaughlin, Anderson & Brutlag, (for appellants)

Charles J. Noel, Jennifer Kjos Fackler, (for respondents)

Considered and decided by Shumaker, Presiding Judge; Kalitowski, Judge; and Willis, Judge.

UNPUBLISHED OPINION

WILLIS, Judge.

Appellants challenge the district court's determination on summary judgment that an exculpatory clause in a contract between appellant Doug Schipper and respondent Dahl Trucking is enforceable. Because we conclude that the exculpatory clause is enforceable, we affirm in part. But because the district court did not explain the legal theory under which it determined that the negligence claim against respondent Chad Jongbloedt was waived, and because the district court did not perform a choice-of-law analysis to determine whether to apply Iowa or Minnesota law to the loss-of-consortium claim, we remand in part.

FACTS

Appellants Doug and Mary Schipper are residents of Murray County. Doug Schipper (Schipper) is the owner of Midwest Cargo, which owns and operates a truck. On May 13, 2003, Schipper entered into an agreement with respondent Dahl Trucking, Inc., an Iowa corporation that has its headquarters in Minnesota, to provide freight transportation. The contract contains the following provision:

9. THE CONTRACTOR EXPRESSLY WAIVES ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION AGAINST CARRIER AS A RESULT OF THE DEATH OR INJURY OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES IN CONNECTION WITH THE PERFORMANCE OF CONTRACTOR OR THE CONTRACT AND FURTHER AGREES TO HOLD CARRIER HARMLESS AND INDEMNIFY CARRIER FORM [sic] SUCH CLAIMS.

The contract defines the "carrier" as Dahl Trucking and the "contractor" as "Doug Schipper of Midwest Cargo." Under the contract, Schipper received 75% of the gross revenue generated as a result of the hauling services that he provided.

The contract also requires that Schipper maintain business-liability insurance and stipulates that "[a]ny collision, physical damage, or comprehensive insurance on the Equipment furnished by [Schipper] shall be the sole responsibility of [Schipper]" and that Dahl Trucking "shall in no way be liable for any damage which may occur to [Schipper's] Equipment." The contract provides that it "shall be governed by the Laws of the State of Iowa and Minnesota, both as to interpretation and performance."

On July 21, 2003, Schipper and respondent Chad Jongbloedt, an employee of Dahl Trucking

who is a resident of Minnesota, both were hauling asphalt along highway 218 in Iowa. Schipper was driving his truck, while Jongbloedt was driving a truck owned by Dahl Trucking. While traveling northbound, Jongbloedt rounded a curve and saw a vehicle stopped in front of him. Jongbloedt attempted to stop, but his trailer "jackknifed" and collided with Schipper's truck, which was traveling in the southbound lane. As a result, Schipper suffered personal injuries, and his truck was damaged.

Appellants brought this negligence action against Dahl Trucking and Jongbloedt, seeking compensation for Schipper's personal injuries, the damage to Schipper's truck, and Mary Schipper's loss of consortium. The parties filed cross-motions for summary judgment, and the district court granted respondents' motion.

Relying on this court's decision in Bogatzki v. Hoffman, 430 N.W.2d 841 (Minn. App. 1988), review denied (Minn. Dec. 21, 1988), the district court determined that the exculpatory clause is unambiguous because it applies to "any claim, demand, action, or cause of action" and, therefore, necessarily applies to Schipper's negligence claim against Dahl Trucking.

The district court also determined that Schipper waived any claim against Jongbloedt, reasoning that by including the exculpatory clause in its contract, "Dahl Trucking meant to absolve itself of liability based on its own conduct as well as the conduct of others" and that because Dahl Trucking can act only through its employees, the exculpatory clause applies to claims against those employees. Finally, the district court dismissed Mary Schipper's loss-of-consortium claim because it determined that under Minnesota law, loss of consortium is a derivative claim, which cannot survive dismissal of the underlying claim. This appeal follows.

DECISION

I.

Appellants assert that the district court erred by determining that the exculpatory clause is enforceable, arguing that the clause is ambiguous and that it contravenes public policy. When reviewing a grant of summary judgment, this court examines the record to determine (1) whether there are any issues of genuine material fact and (2) whether the district court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990). We must review the record in a light most favorable to the party against whom summary judgment was granted. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993).

The contract at issue contains a choice-of-law provision that provides that the contract "shall be governed by the Laws of the State of Iowa and Minnesota." Minnesota courts generally enforce contractual choice-of-law provisions. Milliken & Co. v. Eagle Packaging Co., 295 N.W.2d 377, 380 n.1 (Minn. 1980). When there is more than one possible source of law that may be applied, a choice-of-law analysis must be performed only if there is an actual conflict in the law, that is, if the conflict is outcome-determinative. Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co., 604 N.W.2d 91, 93-94 (Minn. 2000). Here, the district court reviewed the enforceability of the exculpatory clause under Minnesota law, and the parties do not argue that Minnesota and Iowa law are in conflict with regard to the issue. We will therefore consider the enforceability of the exculpatory clause under Minnesota law. See Davis by Davis v. Outboard Marine Corp., 415 N.W.2d 719, 723 (Minn. App. 1987) (noting that in the absence of a conflict, a forum state may apply its own law), review denied (Minn. Jan. 28, 1988).

It is well settled that contracting parties may protect themselves from liability through exculpatory clauses, although such clauses are not favored in the law and are strictly construed against the benefiting party. Anderson v. McOskar Enters., Inc., 712 N.W.2d 796, 799-800 (Minn. App. 2006). Exculpatory clauses are enforceable if they (1) are not ambiguous; (2) do not purport to protect against intentional, willful, and wanton acts; and (3) do not contravene public policy. Id. at 800.

Appellants contend first that the exculpatory clause here is ambiguous. Whether a clause is ambiguous is a question of law, which we review de novo. See Blackburn, Nickels & Smith, Inc. v. Erickson, 366 N.W.2d 640, 643 (Minn. App. 1985) (discussing construction of contracts), review denied (Minn. June 24, 1985). A clause is ambiguous if it is reasonably subject to more than one interpretation. Beehner v. Cragun Corp., 636 N.W.2d 821, 827 (Minn. App. 2001); see also Anderson, 712 N.W.2d at 800 (noting that alternative constructions of an exculpatory clause must be reasonable to establish ambiguity).

Appellants argue that the exculpatory clause is ambiguous because it does not specifically state that claims against Dahl Trucking that arise from Dahl Trucking's own negligence are waived. Appellants rely on the supreme court's recent decision in Yang v. Voyagaire Houseboats, Inc., in which the lessee of a houseboat signed a rental contract that contained an exculpatory clause. 701 N.W.2d 783, 786-87 (Minn. 2005). The supreme court held that the clause was unenforceable because the houseboat-leasing company provided a service similar to that provided by an innkeeper and because an innkeeper cannot enforce an exculpatory clause, as a matter of public policy, neither could the houseboat-leasing company. Id. at 790-91. But the supreme court did not address the issue of whether the exculpatory clause was ambiguous; it based its determination that the clause was unenforceable entirely on public policy. See id. at 789-91. We conclude therefore that Yang does not control our determination of whether this exculpatory clause is ambiguous.1

Schipper purported to waive "any claim, demand, action, or cause of action" against Dahl Trucking that arises "in connection with the performance of contractor or the contract." This clause necessarily includes a negligence claim against Dahl Trucking because as long as the claim arises from "the performance of contractor or the contract," Schipper has waived that claim. See Otis Elevator Co. v. Don Stodola's Well Drilling Co., 372 N.W.2d 77, 78 (Minn. App. 1985) (concluding that the lack of "an explicit reference to negligence" does not make an exculpatory clause ambiguous), review denied (Minn. Oct. 11, 1985). We agree with the district court's conclusion that the exculpatory clause is not ambiguous and that it applies to claims based on Dahl Trucking's negligence.

Appellants argue also that the clause is unenforceable because it contravenes public policy. In determining whether a clause violates public policy, we consider (1) whether there is a disparity in the parties' bargaining power such that one party lacks the ability to negotiate the terms, or the elimination, of the exculpatory clause and (2) the type of service that is provided by the benefiting party. Schlobohm v. Spa Petite, Inc., 326 N.W.2d 920, 923 (Minn. 1982). There is a disparity of bargaining power when (1) a service is necessary or is unavailable elsewhere; (2) there is a compulsion to participate; and (3) there is no opportunity to negotiate. Beehner, 636 N.W.2d at 827.

Appellants argue that the "relationship of employer and independent contractor created a disparity in bargaining power," relying on this court's decisions in Bunia v. Knight Ridder, 544 N.W.2d 60 (Minn. App. 1996), and Walton v. Fujita Tourist Enters. Co., 380 N.W.2d 198 (Minn. App. 1986), review denied (Minn. Mar. 21, 1986).

In Bunia, this court determined that an exculpatory clause was unenforceable on the ground that there was a disparity in bargaining power between Bunia, an independent contractor who delivered newspapers, and the newspaper company because the relationship between the parties was "comparable to . . . that of most employers and employees." 544 N.W.2d at 63. In reaching that conclusion, this court noted that exculpatory clauses in contracts between employees and employers are generally held to violate public policy because of "the economic necessity which forces the employee to accept the employer's terms." Id. (quoting Restatement (Second) of Torts § 496B cmt. f (1995)). In Walton, this court held that there was a disparity of bargaining power between a travel agent who

was injured while on a "familiarization trip" to Japan and an airline because the airline's familiarization trips to Japan were a "practical necessity" for the travel agent because "participation in [familiarization] trips is necessary for the business success of an agent" and the airline's size "gave it a virtual monopoly on such trips" from the Minneapolis area. 380 N.W.2d at 201.

We conclude that there is no evidence of a disparity of bargaining power here. Unlike the plaintiff in Bunia, Schipper was not in a circumstance that was "nearly identical to that of an employee," nor is this a case involving a relationship similar to that between a newspaper carrier and a "major newspaper publisher." 544 N.W.2d at 63. Indeed, under the contract, Schipper received 75% of the gross revenue that was generated from the hauling services that he provided for Dahl Trucking. Similarly, unlike the circumstance in Walton, where the airline had a "virtual monopoly" on familiarization trips to Japan from the Minneapolis area, there is no evidence here that Dahl Trucking was the only freight hauler that Schipper could contract with. 380 N.W.2d at 201.

Appellants argue also that the exculpatory clause violates public policy because Dahl Trucking provides a "public and essential" service. Public policy bars a service provider from enforcing an exculpatory clause if (1) the service provided is subject to public regulation or (2) the service provided is of practical necessity to a portion of the public. Beehner, 636 N.W.2d at 828. Appellants argue that the clause is unenforceable because Dahl Trucking is subject to regulation. But this court has held that the fact that a business is regulated is not alone sufficient to establish that the business provides a "necessary or public service." See Malecha v. St. Croix Valley Skydiving Club, Inc., 392 N.W.2d 727, 730-31 (Minn. App. 1986) (noting that the fact that the skydiving company was regulated did not void an exculpatory agreement when the service provided by the skydiving company was qualitatively different from the services provided by businesses that were found to be necessary or public), review denied (Minn. Oct. 29, 1986). And appellants have not shown that Dahl Trucking provides a service that is a practical necessity. We therefore conclude that the exculpatory clause is not void on public-policy grounds.

Finally, the district court determined that Schipper waived his negligence claim against Jongbloedt because, by including the exculpatory clause in the contract, "Dahl Trucking meant to absolve itself of liability based on its own conduct as well as the conduct of others." The district court reasoned that because Dahl Trucking can only act through its employees, the exculpatory clause necessarily applies to claims against those employees. The district court cited no authority for this conclusion. And we note that appellants' complaint seeks damages against Dahl Trucking and against Jongbloedt individually, not as an agent of Dahl Trucking for the purpose of establishing Dahl Trucking's liability under a respondeat-superior theory. We also note that the exculpatory clause in the contract provides that Schipper waives all claims against Dahl Trucking, not against its employees. See Anderson, 712 N.W.2d at 800 (noting that exculpatory clauses are strictly construed). Because we cannot determine on what basis the district court concluded that Schipper waived his negligence claim against Jongbloedt, we remand for clarification or reconsideration of that issue.

II.

Appellants argue next that the district court erred when it applied Minnesota law to Mary Schipper's loss-of-consortium claim. The district court's resolution of a choice-of-law issue is a question of law, which we review de novo. Danielson v. Nat'l Supply Co., 670 N.W.2d 1, 4 (Minn. App. 2003), review denied (Minn. Dec. 16, 2003). There are facts here that could support the application of either Minnesota or Iowa law to the loss-of-consortium claim. Thus, to determine what law to apply, a court must first determine if the applicable states' laws are actually in conflict so that resolution of the conflict would determine the outcome of the

case.2 See Jepson v. Gen. Cas. Co. of Wis., 513 N.W.2d 467, 469 (Minn. 1994). Second, once the court has concluded that the laws are in conflict, it must determine whether there are any constitutional barriers to applying one state's law rather than another's. See id. (describing the constitutionality test as a determination of whether there are sufficient contacts between a state and the parties that applying the law of that state would not be arbitrary or fundamentally unfair). And third, assuming that the laws are in conflict and that there is no constitutional barrier, the court must apply a five-factor analysis to determine which state's law to apply. Id. at 470. Specifically, courts are to consider (1) the predictability of result; (2) the maintenance of interstate order; (3) the simplification of the judicial task; (4) the advancement of the forum state's interest; and (5) the application of the better rule of law. Nodak, 604 N.W.2d at 94.

The supreme court has stated that these factors are not intended to be applied mechanically but rather are "to prompt courts" to carefully consider and explain choice-of-law determinations. Jepson, 513 N.W.2d at 470; see also Schwartz v. Consol. Freightways Corp. of Del., 300 Minn. 487, 491, 221 N.W.2d 665, 668 (1974) (noting that a choice-of-law determination takes into account policy and factual considerations of each case). But aside from the statement that the "State of Iowa has no interest in [appellants'] marriage," the record lacks an explanation of the district court's rationale for its decision to apply Minnesota law to Mary Schipper's loss-of-consortium claim. Because a choice-of-law analysis is dependent on the particular facts of a case, we remand for such an analysis by the district court.

In summary, we affirm the district court's determination that the exculpatory clause in the parties' contract is enforceable. But because the district court did not explain the legal theory under which it determined that Schipper waived his negligence claim against Jongbloedt, individually, and because the district court failed to perform the required choice-of-law analysis of Mary Schipper's loss-of-consortium claim, we remand for further proceedings consistent with this opinion. We express no opinion as to the merits of appellants' remaining claims.

Affirmed in part and remanded.

Notes:

1. We note that the provision at issue here also contains an indemnity clause, in which Schipper agreed to hold Dahl Trucking harmless from and indemnify Dahl Trucking against "any claim, demand, action, or cause of action" arising from the performance of the contract. On appeal, appellants argue only that the district court erred by determining that Schipper waived his negligence claims, and there is no claim against Schipper under the indemnity clause. Thus, because the parties have not put the enforceability of the indemnity clause at issue, we do not address it.

2. We note that although in Minnesota a loss-of-consortium claim is derivative, it appears that a loss-of-consortium claim may not be derivative in Iowa. Compare Thill v. Modern Erecting Co., 284 Minn. 508, 513, 170 N.W.2d 865, 869 (1969) (holding that a loss-of-consortium claim is derivative), with Huber v. Hovey, 501 N.W.2d 53, 57 (Iowa 1993) (concluding that although husband signed a release waiving a negligence claim, wife could still bring a loss-of-consortium claim arising from the act of negligence, regardless of whether the husband had waived his own claim).
