

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-361

FEBRUARY TERM, 2002

James Gabaree and Traci Trudo	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
Peerless Insurance Company	}	DOCKET NO. S1043-99 CnC
	}	
	}	Trial Judge: David A. Jenkins
	}	
	}	

In the above-entitled cause, the Clerk will enter:

The single issue on appeal in this action for negligent misrepresentation and violation of an insurance policy's implied covenant of good faith and fair dealing is whether the trial court committed reversible error by granting the defendant insurer's unopposed motion for summary judgment without fact findings or explanation grounding the court's decision. We affirm.

Plaintiffs were injured after the car in which they were riding collided with a horse that had escaped from a neighboring farm. The car was insured by defendant. Plaintiffs notified defendant of the accident, and defendant's agent suggested that they seek recovery for their injuries from the horse's owner because plaintiffs indicated that they were not at fault for the accident. The agent told plaintiffs that defendant would process their claims once the matter was resolved with the horse's owner. Plaintiffs thereafter pursued their claim through litigation and lost.

After plaintiffs contacted defendant's agent to advise her of the outcome of the suit against the horse's owner, defendant paid plaintiffs' medical expenses in accordance with the insurance policy. Defendant had already paid for the damage to the vehicle in which plaintiffs were riding. Defendant denied coverage under the liability portion of the policy because the plaintiff driver was not responsible for the accident. Consequently, plaintiffs instituted the present suit against the insurer for negligent misrepresentation and violation of the implied covenant of good faith and fair dealing.

Before substantial discovery had taken place, defendant moved for summary judgment, which plaintiffs opposed. The court denied the motion. Defendant later took plaintiffs' depositions and renewed its motion for summary judgment. Plaintiffs did not respond to that second motion. Approximately eight weeks after defendant's second motion for summary judgment, the court entered summary judgment for defendant and directed defendant to submit a proposed judgment order. After the court rejected defendant's initial proposed order, defendant submitted a judgment order consistent with V.R.C.P. 84, Form 32, which the judge signed on July 6, 2001. The order states simply:

On April 24, 2001, Defendant moved for summary judgment on all claims asserted by Plaintiffs in this action. Plaintiffs did not oppose the motion. After due consideration, the Court, Honorable David A. Jenkins presiding, granted Defendant's motion by Order dated June 18, 2001.

It is ORDERED and ADJUDGED that the plaintiffs take nothing and that this action is dismissed on the merits.

Plaintiffs timely appealed the judgment to this Court.

It is important to first point out what plaintiffs do not argue in this case. They do not argue that summary judgment was improper because material factual disputes existed requiring a trial on the merits of plaintiffs' claims. Nor do plaintiffs argue that defendant was not entitled to judgment as a matter of law based on the undisputed facts. Plaintiffs' argument is solely a procedural one, which contends that the "if appropriate" language contained in V.R.C.P. 56(e) requires the trial court to provide an explanation and fact findings as to why summary judgment is appropriate. We disagree with plaintiffs' interpretation of the rule.

Subsection (e) of V.R.C.P. 56 addresses the form of affidavits which may support a motion for summary judgment. Reporters Notes, V.R.C.P. 56. It also "provides that depositions and answers to interrogatories may be used to supplement or oppose them." *Id.* It states that if the adverse party does not respond to a summary judgment motion by pointing to specific facts in affidavits, interrogatory answers or depositions showing that a genuine issue for trial exists, the court must grant summary judgment "if appropriate." V.R.C.P. 56(e). The standard for determining whether summary judgment is "appropriate" is contained in V.R.C.P. 56(c), however, not V.R.C.P. 56(e). V.R.C.P. 56(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c). Nothing in V.R.C.P. 56(e) requires the court to explain the basis of its decision through fact findings or otherwise.

It is true that we encourage trial courts to identify the undisputed material facts supporting summary judgment, Crosby v. The Great Atlantic & Pacific Tea Co., 143 Vt. 537, 539 (1983), even though fact findings are "ordinarily inconsistent with summary judgment." Berlin Dev. Assocs. v. Dep't of Soc. Welfare, 142 Vt. 107, 110 (1982). The specification of the undisputed facts assists appellate review when a party challenges the underlying merits of the summary judgment order. See Crosby, 143 Vt. at 539 (fact findings on summary judgment facilitates appellate review). While plaintiffs may be correct that the absence of an explanation concerning the appropriateness of the court's summary judgment order in this case leaves us to speculate as to the basis for the court's decision, plaintiffs do not challenge that basis. Accordingly, the lack of fact findings and discussion explaining the rationale for the trial court's decision alone is insufficient to justify reversal of the summary judgment order.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice