

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-CV-01859

Estate of James Alger by Virginia Alger, Administrator v. United Ohio Insurance Co.

Opinion and Order on United Ohio's Motion to Reconsider

This is a UM/UIM insurance dispute between the administrator of decedent's, Mr. Alger's, estate and his former employer's auto insurer, United Ohio Insurance Co. The Court recently denied both parties' summary judgment motions addressing whether UM/UIM coverage was available to Mr. Alger. United Ohio has now filed a motion for reconsideration. It argues that the Court misunderstood Vermont insurance law, conflated policy provisions, constructed unusual and self-contradictory policy interpretations rather than simply giving policy terms their ordinary meaning, and should have granted summary judgment to it because Plaintiff has the ultimate burden of persuasion. The Court presumes familiarity with the parties' summary judgment motions and its decision.

As the Rules of Civil Procedure have no formal standards for motions to reconsider, courts often analyze them under the provisions of Vt. R. Civ. P. R. 59(e), despite the fact that no "judgment" has been entered. *See Drumheller v. Drumheller*, 185 Vt. 417, 432 (2009). Under that rule, a motion to reconsider should not be a vehicle to relitigate matters previously adjudicated by the court or to consider matters not initially raised by the moving party. *Keene Corp. v. Int'l Fid. Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1982). As a result, as the District Court for the District of Vermont has rightly noted:

“The standard for granting [a motion to reconsider] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Latouche v. North Country Union High School Dist.*, 131 F. Supp. 2d 568, 569 (D. Vt. 2001) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)). “[A] motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided.” 131 F. Supp. 2d at 569 *Id.*

While the above precedents inform the Court’s review, as Rule 54(b) provides, the Court retains extremely broad discretion to reconsider its interlocutory orders. Vt. R. Civ. P. 54(b) (interlocutory orders “subject to revision at any time” prior to entry of final judgment); see *Drumheller*, 185 Vt. at 432. A court should not hesitate to revisit a ruling that is shown to have been issued in error. In this instance, however, United Ohio has not convinced the Court that its earlier ruling was incorrect.

In its motion, Plaintiff urged a broad interpretation of the policy, which the Court referred to as the continuity-of-use theory. The Court embraced a more expansive interpretation of the policy but denied Plaintiff’s motion because the facts so far advanced in support of coverage do not entitle Plaintiff to judgment as a matter of law under the Court’s interpretation of the applicable policy provisions.

In so ruling, the Court took care to note as follows: “The parties have filed cross-motions for summary judgment. United Ohio’s statement of undisputed facts is, in fact, almost entirely undisputed by Ms. Alger. Mostly, it simply recites facts already asserted in the complaint. *United Ohio’s motion is not calculated to address the continuity-of-use*

theory clearly presented by Ms. Alger's motion, however. Thus, for purposes of summary judgment procedure, analysis of the continuity-of-use issue arises out of Ms. Alger's motion alone." Opinion and Order on Cross-Motions for Summary Judgment at 10 n.5 (emphasis added).

As a result, contrary to one of the arguments raised in the instant motion, United Ohio's motion for summary judgment did not shift the burden of production to Plaintiff by indicating an absence of evidence in the record in support of Plaintiff's claim. See *Ross v. Times Mirror, Inc.*, 164 Vt. 13, 18 (1995) ("Where the moving party does not bear the burden of persuasion at trial, it may satisfy its burden of production by showing the court that there is an absence of evidence in the record to support the nonmoving party's case. The burden then shifts to the nonmoving party to persuade the court that there is a triable issue of fact." (citations omitted)).

Instead, on the issue that matters, United Ohio was in the position of a non-movant. Nothing in Rule 56 procedure compelled the Court to grant judgment to United Ohio, as a non-movant, simply because Plaintiff has the ultimate burden of persuasion and failed to demonstrate entitled to judgment as a matter of law.

Otherwise, United Ohio's motion for reconsideration cites no controlling decisions or other data that the Court overlooked. It merely seeks to relitigate matters that have already been decided. United's argument that the Court improperly determined that coverage will or will not be available depending exclusively on whether Mr. Alger's auto was used in LPD's business and regardless whether Mr. Alger was the one using it stretches the Court's ruling beyond its limits. The Court's opinion reflects that coverage depends both on whether the auto was being used in LPD's business and on whether Mr.

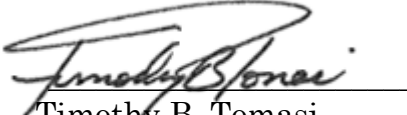
Alger was making that use of the auto. The Court's opinion said: "The proper factual inquiry, stated plainly, is whether Mr. Alger was using his car for LPD business affairs when he was struck and killed." Opinion and Order on Cross-Motions for Summary Judgement at 5 (filed Mar. 27, 2023). United Ohio's arguments to contrary provide no basis for reconsideration.

Similarly, United Ohio's remaining arguments against the Court's interpretation of the applicable policy terms do not persuade the Court that its construction was flawed.

Conclusion

For the foregoing reasons, United Ohio's motion to reconsider is denied.

Electronically signed on Friday, June 23, 2023, pursuant to V.R.E.F. 9(d).


Timothy B. Tomasi
Superior Court Judge