6-23-2003

State Farm Mutl Auto v. Flubacher

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2849

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

v.

CATHERINE FLUBACHER,
Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. No. 01-cr-05012)
District Judge: Honorable Charles R. Weiner

Submitted Under Third Circuit LAR 34.1(a)
May 20, 2003

Before: SCIRICA, *Chief Judge*, NYGAARD and BECKER,
Circuit Judges

(Filed: June 23, 2003)

OPINION

BECKER, *Circuit Judge.*

This is an appeal from an order of the District Court granting summary judgment in favor of State Farm Automobile Insurance Company in its declaratory judgment action

against Catherine Flubacher. State Farm asked the Court to determine that Flubacher, a State Farm policyholder, was bound by her deceased husband's written election of uninsured/underinsured motorist limits in the amount of $15,000 per person/$30,000 per accident, which limits are lower then the limits of bodily injury liability coverage on the policy. The District Court held that she was. We affirm. The facts are well known to the parties and need not be repeated here.

Flubacher's argument is squarely precluded by the decisions in *Nationwide Mutual Insurance Company v. Rosetta Buffetta, Administratrix of the Estate of Francesco Miriello*, 230 F.3d 634 (3d Cir. 2000); *Kimball v. CIGNA*, 660 A.2d 1386 (Pa. Super. 1995); and *Rupert v. Liberty Mutual Insurance Company*, 291 F.3d 243 (3d Cir. 2002). While the opinion writer is flattered that Flubacher's counsel urges that his dissenting opinion in *Rupert* is better reasoned than that of the majority, it remains a dissent, and we are, of course, bound by the majority.

Finally, Flubacher looks to a decision by the Allegheny County Court of Common Pleas, in which the Court, without citation to any cases, held that a wife was not bound by the limited tort election made by her ex-husband. *Kail v. Kalsek*, Case No. GD99-15479 (Allegheny Cty. Ct. of Common Pleas May 31, 2001). Although the facts in *Kail* seem identical to *Buffetta* (the wife was covered but not the named insured on her ex-husband's policy and only became the named insured after her ex-husband was removed from the policy), the Court determined that a new policy was created and the ex-husband's election could not bind the wife. Despite this contradiction, we cannot revisit our conclusion in

Buffetta simply on account of a Court of Common Pleas decision. *See Smith v. Calgon Carbon Corp.*, 917 F.2d 1338, 1341, 1343 (3d Cir. 1990) (holding that we are "required to 'predict the position which [the Pennsylvania Supreme Court] would take in resolving this dispute,'" and "in the absence of a *clear* statement by the Pennsylvania Supreme Court to the contrary or other persuasive evidence of a change in Pennsylvania law, we are bound by the holdings of previous panels of this court") (quoting *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 364 (3d Cir. 1990)).

The judgment of the District Court will be affirmed.

TO THE CLERK:

Kindly file the foregoing opinion.

/s/ Edward R. Becker
Circuit Judge