Cite as 2011 Ark. 128

SUPREME COURT OF ARKANSAS

No. 10-1076

DUSTIN BARWICK
APPELLANT

VS.

GOVERNMENT EMPLOYEE INSURANCE CO., INC.
APPELLEE

Opinion Delivered March 31, 2011

APPEAL FROM THE BENTON COUNTY CIRCUIT COURT,
NO. CV-10-820-5
HON. XOLLIE DUNCAN, JUDGE

AFFIRMED.

COURTNEY HUDSON HENRY, Associate Justice

Appellant Dustin Barwick brings this appeal from an order entered by the Benton County Circuit Court granting summary judgment and dismissing his claim for medical benefits under an automobile insurance policy issued by appellee Government Employee Insurance Co., Inc. (GEICO).[1] For reversal, appellant contends that the circuit court erred in ruling that an electronically generated record containing an electronic signature meets the requirement that a rejection of no-fault coverage be "in writing" under the terms of Arkansas Code Annotated section 23-89-203 (Repl. 2004). Although this case was originally filed with the court of appeals, we assumed jurisdiction pursuant to Ark. Sup. Ct. R. 1-2(b)(1) and (6), as the appeal involves an issue of first impression and a question of statutory interpretation. We find no error and affirm.

On June 14, 2009, Lucy Sheets, who subsequently married appellant, purchased

[1]GEICO asserted below and continues to state on appeal that it is properly identified as "GEICO Indemnity Co.," not "Government Employee Insurance Co., Inc."

automobile insurance coverage online at GEICO's website. On January 5, 2010, a vehicle struck appellant, who was then a named insured on the policy. Appellant presented a claim to GEICO for the payment of $6284 in medical expenses that he incurred as a result of the accident. GEICO denied liability on the ground that Ms. Barwick had rejected coverage for medical benefits when she applied online for the purchase of insurance. On March 16, 2010, appellant then filed suit against GEICO, claiming entitlement to medical benefits in the sum of $5000, the minimum amount of coverage required under Arkansas Code Annotated section 23-89-202(1) (Repl. 2004). In its answer to the complaint, GEICO asserted that Ms. Barwick specifically rejected coverage for medical benefits as indicated by the online application and by her electronic signature, which GEICO claimed was valid under the Uniform Electronic Transactions Act (UETA), found at Arkansas Code Annotated sections 25-32-101 to -120 (Repl. 2002 & Supp. 2009).

On April 12, 2010, appellant moved for summary judgment, contending that Ms. Barwick's electronic signature on the application did not qualify as a written rejection of coverage as required by section 23-89-203. GEICO responded with its own motion for summary judgment, in which it argued that Arkansas Code Annotated section 25-32-107 (Repl. 2002) gives legal effect to electronic records, signatures, and contracts and that Ms. Barwick's electronic signature on the form satisfied the "in writing" requirement of section 23-89-203. In support of its motion, GEICO submitted excerpts from Ms. Barwick's deposition, and the "Arkansas Information and Option Form," completed by Ms. Barwick

online. The form indicated that she rejected both medical benefits and medical-payments coverage, and it bore an electronic signature of her name. In her deposition, Ms. Barwick acknowledged that she completed the form on the website and that she did not select coverage for medical benefits. She also testified that she signed the application electronically. Ms. Barwick stated, however, that she had not physically signed any written document provided by GEICO rejecting medical-benefits coverage.

After a hearing, and upon consideration of the parties' briefs, the circuit court granted GEICO's motion for summary judgment, ruling that the online rejection of coverage and electronic signature satisfied the statutory requirement for a rejection to be in writing under section 23-89-203. Appellant filed a timely appeal from the order of summary judgment entered on August 9, 2010.

In this appeal, appellant contends that a rejection of coverage must be in writing in accordance with section 23-89-203 and that pressing a button on a computer is not a "writing" that is contemplated by the terms of the statute. Relying on the settled principle of law that a general statute does not apply when a specific one governs the subject matter, *see Ozark Gas Pipeline Corp. v. Ark. Pub. Serv. Comm'n*, 342 Ark. 591, 29 S.W.3d 730 (2000), he argues that section 23-89-203, which specifically applies to insurance claims, takes precedence over the provisions in the UETA. While appellant does not dispute that a contract may be entered into electronically pursuant to the UETA, appellant asserts that the ability to form a contract by electronic medium should not be confounded with the statutory

requirement that a rejection of coverage must be in writing. In support of the circuit court's decision, GEICO asserts that section 23-89-203 and the provisions of the UETA are not in conflict and that the plain language of the UETA permits an electronic record to satisfy the requirements of section 23-89-203. In the alternative, GEICO contends that appellant should be estopped from questioning the validity of the electronic rejection of coverage because he is also seeking to benefit from the insurance policy that Ms. Barwick obtained online.

This case is before us on cross-motions for summary judgment concerning a question of statutory interpretation. A circuit court may grant summary judgment only when it is clear that there are no genuine issues of material fact to be litigated and that the party is entitled to summary judgment as a matter of law. *Sw. Energy Prod. Co. v. Elkins*, 2010 Ark. 481, 374 S.W.3d 678. Normally, we determine if summary judgment is proper based on whether evidentiary items presented by the moving party leave a material fact unanswered, viewing all evidence in favor of the nonmoving party. *Massey v. Fulks*, 2011 Ark. 4, 376 S.W.3d 389. Here, however, the facts are not in dispute, and the circuit court decided the case purely as a matter of statutory interpretation.

The question of the correct application and interpretation of an Arkansas statute is a question of law, which this court decides de novo. *Evans v. Hamby*, 2011 Ark. 69, 378 S.W.3d 723. We are not bound by the circuit court's decision; however, in the absence of a showing that the circuit court erred, its interpretation will be accepted as correct. *Racine v. Nelson*, 2011 Ark. 50, 378 S.W.3d 93. The basic rule of statutory construction is to give

effect to the intent of the General Assembly. *McLane S., Inc. v. Ark. Tobacco Control Bd.*, 2010 Ark. 498, 375 S.W.3d 628. Reviewing issues of statutory interpretation, we first construe a statute just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III, L.P.*, 374 Ark. 489, 288 S.W.3d 627 (2008). When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory construction. *Ryan & Co. AR, Inc. v. Weiss*, 371 Ark. 43, 263 S.W.3d 489 (2007). Our court also strives to reconcile statutory provisions to make them consistent, harmonious, and sensible. *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179.

The coverage involved in this case is no-fault coverage that is mandated by the General Assembly to be offered to prospective insureds. Section 23-89-202 sets out the required minimum benefits that automobile liability-insurance policies must include for medical and hospital benefits, income disability benefits, and accidental death benefits. As pertinent here, the statute provides that every automobile liability-insurance policy covering any private-passenger motor vehicle issued or delivered in this state shall provide minimum medical and hospital benefits to the named insured for all reasonable and necessary expenses incurred within twenty-four months after the accident up to an aggregate of $5000 per person. Ark. Code Ann. § 23-89-202(1). However, section 23-89-203(a) states that the "named insured shall have the right to reject in writing all or any one (1) or more coverages enumerated in § 23-89-203." Thus, these statutes encompass the mandatory offering of no-fault coverage

accompanied by the right to reject such coverage in writing.

Along with forty-seven other states, Arkansas adopted the UETA in 2001. As set forth in Arkansas Code Annotated section 25-32-106 (Repl. 2002), the provisions of the UETA must be construed and applied to facilitate electronic transactions consistent with other applicable law; to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. In terms of scope, the UETA applies to electronic records and electronic signatures relating to a transaction. Ark. Code Ann. § 25-32-103(a) (Repl. 2002). However, it does not apply to transactions under certain articles of the Uniform Commercial Code and to those governed by a law concerning the creation and execution of wills, codicils, or testamentary trusts. Ark. Code Ann. § 25-32-103(b). Also, a transaction subject to the act is subject to other applicable substantive law. Ark. Code Ann. § 25-32-103(d). Arkansas Code Annotated section 25-32-107 provides as follows:

> (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
>
> (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
>
> (c) If a law requires a record to be in writing, an electronic record satisfies the law.
>
> (d) If a law requires a signature, an electronic signature satisfies the law.

As defined in the UETA, "electronic record" means a record created, generated, sent,

communicated, received, or stored by electronic means. Ark. Code Ann. § 25-32-102(7) (Repl. 2002). An "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Ark. Code Ann. § 25-32-102(8).

The issue in this case is whether an electronically generated record satisfies the requirement of section 23-89-203 that a rejection of coverage for medical benefits must be memorialized in writing. In our view, the meaning of section 25-32-107(c) could not be more straightforward when it states that "[i]f a law requires a record to be in writing, an electronic record satisfies the law." We perceive no conflict between these two statutory provisions, and they can be read harmoniously to mean that an electronic record fulfills the requirement of a written rejection of coverage. In the present case, Ms. Barwick rejected coverage for medical benefits when she completed the online application for insurance. She also expressed her intention to forego those benefits with her electronic signature. We hold that the electronic record memorializing her rejection of coverage qualifies as a written rejection of benefits under section 23-89-203. Accordingly, we affirm the circuit court's grant of summary judgment. In light of our holding, it is not necessary for us to address GEICO's estoppel argument.

Affirmed.