STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0807

Cannon Cochran Management Services, Inc.,
individually and as subrogee for Landes Trucking,
Plaintiff,

vs.

Kurt Duncan, et al.,
Respondents,

Charles Connor,
Defendant,

Kurt Duncan, et al.,
defendants and third party plaintiffs,
Respondents,

vs.

John M. Steele, third party defendant,
Appellant.

Filed April 14, 2009
Affirmed
Poritsky, Judge[*]

Hennepin County District Court
File No. 27-CV-07-13075

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

Richard P. Wright, Cheryl Hood Langel, McCollum, Crowley, Moschet & Millet, 700 Wells Fargo Plaza, 7900 Xerxes Avenue South, Minneapolis, MN 55431 (for respondents Kurt Duncan and USAA Casualty Insurance Company)

John M. Steele, 725 Southeast 26th Avenue, Ft. Lauderdale, FL 33301 (pro se attorney)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Poritsky, Judge.

U N P U B L I S H E D O P I N I O N

PORITSKY, Judge

John Steele appeals from the district court's order granting partial summary judgment to Cannon Cochran Management Services, Inc. (CCMSI), and USAA Casualty Insurance Company (USAA). Steele argues that the district court should have dismissed CCMSI's suit to recover its lien on workers' compensation benefits paid because the court lacked subject-matter jurisdiction. Steele also contends that disputed issues of material fact preclude summary judgment on the issue of whether his letter to USAA created a binding guarantee. Finally, Steele argues that CCMSI's suit should be dismissed because CCMSI is not the real party in interest. The district court declined to dismiss the suit and ruled that (1) CCMSI had a valid lien, and (2) Steele's letter to USAA constituted a binding guarantee that CCMSI's lien would be satisfied. We affirm.

FACTS

On October 29, 2004, Charles Connor was injured in an automobile collision with Kurt Duncan near Elk River, Minnesota. Duncan's liability insurer was USAA. At the time of the collision, Connor, a resident of Illinois, was driving a truck for Landes

Trucking, his Illinois-based employer. Connor sustained injuries in the collision and claimed workers' compensation benefits in Illinois for lost wages and medical bills. CCMSI, the administrator of Landes's workers' compensation programs, paid workers' compensation benefits to Connor.

Immediately after the collision, Connor was taken to a hospital in St. Cloud, Minnesota. While in the hospital, he hired John Steele as his attorney. On November 9, 2004, Steele sent a letter notifying Landes that he represented Connor for injuries sustained in the collision. In the letter, Steele wrote:

> I believe that [Connor] should be entitled to workers compensation benefits and trust that you have made a first report of injury to the appropriate comp carrier. . . .
>
> Due to the statutory lien for reimbursement of comp benefits (partial) that your comp carrier most likely has under Illinois law you should advise them that I am representing your employee for his claims against the third party tortfeasor, Kurt Joseph Duncan. . . . Please so advise the comp carrier so that wage substitute, most likely in the form of temporary total disability, can be started at the earliest possible time.

On January 21, 2005, CCMSI wrote back to Steele, notifying him that Connor had made a claim against his employer, that CCMSI had paid benefits to Connor, and that "[p]ursuant to . . . Section 5 of the Illinois Workers' Compensation Act, this letter will serve as notice to you that [CCMSI] hereby claims a lien against you for any and all sums of money incurred in the payment of this claim." On February 3, 2005, Steele wrote to CCMSI questioning why it had not paid Connor's workers' compensation benefits for two or three weeks and asking: "Why do you think that your lien rights under Illinois law

have extraterritorial reach thereby giving rise to any obligation on my part to protect your alleged lien rights?" After Steele's letter in February, the correspondence between Steele and CCMSI ceased for several months.

On August 1, 2005, CCMSI sent a letter to USAA and Steele, which stated: "Per the Illinois worker's compensation act, please be advised that the personal injury case cannot be settled until the workers' compensation claim has been resolved. The amount paid on [Connor's] file as of today is $48,173.32." USAA had previously acknowledged CCMSI's notice of lien on any personal injury settlement on June 2, 2005, and requested "any and all documentation related to Mr. Connor's workers compensation claim, so we may be able to properly evaluate and set our reserve."

In September 2005, Steele and USAA agreed to settle Connor's claim against Duncan for Duncan's policy limit of $100,000. On September 2, 2005, Steele sent a signed letter regarding the settlement to USAA's agent Roxane Jones. The letter states:

> Per our telephone conversation of a few minutes ago please forward a draft in the amount of $100,000.00, the policy limit, together with a release.
>
> Also please be advised that I will hold USAA harmless from any and all subro claims and will deal directly with the workers comp carrier that has paid benefits to Mr. Connor.

The district court noted that "USAA wanted this personal guarantee from Steele because Steele instructed USAA not to prepare two separate settlement checks, one being payable to CCMSI, and instructed USAA not to include CCMSI as a payee on the settlement check."

Also on September 2, 2005, Jones sent a letter to Steele which confirmed that USAA considered Connor's claim against Duncan settled and directed Steele to do several things before USAA would pay the $100,000. The letter directed Steele to have Connor sign the enclosed release, have the signature witnessed, and return the release in the envelope provided. The short letter also contained the statement: "This will confirm John Steele and Charles Connor are responsible for the lien from workers' comp." On October 31, 2005, Steele returned the release and hold harmless agreement, signed by Connor, to USAA. USAA then sent the $100,000 check to Steele, who kept 33% in attorney fees for himself, sent the remainder to Connor, and disbursed nothing to CCMSI. Thereupon, CCMSI brought the present lawsuit.

CCMSI sued USAA, Duncan, and Connor in Hennepin County District Court. CCMSI sought to recover its statutory lien for $48,179.17 in workers' compensation benefits it paid to Connor. USAA denied liability for CCMSI's statutory lien and cross-claimed against Connor, asserting that the settlement agreement between USAA and Connor for Duncan's policy limit of $100,000 included a signed release providing that Connor would hold Duncan and USAA harmless for any future claims or subrogated causes of action arising out of the October 29th collision. USAA also initiated a third-party complaint against Steele, asserting that Steele was liable to CCMSI because Steele had agreed to hold USAA harmless for any future claims—specifically any "subro claims"—from the workers' compensation carrier. Steele denied liability and sought to have the third-party complaint dismissed, arguing that he did not sign a binding guarantee

with USAA to satisfy CCMSI's lien, and that the Illinois lien statute cannot be applied to a "Minnesota settlement" between USAA/Duncan and Connor/Steele.

The parties brought multiple motions for declaratory and summary judgments to the district court. CCMSI moved the court to declare that the settlement agreement between USAA/Duncan and Connor/Steele was invalid and should not be binding on CCMSI and that CCMSI still had a cause of action for reimbursement of its statutory lien against Duncan/USAA. USAA argued that if CCMSI was eligible to collect its statutory lien for the workers' compensation benefits, it had to collect from Connor and Steele because under the terms of the settlement agreement, Connor agreed to release USAA from future claims in exchange for USAA paying Duncan's policy limit of $100,000, and Steele had agreed to "hold USAA harmless for any and all subro claims" and to "deal directly with the workers comp carrier that has paid benefits to Mr. Connor." Steele argued that the district court should dismiss the case because it involved claims based on Illinois workers' compensation laws and Minnesota could not give "extraterritorial" effect to rights created by the Illinois legislature.

The district court denied CCMSI's request to invalidate the settlement agreement, but concluded that the settlement agreement was not binding on CCMSI. Thus, CCMSI was not barred from bringing its action as a result of the settlement agreement. The district court also denied USAA's motion to dismiss CCMSI's claims against Duncan and USAA concluding that, "it is premature to dismiss the claims . . . until Connor and Steele have actually indemnified CCMSI as they agreed to do." The district court determined

that there was no just reason for delay and directed entry of judgment on these claims under Minn. R. Civ. P. 54.02.

Steele appeals the district court's decision granting partial summary judgment to CCMSI and USAA.

D E C I S I O N

I

Steele asserts that Minnesota does not have subject-matter jurisdiction over CCMSI's claim. The district court concluded that it had subject-matter jurisdiction to decide this case. Whether subject-matter jurisdiction exists is a question of law subject to de novo review. *Hale v. Viking Trucking Co.*, 654 N.W.2d 119, 123 (Minn. 2002).

"Subject-matter jurisdiction is a court's power to hear and determine cases of the general class or category to which the proceedings in question belong." *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (citation omitted), *aff'd*, 612 N.W.2d 862 (Minn. 2000). Minnesota district courts have "original subject-matter jurisdiction over civil and criminal cases" as provided by statute and the state constitution. *Id.*; *Murphy Motor Freight Lines, Inc. v. Interstate Motor Freight Sys.*, 384 N.W.2d 196, 199 (Minn. App. 1986), *review denied* (Minn. May 16, 1986). Minn. Stat. § 484.01 (2008) provides that Minnesota district courts have original jurisdiction over "all civil actions within their respective districts." Steele admits that Minnesota district courts have original jurisdiction over civil claims. CCMSI brought this civil action to enforce its statutory lien for reimbursement of workers' compensation benefits it paid to Connor, and the district court had subject-matter jurisdiction to hear it.

Though it is difficult to grasp Steele's arguments, his underlying disagreement seems to be with the district court's decision to apply the Illinois workers' compensation laws to CCMSI's action for reimbursement of workers' compensation benefits. But this is not a subject-matter-jurisdiction issue because "[a] state court's decision whether to recognize and enforce an employer's cause of action for reimbursement, which is created by statute in another state, is an issue of conflict of laws rather than subject matter jurisdiction." *Murphy*, 384 N.W.2d at 199–200. Here, the district court performed a thorough conflict-of-laws analysis and properly applied Illinois law. Under Illinois law, CCMSI has a valid lien on the USAA/Duncan-Connor/Steele settlement in the amount of the workers' compensation benefits it paid to Connor.[1] Steele does not directly challenge that decision but rather incorrectly frames his argument as a subject-matter-jurisdiction issue.

In addition to his subject-matter-jurisdiction argument, Steele asserts that the district court improperly gave "extraterritorial effect" to the Illinois statute that

[1] *See* 820 Ill. Comp. Stat. Ann. 305/5(b) (West 2008), providing that:

> If the injured employee . . . agrees to receive compensation from the employer or accept from the employer any payment on account of such compensation . . . the employer may have or claim a lien upon any award . . . .
>
> No release or settlement of claim for damages by reason of such injury or death, and no satisfaction of judgment in such proceedings shall be valid without the written consent of both employer and employee . . . except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by Court order.

established CCMSI's lien. Steele relies on *Shelby Mut. Ins. Co. v. Girard Steel Supply Co.*, 224 F. Supp. 690 (D. Minn. 1963) to support this argument. But as the district court concluded, *Shelby* is legally and factually distinguishable and "does not stand for the proposition that an out of state workers' compensation subrogation lien is not entitled to extraterritorial application in Minnesota." We agree with the district court: Steele's reliance on *Shelby* is misplaced.

In *Shelby*, a workers' compensation insurer sued a third party to recover reimbursement for benefits that the insurer had paid after its insured was killed in Minnesota by the alleged negligent acts of the third party. 224 F. Supp. at 694. At the time, Wisconsin law gave the workers' compensation insurer a cause of action against the third party but Minnesota law did not. *Id*. To determine whether to apply Wisconsin's laws to a tort that occurred in Minnesota, the Minnesota federal district court applied the "*lex loci delicti*" approach. Under that approach, a cause of action for a tort and the extent of damages recoverable are determined by reference to the substantive laws of the state in which the tort occurred. *Id*.; *see also Black's Law Dictionary* 930 (8th ed. 2004) (defining "lex loci delicti" as "[t]he law of the place where the tort or other wrong was committed"). But 10 years after the *Shelby* decision, the Minnesota Supreme Court rejected the *lex loci delicti* approach in favor of the more flexible conflict-of-laws approach. *See Hoffmann v. Henderson*, 355 N.W.2d 322, 323 (Minn. App. 1984) (citing *Milkovich v. Saari*, 295 Minn. 155, 203 N.W.2d 408 (1973)), *review denied* (Minn. Dec. 20, 1984). Because Minnesota courts no longer use the approach used in the *Shelby* decision, the case has lost whatever persuasive effect it had.

According to *Milkovich* and *Hoffmann*, instead of looking solely at the law of the state in which the tort occurred, in determining choice-of-law issues courts now consider five factors: predictability of results, maintenance of interstate and international order, simplification of the judicial task, advancement of the forum's governmental interests, and application of the better rule of law. 295 Minn. at 161, 203 N.W.2d at 412; 355 N.W.2d at 323. Here, the district court analyzed the choice-of-law factors and determined that it was proper to apply Illinois law. We agree with the district court's analysis, and note that there is no material difference between Illinois and Minnesota's law because Minnesota law also provides a workers' compensation insurer with a right to be reimbursed if an injured employee settles with a third party after receiving benefits from a workers' compensation insurer. *See* Minn. Stat. § 176.061, subd. 8(a) (2008) (providing that "a settlement between the third party and the employee is not valid unless prior notice of the intention to settle is given to the employer within a reasonable time" and that "[a]ny judgment rendered in the action is subject to a lien of the employer for the amount to which it is entitled to be subrogated or indemnified").

Further support for the conclusion that Illinois law applies to CCMSI's action is found in Restatement (Second) of Conflict of Laws § 185. The restatement provides that "[t]he local law of the state under whose workmen's compensation statute an employee has received an award for an injury determines what interest the person who paid the award has in any recovery for tort . . . that the employee may obtain against a third person on account of the same injury." *Id.* Here, because Connor received a workers'

compensation award in Illinois, Illinois law should apply to determine CCMSI's interest in Connor's settlement proceeds with Duncan/USAA.

II

Steele argues that the district court improperly granted summary judgment on the issue of whether Steele's letter to USAA constituted a binding guarantee. Steele contends that the district court "overlook[ed] contested material facts and or treat[ed] them as undisputed and . . . either [applied] the wrong law or a wrong analysis that avoided recognition of contested material facts." The district court concluded that there were no material factual disputes and that Steele's hold-harmless letter to USAA constituted an enforceable guarantee because (1) Steele admitted that he wrote and signed the letter; (2) the letter contained all the essential terms; (3) Steele made this promise to USAA in consideration of USAA releasing the settlement money without delay; and (4) the statute of frauds does not apply to Steele's written and signed promise. We agree.

Contract interpretation is a question of law, which is subject to de novo review. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). In arguing that his letter to USAA does not constitute a binding contract, Steele makes three arguments that may be charitably described as unpersuasive.

First, he argues that his letter to USAA does not satisfy the statute of frauds. The Minnesota Statute of Frauds requires a written note or memorandum expressing consideration for promises to answer for the debts of another. Minn. Stat. § 513.01 (2008). The writing must also be signed by the party who makes the promise. *Id.* Steele's September 2, 2005 letter satisfies the statute of frauds. First, Steele admits that

he wrote and signed the letter to USAA that states: "I will hold USAA harmless from any and all subro claims and will deal directly with the workers comp carrier that has paid benefits to Mr. Connor." Second, Steele agreed to "hold USAA harmless." To hold a party harmless means "[t]o absolve [them] from any responsibility . . . or other liability arising from the transaction." *Black's Law Dictionary* 749 (8th ed. 2005). And, a "hold-harmless agreement" is "[a] contract in which one party agrees to indemnify the other." *Id.* Steele, a licensed Minnesota lawyer, must have known the type of agreement he was making when he chose to use the legal term "hold harmless." Third, Steele received consideration in the form of the settlement proceeds in exchange for his promise. Roxane Jones, USAA's agent, informed Steele that she "would not release the settlement check without his personal guarantee" because Steele asked USAA to issue one check and exclude CCMSI as a payee. Recovering the settlement proceeds without delay and without subtracting CCMSI's interest was valuable consideration to Steele. The district court properly concluded that the statute of frauds did not affect Steele's guarantee.

Steele next makes the astonishing argument that there is a fact question regarding what he meant when he wrote to USAA: "I will hold USAA harmless from any and all subro claims and will deal directly with the workers comp carrier." He states that the letter was merely a "sloppy reference to an agreement to have Connor hold USAA harmless." The construction of a contract is a question of law. *Kauffman Stewart, Inc. v. Weinbrenner Shoe Co.*, 589 N.W.2d 499, 501 (Minn. App. 1999). And unless a contract is ambiguous, courts must consider only the contract and no extrinsic evidence. *Hous. & Redevelopment Auth. of Chisholm v. Norman*, 696 N.W.2d 329, 337 (Minn. 2005).

Steele's letter is simple and unambiguous. The letter confirms that the parties agreed to settlement in a phone conversation just a few minutes prior to when Steele wrote the letter. The letter unambiguously states that "I will hold USAA harmless . . . ." A contract is only ambiguous if it is "reasonably susceptible to more than one interpretation." *Kauffman*, 589 N.W.2d at 501. Steele's promise—especially considering that he is a lawyer who knows the meaning of the legal term "hold harmless"—is simply not reasonably susceptible to more than one interpretation. No issues of material fact preclude summary judgment regarding the meaning of Steele's letter.

Finally, Steele argues that his personal guarantee in the September 2 letter "merged" into the formal release that Connor signed. This argument likewise fails. Steele's guarantee is completely separate from Connor's "Release and Hold Harmless Agreement." Steele does not cite, nor can we find, any legal authority for the idea that a guarantee by one party can somehow "merge" into a different guarantee by another party. The two documents are separate guarantees, and the record shows that USAA would not have released the settlement check without both Steele's and Connor's guarantees.

Because material facts are not at issue and because the district court properly concluded that Steele's unambiguous letter constituted a binding guarantee, the district court's grant of summary judgment on this issue was correct.

III

For the first time in this appeal, Steele argues that "CCMSI is not the real party in interest and therefore the action must be dismissed." Issues not raised before the district

court will normally not be addressed for the first time on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Even if we were to address Steele's untimely argument, it would fail because (1) CCMSI's representative submitted an affidavit confirming that CCMSI is Landes's subrogee, and (2) the district court specifically noted that "CCMSI has brought this suit under a subrogation agreement as the subrogee for Landes."

Affirmed.

Judge Bertrand Poritsky