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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2082**

James J. Zych,
Appellant,

vs.

Timothy Haugen, et al.,
Respondents.

**Filed July 31, 2017
Affirmed
Larkin, Judge**

Big Stone County District Court
File No. 06-CV-15-237

David C. McLaughlin, Fluegel, Anderson, McLaughlin & Brutlag, Chartered, Ortonville,
Minnesota (for appellant)

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(for respondents)

Considered and decided by Larkin, Presiding Judge; Jesson, Judge; and Toussaint,
Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's dismissal of his negligence claim against respondents insurance agency and agent, arguing that the district court did not comply with Minn. R. Civ. P. 12.03 and erred in concluding that appellant's claim is preempted under the Federal Crop Insurance Act (FCIA). We affirm.

FACTS

In November 2015, appellant James J. Zych sued respondents Timothy Haugen and Haugen Insurance Agency Inc., asserting negligence, slander, and defamation claims.¹ Appellant alleged that respondents acted as an agent for Rural Community Insurance Services (RCIS) in the sale of a 2009 "Multi-Peril Crop Insurance Policy" to appellant, which covered appellant's corn and soybean crops. Appellant alleged that as RCIS's agent, respondents were responsible for providing RCIS a "Notice of Loss" when a crop loss occurred.

According to appellant's complaint, he informed respondents that a hail event occurred in July 2009 and a frost event occurred in October 2009. Respondents told appellant that "a farmer cannot turn in a Notice of Loss if the farmer intended to harvest the field," that respondents "would not turn in a Notice of Loss unless there is evidence of damage," and that "the harvest is the ultimate determining factor of damage." Respondents filed a Notice of Loss with RCIS on behalf of appellant in December 2009. Because

¹ The district court dismissed appellant's slander and defamation claims pursuant to a stipulation of the parties.

appellant's corn crop was too wet to harvest at the time, appellant elected to wait and let the corn crop dry in the field. In March 2010, RCIS examined appellant's corn field and denied his claim on the grounds that appellant "did not utilize good farming practices by selecting a variety that may not mature in time" and "did not provide [RCIS a] Notice of Loss when he in fact provided notice to [respondents] and others."

Appellant submitted a claim to RCIS for more than \$700,000, and the matter went to arbitration. Appellant and RCIS settled the claim for \$250,000, and the settlement excluded appellant's claims against respondents.

In the underlying action against respondents, appellant alleged that respondents' "negligent handling of the claims by failing to file a Notice of Loss with RCIS and provid[ing] misleading and inaccurate information to [appellant] was the direct and proximate cause of the [appellant's] loss or his claim" and that appellant suffered damages in excess of \$50,000. Respondents answered with an affirmative defense: appellant's lawsuit was "barred by the Federal Crop Insurance Act."

In June 2016, respondents moved for judgment on the pleadings under Minn. R. Civ. P. 12.03, arguing that appellant failed to (1) "submit the [negligence] claim to mandatory arbitration within one year of the date his 2009 crop-loss claim was denied as required by the terms of his crop insurance policy" and (2) "obtain a determination from the [Federal Crop Insurance Corporation (FCIC)] that [respondents] failed to comply with the terms of his policy or procedures required under [the] federal crop insurance program" and "that such failure resulted in his receiving a payment in an amount that is less than the amount he was entitled."

The district court granted respondents' motion for judgment on the pleadings and dismissed appellant's complaint. The district court found that the insurance contract in question was governed by 7 C.F.R. § 400.352 (2017), which generally prevents state and local governmental entities from levying judgments for damages and costs against "companies, [and] employees of companies including agents and loss adjusters . . . arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act." The district court reasoned that appellant's negligence claim involved the alleged negligence of an agent and agency who were proceeding under the FCIA and that the claim was therefore federally preempted. This appeal follows.

D E C I S I O N

In reviewing a motion for judgment on the pleadings under Minn. R. Civ. P. 12.03, an appellate court accepts the factual allegations in the complaint as true and construes those allegations in the light most favorable to the nonmoving party. *Hoffman v. N. States Power Co.*, 764 N.W.2d 34, 45 (Minn. 2009). "[J]udgment on the pleadings is proper where the defendant relies on an affirmative defense or counterclaim which does not raise material issues of fact." *Zutz v. Nelson*, 788 N.W.2d 58, 61 (Minn. 2010) (quotation omitted).

If, on a motion for judgment on the pleadings

matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.03.

In determining whether a district court properly granted judgment on the pleadings, this court reviews de novo whether the complaint sets forth a legally sufficient claim for relief. *Zutz*, 788 N.W.2d at 61.

I.

Appellant contends that the district court erred in entering judgment on the pleadings because it “considered information submitted by Respondents outside of the Complaint.”² Appellant argues that respondents’ attachment of documents to their memorandum of law in support of their rule 12 motion converted the motion to one for summary judgment and that he “should have been permitted to develop [the] record in order to bring this matter to a conclusion.”

Appellant and respondents both submitted documents outside of the pleadings in the district court. However, the district court expressly stated that its analysis was “made under Rule 12 on the face of the pleadings” and did not rely on any documents outside of the complaint in granting respondents’ motion for judgment on the pleadings. Moreover, in addressing appellant’s argument that “he specifically reserved his claim against [respondents] in settling his claim against RCIS,” the district court noted that consideration of that argument would require review of a document appellant submitted that “would take

² Appellant also contends that the district court erred in entering judgment on the pleadings because “it did not accept all statements in the Complaint as being true.” Because this court reviews de novo whether the complaint sets forth a legally sufficient claim for relief, this alleged error is immaterial.

the Court’s inquiry out of the realm of Rule 12 and into the realm of Rule 56 Summary Judgment.”

In sum, the record refutes appellant’s contention that the district court erroneously considered matters outside of the pleadings.

II.

Appellant contends that the district court erred by ruling that appellant’s negligence claim against respondents is preempted under 7 C.F.R. § 400.352. Appellant argues that his “cause of action against Respondents for negligence is not inconsistent with the purpose of the FCIA, and therefore, it is not preempted by the FCIA or the FCIC’s regulations.”

Article VI of the U.S. Constitution provides that “the Laws of the United States . . . shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” Under the Supremacy Clause, federal law, including federal regulations promulgated pursuant to an agency’s statutory authority, preempts state law if Congress intends that it do so. *Fidelity Fed. Sav. & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 152-54, 102 S. Ct. 3014, 3022-23 (1982); *Hous. & Redev. Auth. of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014). Federal law can displace state law in three ways: (1) pursuant to express preemption language (express preemption), (2) implicitly through comprehensive federal regulation in a certain area (field preemption), or (3) through an actual conflict with state law (conflict preemption). *Cal. Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 280-81, 107 S. Ct. 683, 689 (1987); *Lee*, 852 N.W.2d at 687.

Congress created the FCIA to “improve[] the economic stability of agriculture through a sound system of crop insurance and provid[e] the means for the research and experience helpful in devising and establishing such insurance.” 7 U.S.C. § 1502(a) (2012). To carry out the purposes of that act, Congress established the FCIC within the U.S. Department of Agriculture. 7 U.S.C. § 1503 (2012). The FCIC “may insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under 1 or more plans of insurance determined by the [FCIC] to be adapted to the agricultural commodity concerned.” 7 U.S.C. § 1508(a)(1) (2012). The FCIC is empowered to “issue regulations, necessary in the conduct of its business, as determined by the Board.” 7 U.S.C. § 1506(l) (2012). The FCIC issues final agency determinations (FADs) through the U.S. Department of Agriculture’s Risk Management Agency (RMA) that interpret the FCIA and FCIC regulations, which are “binding on all participants in the Federal crop insurance program.” 7 C.F.R. §§ 400.765, .768(f) (2016).

The FCIA expressly preempts inconsistent state law:

State and local laws or rules shall not apply to contracts, agreements, or regulations of the [FCIC] or the parties thereto to the extent that such contracts, agreements, or regulations provide that such laws or rules shall not apply, or to the extent that such laws or rules are inconsistent with such contracts, agreements, or regulations.

7 U.S.C. § 1506(l).

Moreover, 7 C.F.R. § 400.352(a) provides that “[n]o State or local governmental body . . . shall have the authority to . . . issue policies or decisions that directly or indirectly affect or govern agreements, contracts, or actions authorized by this part unless such

authority is specifically authorized by this part or by the [FCIC].” 7 C.F.R. § 400.352(b) provides a “non-inclusive list” of examples of actions that state or local governmental entities may not take against the FCIC or any party that is acting pursuant to the FCIA and regulations under that act. Such entities may not

[l]evy fines, judgments, punitive damages, compensatory damages, or judgments for attorney fees or other costs against companies, employees of companies *including agents and loss adjustors*, or Federal employees arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations, or procedures issued by the Corporation.

7 C.F.R. § 400.352(b)(4) (emphasis added).

The regulation provides an exception for certain damages imposed against an insurance company:

(Nothing herein precludes such damages being imposed against the company if a determination is obtained from FCIC that the company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC and such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled)[.]

Id.

When the words of a regulation are clear and unambiguous, we apply them as written. *Indep. Sch. Dist. No. 12 v. Minn. Dep’t of Educ.*, 788 N.W.2d 907, 912 (Minn. 2010). We do not go beyond the regulation’s language unless the language is ambiguous, that is, subject to more than one reasonable interpretation. *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 506 (Minn. 2015); *Indep. Sch. Dist. No. 12*, 788 N.W.2d at 912.

Appellant does not dispute that his crop insurance policy with RCIS is governed by the FCIA and FCIC regulations. The clear language of 7 C.F.R. § 400.352(a) expressly preempts state and local government actions that directly or indirectly affect or govern agreements, contracts, or actions authorized by the FCIA or regulations regarding that act unless the authority for the state and local governmental entities to take such actions is “specifically authorized” by the FCIA, regulations regarding the act, or by the FCIC. And the clear language of 7 C.F.R. § 400.352(b)(4) broadly prohibits state and local governmental entities from levying fines, judgments, damages, or other costs against “employees of companies including agents” arising out of actions regarding the FCIA, regulations regarding that act, any contract or agreement authorized by the FCIA, or procedures issued by the FCIC.

Appellant’s negligence claim against respondents is a request for the district court to levy a judgment for damages, costs, and disbursements against respondents, agents of an insurance company, for their actions and inactions regarding a crop insurance policy governed by the FCIA. That claim is preempted under the plain language of 7 C.F.R. § 400.352(a), (b)(4).

7 C.F.R. § 400.352 does not expressly provide any exceptions to its general prohibition on state judgments against agents of insurance companies stemming from their actions or inactions regarding the FCIA. The only exception contained in 7 C.F.R. § 400.352 allows damages to be “imposed against *the company*” if the party seeking damages obtains a determination from the FCIC (1) “that the company, its employee, agent or loss adjuster failed to comply with the terms of the policy or procedures issued by FCIC”

and (2) “such failure resulted in the insured receiving a payment in an amount that is less than the amount to which the insured was entitled.” 7 C.F.R. § 400.352(b)(4) (emphasis added). In FAD-251 dated December 17, 2015, the RMA interpreted 7 C.F.R. § 400.352(b)(4) as follows:

[A]ny claim, including a claim for *extra-contractual damages*, that arises under or is related to a Federal crop insurance policy issued pursuant to the Federal Crop Insurance Act (Act) may only be awarded if a determination is obtained from FCIC in accordance with section 20(i) of the Common Crop Insurance Policy Basic Provisions and §400.352.

(Emphasis added.)

The FCIC noted that “[t]o the extent that State courts award extra-contractual damages without first obtaining a determination from FCIC, such awards are not in accordance with 7 C.F.R. § 400.352 and FCIC regulations.”

Respondents argue that damages against an agent are possible so long as there is compliance with the determination requirement under 7 C.F.R. § 400.352(b)(4), as interpreted in FAD-251. This argument assumes that the words “any” and “extra-contractual” damages extend the reach of the exception in 7 C.F.R. § 400.352(b)(4) beyond damages against “the company.” The implication is that 7 C.F.R. § 400.352(b)(4) does not completely preempt an award of damages or judgment against an agent. Under this interpretation, appellant could only obtain damages against respondents based on the crop insurance policy if he obtains a determination from the FCIC regarding respondents’ alleged failure to comply with the terms of the policy. Appellant concedes that he did not obtain such a determination from the FCIC. Thus, even assuming that FAD-251 expanded

the exception, appellant's negligence claim is preempted under 7 C.F.R. § 400.352(a), (b)(4).

Appellant argues that this court "should not rely on the FAD-251 urged by the Respondents because it was issued six years after Appellant purchased crop insurance from RCIS through Respondents." However, if this court were unwilling to apply FAD-251 as construed above, it would be left with the plain language of 7 C.F.R. § 400.352(a), (b)(4) which provides no exceptions to the general rule that a state governmental body cannot levy judgments for damages against an agent of an insurance company for actions or inactions under the FCIA.

Appellant also argues that an FCIC determination is unnecessary because "RCIS has already admitted," in depositions of RCIS representatives, "that it is Respondents' responsibility as agents to provide the Notice of Loss to RCIS in order for RCIS to determine the extent of the crop loss and whether the loss was caused by a covered event." RCIS's "admission" does not satisfy the plain language of 7 C.F.R. § 400.352(b)(4), which requires a determination "from FCIC." Such a determination did not occur.

We note that the FCIC has stated that one of the goals of the federal crop insurance program is "to ensure that all producers are treated alike and none receive special benefits or treatment because of the crop they produce, the insurance provider that insures them, or who hears their disputes." General Administrative Regulations, Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations for the 2004 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions, 69 Fed. Reg. 48,652, 48,715 (Aug. 10, 2004). Consistent with that goal of uniformity, a

party must obtain a determination from the FCIC before that party may seek damages regarding a policy covered by the FCIA. The FCIC's regulations simply do not authorize a party to an FCIC-covered insurance policy to make that determination instead of the FCIC.

Appellant makes several assertions that his lawsuit is nonetheless actionable. For example, appellant asserts that “[b]ecause [he] is not seeking damages from RCIS, the requirement to first obtain a determination from the FCIC regarding wrongdoing and damage does not apply in this case.” Appellant also asserts that “[t]he agent is responsible for his negligent actions and should not be afforded the same protections as RCIS.” Appellant further asserts that FAD-251 does not apply to actions for damages against agents of insurance companies because “[i]t was not the Agencies of the Government’s intent . . . to provide agents with insurance protection for their negligent actions.”

Appellant notes that “[w]hether a claim is preempted is a question of congressional intent that is . . . a legal question of statutory construction,” relying on *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383, 112 S. Ct. 2031, 2036 (1992). *Morales* states that in such an inquiry, a court “begin[s] with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” 504 U.S. at 383, 112 S. Ct. at 2036 (quotations omitted). Here, we need not look beyond the ordinary meaning of the language used in 7 C.F.R. § 400.352(a), (b)(4) which clearly expresses an intent to preempt a lawsuit such as appellant’s.

Appellant argues that “[t]he FCIA does not completely preempt state law remedies against crop insurers or their agents” and only “preempts state law that is inconsistent with

the purpose of the FCIA.” (Emphasis omitted.) Appellant asserts that his negligence claim against respondents “is not inconsistent with the purpose of the FCIA, and therefore, it is not preempted by the FCIA or the FCIC’s regulations.” Appellant relies on several federal court of appeals and district court cases in support of this proposition. These federal cases addressed whether FCIA and FCIC regulations completely preempt state-based causes of action against agents who sell federally reinsured crop insurance. *Rio Grande Underwriters, Inc. v. Pitts Farms, Inc.*, 276 F.3d 683, 687 (5th Cir. 2001); *Meyer v. Conlon*, 162 F.3d 1264, 1270 (10th Cir. 1998); *Williams Farm of Homestead, Inc. v. Rain & Hail Ins. Servs., Inc.*, 121 F.3d 630, 634-35 (11th Cir. 1997); *Agre v. Rain & Hail LLC*, 196 F. Supp. 2d 905, 911-12 (D. Minn. 2002). In each case, the court held that the FCIA and FCIC regulations did not completely preempt such state-based actions. *Rio Grande Underwriters, Inc.*, 276 F.3d at 687; *Meyer*, 162 F.3d at 1270; *Williams Farms of Homestead, Inc.*, 121 F.3d at 634-35; *Agre*, 196 F. Supp. 2d at 911-12.

The federal cases on which appellant relies are inapposite because in this case, respondents do not contend that the FCIA and FCIC regulations completely preempt state-based actions against agents who sell federally reinsured crop insurance. Instead, they argue that the FCIA and FCIC regulations “put strict limits on state action” and that appellant did not comply with the procedural prerequisites applicable to his claim under the regulations. In sum, the federal cases appellant cites do not support his assertion that his negligence claim is not preempted.

Appellant alternatively argues that “[e]ven if the Court concludes that the preemption language in 7 C.F.R. § 400.352(b)(4) applies to Respondents, RCIS waived the

protections afforded to Respondents under the regulation by virtue of the Settlement Agreement.” This assertion fails because appellant does not cite authority for the proposition that RCIS can waive application of a federal regulation, especially in a dispute regarding an insurance policy that “is reinsured by the [FCIC] under the provisions of the [FCIA],” and which expressly states that “[a]ll provisions of the policy and rights and responsibilities of the parties are specifically subject to the [FCIA]” and that “[t]he provisions of the policy may not be waived or varied in any way by [RCIS or its] insurance agent . . . unless the policy specifically authorizes a waiver or modification by written agreement.” 7 C.F.R. § 457.8 (2017).

In conclusion, because appellant’s negligence claim against respondents is preempted under 7 C.F.R. § 400.352(a), (b)(4) we affirm the district court’s rule 12.03 dismissal of appellant’s complaint without addressing the parties’ arguments regarding whether appellant was required to arbitrate his dispute with respondents.

Affirmed.