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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1921**

Maria Vlachou-Hahn, et al.,
Plaintiffs,

vs.

Michael A. Zimmer,
as Special Administrator for the Estate of Marcus Hahn, deceased, et al.,
Respondents,

Budget Rent A Car System, Inc., et al.,
Appellants,

Nationwide Mutual Insurance Company, et al.,
Respondents,

and

Budget Rent A Car System, Inc., et al.,
Defendants and Third Party Plaintiffs,

PV Holding Corp.,
Defendant and Third Party Plaintiff,

vs.

Diego Velazquez Sanchez, et al.,
Third Party Defendants.

**Filed June 18, 2018
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-17-9143

B. Jon Lilleberg, Peter M. Leiferman, Lilleberg & Hopewell, PLLC, Edina, Minnesota (for respondents Michael A. Zimmer, et al.)

Sylvia Ivey Zinn, Brendel, Zinn, Sofio & Oskie, PLLC, St. Paul, Minnesota (for respondents Nationwide Mutual Insurance Company and AMCO Insurance company)

Robert E. Kuderer, Thomas C. Brock, Erickson, Zierke, Kuderer & Madsen, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellants rental-car company and insurer argue that the district court abused its discretion by staying an action in Minnesota and denying a request for an anti-suit injunction regarding an action in another state. We affirm.

FACTS

On August 27, 2015, California residents Marcus Hahn (Hahn) and his wife and daughter, plaintiffs Maria and Eva Vlachou-Hahn (Vlachou-Hahns), rented a car from appellant Budget Rent-A-Car (Budget) in Minnesota. Two days later, while driving in Minnesota, Hahn collided with a vehicle driven by third-party defendant Diego Sanchez. The collision killed Hahn and injured Vlachou-Hahns and the passengers in Sanchez's car.

On November 3, 2016, Hahn's insurers, respondents Nationwide Mutual Insurance Company and AMCO Insurance Company (Nationwide), sought declaratory relief in state court in California, seeking a determination about their obligation, if any, to indemnify or

defend Hahn's estate against liability claims resulting from the accident.¹ On December 19, the Minnesota District Court appointed respondent Michael Zimmer to serve as special administrator of Hahn's estate. On December 20, Vlachou-Hahns filed their answer in the California action.

In late December 2016, Vlachou-Hahns sued Hahn's estate, Budget, and defendant/third-party plaintiff PV Holding Corp. (PV), the owner of Hahn's rental car, in Minnesota District Court for damages allegedly caused by Hahn's driving negligence.² Vlachou-Hahns also sought a declaratory judgment that the family exclusion in Hahn's insurance policies did not apply and that the insurance policies of appellants ACE American (ACE) and AON Risk Services (AON), Budget, and PV covered the damages sought.

On or about January 19, 2017, Vlachou-Hahns amended their complaint in the Minnesota action, adding Nationwide as a party to their declaratory-judgement action and alleging that ACE, AON, Budget, and PV had denied coverage under their "family exclusion" provisions. On or about March 20, 2017, Vlachou-Hahns added AMCO as a defendant in the Minnesota action.

On or about July 7, 2017, Budget cross-claimed and counterclaimed in the Minnesota action for a declaratory judgment that AMCO's policy has the primary duty to

¹ We take judicial notice of the California Superior Court records. *See Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010) ("[W]e have taken judicial notice of public records and have said we have the inherent power to look beyond the record where the orderly administration of justice commends it." (quotation omitted)).

² The district court's October 4, 2017 order misidentifies the date of this complaint as "November 21, 2016"; the original complaint is dated "12-21-16."

defend and indemnify Hahn’s estate and for equitable contribution from Nationwide for all costs incurred defending Hahn’s estate. Budget also added “Does 1-6” representing the then-unidentified Sanchez-car passengers.³ On or about July 19, Nationwide moved both to stay and to bifurcate the Minnesota action, pending resolution of the California action. On or about August 4, Vlachou-Hahns moved in the Minnesota action to enjoin Nationwide from proceeding with the California action. Budget, PV, ACE, and AON joined the Vlachou-Hahns’ motion and moved to temporarily enjoin Nationwide in the California action. On or about August 10, Nationwide and AMCO moved for summary judgment in the California action.

On or about October 4, 2017, the Minnesota District Court stayed the Minnesota action, noting the first-filed status of the California action, the “identical issues” present in both actions, and that the California action had proceeded further than the Minnesota action. Because the court stayed the Minnesota action, it did not address the motion to bifurcate. The court denied Vlachou-Hahns’ and Budget’s motions for injunctive relief.

This appeal follows.

D E C I S I O N

Budget argues that the district court abused its discretion by granting Nationwide’s motion to stay and by denying Budget’s anti-suit injunction. We disagree.

When parallel litigation is proceeding in different states, “the rules of res judicata will generally be applied with regard to the first suit to be concluded as against the suit still

³ On July 27, 2017, Budget amended its claim to add the Sanchez passengers as parties.

pending.” *St. Paul Surplus Lines Ins. Co. v. Mentor Corp.*, 503 N.W.2d 511, 515 (Minn. App. 1993). But one of the courts, “in its discretion, may stay proceedings before it to allow the proceedings before the other court to continue.” *Id.* We review a district court’s decision to stay an action for an abuse of discretion. *Id.* A district court abuses its discretion when it “disregards either the facts or the applicable principles of equity.” *First State Ins. Co. v. Minn. Mining and Mfg. Co.*, 535 N.W.2d 684, 687 (Minn. App. 1995) (quotation omitted), review denied (Minn. Oct. 18, 1995). We do not reverse a district court’s decision on a motion for an anti-suit injunction “absent a clear abuse of discretion.” *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001). For reasons explained below, we conclude that the district court did not abuse its discretion by granting Nationwide a stay of the Minnesota action or by denying Budget an anti-suit injunction.

“A court may enjoin a party over whom it has in personam jurisdiction from pursuing similar litigation in another court.” *Id.* Budget argues that the district court erred by denying its request for an anti-suit injunction as to the California action because the court improperly considered the first-filed rule because (1) the Minnesota and California courts lack concurrent jurisdiction, (2) the court incorrectly applied the first-filed rule, and (3) the court failed to consider relevant public policy concerns. The Minnesota Supreme Court has described the first-filed rule as follows:

Where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction, its power being adequate to the administration of complete justice, retains its jurisdiction and may dispose of the whole controversy, and no court of coordinate power is at liberty to interfere with its action. This

rule rests upon comity and the necessity of avoiding conflict in the execution of judgments by independent courts, and is a necessary one because any other rule would unavoidably lead to perpetual collision and be productive of the most calamitous results.

State ex rel. Minn. Nat'l Bank of Duluth v. Dist. Ct., 195 Minn. 169, 173, 262 N.W. 155, 157 (1935) (quotation omitted). The power to issue an anti-suit injunction “should be used sparingly.” *Mentor*, 503 N.W.2d at 516.

The first-filed rule is not truly a rule at all, but a principle, “a blend of courtesy and expediency.” *Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 291 (Minn. 1996) (quoting *Medtronic Inc. v. Catalyst Research*, 518 F. Supp. 946, 955, (D. Minn. 1981), *aff'd*, 664 F.2d 660 (8th Cir. 1981)). “This rule is not intended to be rigid, mechanical, or inflexible,” *Advanced Bionics Corp.*, 630 N.W.2d at 449 (quotation omitted), but “should be applied in a manner serving sound judicial administration,” *Gavle*, 555 N.W.2d at 291 (quotation omitted). We review the application of the first-filed rule for an abuse of discretion. *Advanced Bionics*, 630 N.W.2d at 449 (noting, in case involving litigation in both California and Minnesota state courts, that courts are required to exercise their discretion in applying the first-filed rule).

When deciding a motion for an anti-suit injunction, district courts consider “factors of judicial economy, informal comity between courts, cost and convenience of the litigants, and the possibility of vexatious conflict and overlap of multiple determinations of the same dispute.” *Minn. Mut. Life Ins. v. Anderson*, 410 N.W.2d 80, 82 (Minn. App. 1987). “Judicial comity is the respect a court of one state or jurisdiction shows to another state or

jurisdiction in giving effect to the other's laws and judicial decisions.” *Advanced Bionics*, 630 N.W.2d at 449 (quotation omitted).

Here, the district court determined that a consideration of judicial economy weighed in favor of staying the Minnesota case because of the possibility of multiple litigation and conflicting results and that the California action had proceeded further. In its October 4, 2017 order, the court recognized that judicial comity weighed in favor of staying the Minnesota action because the California court had not withdrawn from the matter and had proceeded with scheduling. The court concluded that the costs and convenience of the litigants weighed in favor of the California action because the parties had been actively involved in that action, it was filed first, had proceeded further, and the parties had “demonstrated their ability to litigate” there.

In *Anderson*, the Ramsey County District Court granted an anti-suit injunction against a first-filed case in Hennepin County involving multiple life-insurance claims. 410 N.W.2d at 80–81. On appeal, we affirmed, analyzing the same factors that the district court used in this case: judicial economy, comity, and the cost and convenience of the litigants. *Id.* at 82–83. We concluded that the Ramsey County court did not abuse its discretion by granting the injunction because the Ramsey County action included all necessary parties, had proceeded further, and it had “authority over potentially crucial evidence.” *Id.* at 83.

Here, similar to *Anderson*, the California action has proceeded further, includes all necessary parties for deciding the applicability of the California insurance contracts, and the California court has “authority over potentially crucial evidence,” the applicable

insurance contracts executed by Hahn, a California resident. The district court's consideration of equitable factors in addition to the first-filed rule is well supported in the record. *See First State Ins. Co.*, 535 N.W.2d at 688–89 (concluding that when no concurrent jurisdiction existed, “district court did not misapply the law by relying on the first-filed status in addition to anti-suit injunction factors”); *see also Anderson*, 410 N.W.2d at 82–83 (weighing equitable factors in addition to first-filed rule when concurrent jurisdiction did not exist).

Budget first argues that Minnesota and California lack concurrent jurisdiction and that the district court therefore improperly applied the first-filed rule. Budget correctly asserts that Minnesota and California lack concurrent jurisdiction. *See Black's Law Dictionary* 980 (10th ed. 2014) (defining “concurrent jurisdiction” as: “Jurisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory”). But, as noted above, the first-filed rule is not a rule, but rather a “blend of courtesy and expediency” and “should be applied in a manner serving sound judicial administration.” *Gavle*, 555 N.W.2d at 291 (quotation omitted). Further, this court has used the first-filed rule in cases that do not involve concurrent jurisdiction. *See, e.g., First State Ins. Co.*, 535 N.W.2d at 689 (stating that the “district court did not misapply the law by relying on the first-filed status” in granting anti-suit injunction where no concurrent jurisdiction existed). The district court therefore did not err by applying the first-filed rule even though the Minnesota and California courts lack concurrent jurisdiction.

Budget next argues that the district court erred in applying the first-filed rule because Nationwide anticipatorily sued in California for declaratory judgment to avoid the jurisdiction of the Minnesota courts. Budget cites *Advanced Bionics* as support for its proposition that a district court cannot apply the first-filed rule when one party files an anticipatory declaratory-judgment action. *Advanced Bionics* involved a dispute over the enforcement of a noncompete agreement between a former employee and his Minnesota employer, Medtronic. *Advanced Bionics*, 630 N.W.2d at 445–46. The Minnesota District Court permanently enjoined the former employee’s new employer, Advanced Bionics, from pursuing its action in California. *Id.* at 447. On appeal, this court concluded that the district court “did not err in exercising its discretion in considering the principles underlying the so-called first-filed ‘rule.’” *Id.* at 450. We stated that “it is clear that Advanced Bionics filed suit in California specifically to avoid Minnesota law, which is more likely to result in enforcement of the contract provision.” *Id.*

Advanced Bionics is distinguishable from this case. Hahn, a California resident, executed the insurance policies with an Ohio company (Nationwide) and an Iowa company (AMCO). In *Advanced Bionic*, two of the parties resided in Minnesota, and their employment relationship was formed in Minnesota. 630 N.W.2d at 445–46. But here, the parties do not reside in Minnesota and their contractual relationship was not formed in Minnesota.

Budget also argues that the district court erred in applying the first-filed rule because it did not first analyze a three-part substantial-similarity test. *See Mentor*, 503 N.W.2d at 515 (“Where two actions between the same parties, on the same subject, and to test the

same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction . . . retains its jurisdiction and may dispose of the whole controversy.” (quotation omitted)); *First State Ins. Co.*, 535 N.W.2d at 535 (applying substantial-similarity test). Even if the district court did not precisely analyze the three-part substantial-similarity test, we conclude that the court did not abuse its discretion.

The Minnesota action contains a different party from the California action: the Sanchez-car passengers are third-party defendants in the Minnesota action but are not parties in the California action. *See Mentor*, 503 N.W.2d at 516 (concluding that different parties were present between cases in two states where one state lacked jurisdiction over all parties present in other state’s action). And the issues in the Minnesota and California actions are different: the Minnesota action includes a claim for negligence, and the California action does not. *See id.* (concluding that actions in two states presented different issues because one state’s action included an additional claim). The California action does not intrude upon the jurisdiction of the Minnesota action and will therefore not be dispositive. *See id.* (concluding that neither action was dispositive of the other because “[t]here has been no showing that [one] action was commenced . . . in hopes of obtaining an unfair or inequitable advantage”). And neither the record nor the district court’s findings support Budget’s contention that Nationwide commenced its action in California to obtain an “unfair or inequitable” advantage. *See Doerr v. Warner*, 247 Minn. 98, 107–10, 76 N.W.2d 505, 513–14 (1956) (affirming injunction in a trust case where trustee moved the trust res from Minnesota to Nevada to deprive the Minnesota court of jurisdiction).

Regarding Minnesota’s public policy, Budget argues that the district court erred by failing to consider Minnesota’s “strong interest in having its laws . . . apply to accidents occurring” here.⁴ We note that at oral arguments before the district court, Budget argued that the court should apply the factors of judicial economy, comity, the cost and convenience of the litigants, and the possibility of multiple determinations in deciding whether to grant its motion for an anti-suit injunction. Further, this court has previously used these factors when deciding whether to grant an anti-suit injunction. *See Advanced Bionics*, 630 N.W.2d at 449 (concluding no abuse of discretion in granting anti-suit injunction where the district court in part considered judicial economy, comity, the cost and convenience of the litigants, and the possibility of multiple determinations).

We conclude that the district court did not disregard the facts or fail to consider the proper equitable considerations. Like the courts in *Advanced Bionics* and *First State Ins. Co.*, the district court did not abuse its discretion when it relied on the first-filed status of the California action in addition to other equitable factors—judicial economy, comity, and the cost to and the convenience of the litigants. *See Mentor*, 503 N.W.2d at 515 (affirming denial of stay and grant of anti-suit injunction when a Minnesota court had proper jurisdiction over the parties and issues in first-filed action). We therefore affirm the district court’s grant of a stay and denial of an anti-suit injunction.

Affirmed.

⁴ We note that nothing in the district court’s order here prevents the parties from arguing for the application of Minnesota law to the insurance contracts in the California action.