

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7338
Summary Calendar

JACQUELYN HAMPTON,

Plaintiff-Appellant,

versus

AMERICAN MOTORISTS INSURANCE
COMPANY, ET AL.,

Defendants,

AMERICAN MOTORISTS INSURANCE
COMPANY and XEROX CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court for
the Southern District of Mississippi
(CA 92-236-BN)

(November 4, 1993)

Before REAVLEY, SMITH and DEMOSS, Circuit Judges.

PER CURIAM:*

Plaintiff Jacquelyn Hampton claims that she is entitled to excess uninsured motorist coverage from American Motorists Insurance Company ("AMI") under her employer's automobile policy,

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

even though she was not riding in her employer's vehicle at the time of the accident and her employer had contracted to reject uninsured motorist coverage. Hampton appeals from the district court's entry of summary judgment dismissing her claim, seeking only that we certify a question to the Mississippi Supreme Court which arises from this judgment. We conclude that Hampton has not presented an unresolved question of Mississippi law that merits such a procedure. We affirm.

I. BACKGROUND

Jacquelyn Hampton was injured on May 6, 1986, when the car in which she was riding as a passenger was struck by an oncoming car in Vicksburg, Mississippi. The car in which Hampton was riding was driven by James Broadus and owned by Moncencya Smith. Both Hampton and Broadus were employees of Xerox at the time of the accident and were acting in the scope of their employment.

Hampton filed this complaint almost six years after the accident seeking uninsured motorist coverage from AMI (Xerox's carrier) on the grounds that Xerox had not rejected such coverage in writing as required by Mississippi law. Thereafter, complete copies of the insurance policies requested by Hampton were produced and the district court determined that uninsured motorist coverage had been validly rejected by Xerox. On October 29, 1992, the district court concluded that the defendants were entitled to summary judgment as a matter of law.

AMI filed a disclosure, however, on November 12, 1992, in which it outlined to the court that while it was true that Xerox

had rejected uninsured motorist coverage in every state in which it was permitted to do so by law, the rejection forms may not have actually been returned from Xerox to AMI until after the accident in question. The apparent delay was due to waiting on a specific rejection required by Illinois law. The district court took AMI's disclosure into consideration and concluded that it did not affect the court's entry of summary judgment.

The sole argument presented by Hampton on appeal is that this court should certify a question to the Mississippi Supreme Court regarding whether an automobile liability policy provides uninsured motorist coverage for a guest passenger in a borrowed automobile, when uninsured motorist coverage has "not been rejected in writing."

II. ANALYSIS

Hampton does not explicitly seek a reversal of the district court's entry of summary judgment, but merely asks that we certify an alleged unresolved question of Mississippi law to the Mississippi Supreme Court. Mississippi Supreme Court Rule 20 authorizes certification of unsettled substantive questions of Mississippi law which are determinative independently of any other questions involved in a case if there are no clear controlling precedents in the decisions of the Supreme Court of the state. Furthermore, we can not certify questions of fact and evidence to the Mississippi Supreme Court. See Jones v. Thigpen, 741 F.2d 805, 810 n.5 (5th Cir. 1984).

Considering the above requirements, Hampton does not present us with a valid question to certify to the Mississippi Supreme Court. The district court concluded that the contracting parties validly agreed that Xerox was rejecting uninsured motorist coverage, and did not change this conclusion after AMI's disclosure that the policy was not finally received by AMI until after the accident.¹ Hampton's proposed question, however, presupposes that uninsured coverage "has not been rejected." The question thus does not present a substantive question of Mississippi law which is determinative of the case. Regardless of how the Mississippi Supreme Court might answer Hampton's proposed question, the summary judgment would still stand, since it was based on the district court's conclusion that uninsured motorist coverage had been sufficiently rejected.

We simply have no basis to certify a question based on the judge's offhand remark that he was not aware of any statutes or case law requiring AMI to provide coverage for a vehicle which Xerox did not own. Hampton incorrectly characterizes this statement by claiming the judge granted summary judgment exclusively on the basis of unresolved questions of Mississippi law. In reality, however, the judge granted summary judgment based on the plaintiff's inability to show specific facts which

¹ The judge only acknowledged that his previous finding that the rejection forms were returned prior to the date of the accident was erroneous. He did not change the finding that the rejection was sufficient for purposes of this case. We see no reason why he should have done so. The rejection had been signed by Xerox and no uninsured motorist coverage existed.

could merit a genuine issue for trial. The judge concluded Hampton was unable to show that uninsured coverage had been procured by Xerox and added to this finding by stating the fact that no Mississippi case law or statutes required Xerox to provide coverage in Hampton's situation.

AFFIRMED.