

Wednesday, April 3rd, 2013

Oral Arguments to the COLORADO COURT OF APPEALS

4:00-5:30 p.m. | Rm. 165

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Oral Arguments to the Colorado Court of Appeals

Rm. 165

Fields v. State Farm Mutual

Appellant

Gerol K. Fields

Appellee

State Farm Mutual

Attorneys

Leif Garrison

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Craig Valentine

Attorneys

Michael McCarthy

Marie Williams

People v. Oslund

Appellant

Kelly Oslund

Appellee

The People of the State of
Colorado

Attorneys

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Attorneys

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- Stand when the judge enters or leaves the courtroom, and when you speak to the judge.

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Case Abstract – Fields

Fields was struck by an automobile and severely injured while attempting to cross I-25 on foot. Under Colorado's then-existing No-Fault Act, State Farm opened a claim file under the driver's policy, and informed Fields of his rights to primary No-Fault (or "PIP") coverage under that policy. Because Fields' injuries were severe, he quickly used up the benefits available under the PIP coverage, and the year following the accident State Farm informed Fields and his medical providers that all benefits under the policy were exhausted. However, because Fields lived with his parents at the time of the accident, his parents' State Farm automobile insurance policy qualified Fields for an additional \$50,000 in PIP benefits. Although State Farm opened and closed a claim file concerning this additional coverage, it made no payments under the parents' policy.

Twelve years after the accident, Fields became aware of this additional coverage. When he sought additional payments under his parents' policy, State Farm initially denied benefits. However, after Fields filed suit, State Farm reviewed Fields' claim, made additional benefits available for the payment of Fields' medical bills, and made partial payments on some of Fields' oldest medical bills. While State Farm made payments under the parents' policy, it maintained its position that the statute of limitations barred Fields from bringing suit.

After Fields filed his initial complaint, State Farm removed the case to federal court. The federal court, however, remanded the case to state district court. Fields did not pursue the case further until December 2010, when he filed a motion to amend his complaint. The district court approved the motion over State Farm's objections. After discovery, the parties filed cross-motions for summary judgment, the district court granted State Farm's motion for summary judgment based on the statute of limitations, and Fields appealed.

Fields argues that the trial court erred because State Farm's failure to provide statutorily required disclosures of available benefits under the parents' policy should have equitably tolled the statute of limitations. Additionally, Fields argues that State Farm waived its rights to a statute of limitations defense by acknowledging liability and promising to make payments under the parents' policy. Alternatively, Fields argues that, even if the statute of limitations applied, State Farm's acknowledgement of liability and promise to pay under the policy should, according to Colorado law, start the limitations period anew. Finally, Fields argues that State Farm's actions constitute an ongoing course of bad faith, and its eventual promise to pay benefits do not eliminate any claims arising from an insurer's bad faith conduct prior to such promises.

State Farm answers that, because Fields' attorneys were aware of possible coverage under the parents' policy in the year following the accident, and State Farm did not prevent him from bringing his claims during the limitations period, the acquiring of new attorneys later does not make Fields eligible for equitable tolling. Next, State Farm argues that payments made twelve years after the accident under the parents' policy did not waive its rights to a statute of limitations defense. Additionally, State Farm argues that its payments of specific, previously incurred medical bills do not constitute a promise to pay future bills, and do not revive Fields' stale claims. Finally, State Farm argues that Colorado law does not recognize a continuing violation theory for insurance bad faith claims, and that such claims by Fields do not revive his stale claims.

Case Abstract – Oslund

While attending a party, a friend alerted Kelly Oslund that Mathew Maez had broken into Oslund's car, and fled with items taken from the car. Oslund and his brother Jayson pursued Maez. A short time later, Oslund and Jayson returned to the party with their belongings, Jayson with blood splatter on his hands and carrying a stick, and said that Jayson hit Maez twice with his fist while Oslund retrieved their belongings. Maez subsequently died as a result of head injuries, though an autopsy was inconclusive as to whether the injuries resulted from a hit or a fall.

The state charged Oslund with felony murder and aggravated robbery. While Oslund's attorneys requested jury instructions on the Colorado defense-of-property statute, as an affirmative defense, the trial court declined to give the jury those instructions. The jury convicted Oslund of the robbery, but could not reach an agreement on the felony murder charge. Rather than going to a new trial for the felony murder charge, Oslund plead guilty to reckless manslaughter in exchange for the dropping of the felony murder charge. The trial court sentenced Oslund to twenty-eight years for the robbery, and sixteen years for the manslaughter, to run concurrently.

On appeal, Oslund argues that the trial court erred by failing to instruct the jury on the Colorado defense-of-property statute, including that a person is justified in using force to prevent what he reasonable believes to be an attempted theft, and that flight is a part of the crime of theft. Additionally, Oslund argues that the trial court erred by instructing the jury that proof of ownership of property taken from a victim is immaterial, so long as the victim exercised sufficient control of the property at the time of taking – even if the victim was committing a theft of that property at the time. Regarding sentencing, Oslund argues that reckless manslaughter is not a crime of violence, and the sentence of sixteen years in the Department of Corrections is illegal because, without a crime of violence sentencing enhancer, the presumptive sentencing range was two to six years, with a maximum of twelve years.

Finally, Oslund argues that the trial court abused its discretion in sentencing him to twenty-eight years in the Department of Corrections because, even with aggravating circumstances and current probation on other felonies, the court improperly balanced its considerations by over-emphasizing punishment and placing no weight on Oslund's rehabilitative potential.

The state counters that the trial court did not err in denying Oslund's jury instructions, because the evidence established that Oslund retrieved his belongings only after the completion of the theft. Further, the trial court did not err in its instructions to the jury that proof of ownership of the items taken from the victim was immaterial, because the crime of theft was already complete, and therefore original ownership of the property was irrelevant. Regarding sentencing, the State agrees that the court erred in the sentencing range for the manslaughter charge. However, because the sentence runs concurrently with the aggravated robbery sentence, resentencing will not affect the total number of years of Oslund's sentence, and the error is thus irrelevant. Finally, the state argues that, because Oslund's twenty-eight year sentence falls within the applicable sentencing range of ten to thirty-two years, the court did not abuse its discretion in Oslund's sentencing.