ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION III

CA06-450

February 21, 2007

DENISE WORLEY, ADMINISTRATRIX OF THE ESTATE OF DALE WORLEY, DECEASED APPELLANT	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [CIV-2004-1681-2]
V.	HONORABLE DAVID S. CLINGER, JUDGE
CINCINNATI INSURANCE COMPANIES APPELLEE	AFFIRMED

Appellant, Denise Worley, is the administratrix of the estate of her son, Dale Worley, deceased. On February 23, 2004, the car Dale was driving was hit head-on by a car driven by Jesse Morrison; Dale died as a result of his injuries. Morrison's insurance company settled with appellant for $25,000, his maximum policy limits. The car Dale was operating at the time of the accident was insured by appellee as one of four vehicles insured under a single insurance policy issued to appellant and her husband. As a result of the accident, appellee paid what it considered to be the underinsured limits of the policy, $50,000 per person per accident, as well as $5,000 in accidental-death benefits.

In November 2004, appellant filed a wrongful-death action, alleging that the estate could not be fully compensated by Morrison's insurance and seeking to recover the entire amount of underinsured-motorist benefits provided by appellee's policy, *i.e.*, $50,000 for each of the four vehicles insured under the policy, for a total of $200,000. Appellee filed a motion for summary judgment, alleging that the clear and unambiguous language of the policy prevented the stacking of vehicle coverages under a single policy. Appellant responded, alleging that Arkansas's underinsured-motorist statute and public policy require that stacking be allowed. The trial court granted appellee's motion for summary judgment, and appellant now brings this appeal, arguing that the trial court erred in failing to find that Arkansas Code Annotated section 23-89-209 (Repl. 2004) and public policy precluded the anti-stacking language of the underinsured portion of appellee's policy from being enforced. We affirm.

In *Carver v. Allstate Insurance Company*, 77 Ark. App. 296, 300-01, 76 S.W.3d 901, 903-04 (2002) (citations omitted), this court set forth the well-settled standard of review for cases involving summary judgment in insurance contracts:

> Summary judgment is a remedy that should be granted only when there are no genuine issues of fact to litigate and when the case can be decided as a matter of law. Once the movant has made a prima facie showing of entitlement to summary judgment, the responding party must demonstrate that there remain genuine issues of material fact to preclude a summary judgment. Our review is limited to a determination as to whether the trial court was correct in finding that no material facts were disputed.
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> When the terms of a written contract are ambiguous, the meaning of the contract becomes a question of fact. In order to be ambiguous, a term in an insurance policy

must be susceptible to more than one equally reasonable construction. On motion for summary judgment, the court, viewing the evidence in the light most favorable to the nonmoving party, ascertains the plain and ordinary meaning of the language in the written instrument, and if there is any doubt about the meaning, there is an issue of fact to be litigated. When the intent of the parties as to the meaning of a contract is in issue, summary judgment is particularly inappropriate.

Under Arkansas law, the intent to exclude coverage in an insurance policy should be expressed in clear and unambiguous language, and an insurance policy, having been drafted by the insurer without consultation with the insured, is to be interpreted and construed liberally in favor of the insured and strictly against the insurer. If the language in a policy is ambiguous, or there is doubt or uncertainty as to its meaning and it is fairly susceptible of two or more interpretations - one favorable to the insured and the other favorable to the insurer - the one favorable to the insured will be adopted.

When contractual language is unambiguous, however, its construction is a question of law for the court. If the language is not ambiguous, it is unnecessary to resort to the rules of construction. When the language is clear, it must be given its plain and obvious meaning and should not be interpreted to bind an insurer to a risk which it plainly excluded and for which a premium was not collected.

In the present case, there are no disputed facts. The issue appellant presents is whether Arkansas Code Annotated section 23-89-209 and public policy prevent the anti-stacking language found in the underinsured-motorist provision of the insurance policy from being enforced.

The policy language in question in this case provides:

LIMIT OF LIABILITY - SPLIT LIMITS

A. The limit of liability shown in the Schedule or Declarations for each person for Underinsured Motorists Coverage is “our” maximum limit of liability for all damages, including damages for care, loss of services, or death arising out of bodily injury, for bodily injury sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Schedule or Declarations for each accident for Underinsured Motorists

> Coverage is "our" maximum limit of liability for all damages for bodily injury resulting from any one accident. This is the most "we" will pay regardless of the number of:
>
> 1. "Covered persons";
>
> 2. Claims made;
>
> 3. Vehicles or premiums shown in the Declarations; or
>
> 4. Vehicles involved in the accident.

Although they had an opportunity to select higher limits of underinsured-motorist coverage, appellant and her husband selected underinsured-motorist insurance with limits of $50,000 per person per accident for each vehicle under their policy.

Appellant first argues that Arkansas Code Annotated section 23-89-209(a)(3) (Repl. 2004), the underinsured-motorist coverage provision, precludes the anti-stacking language found in appellee's policy from being enforced. That provision provides:

> The [underinsured-motorist] coverage shall enable the insured or the insured's legal representative to recover from the insurer the amount of damages for bodily injuries to or death of an insured which the insured is legally entitled to recover from the owner or operator of another motor vehicle whenever the liability insurance limits of the other owner or operator are less than the amount of the damages incurred by the insured.

Appellant contends that the statute's use of the word "shall" and the fact that the statute is silent on the issue of stacking mandate that she be able to recover the underinsured-motorist coverage for all four vehicles insured under the policy rather than just the one vehicle that was involved in the accident. However, in *Shelter Mutual Insurance Company v. Williams*, 69 Ark. App. 35, 40, 9 S.W.3d 545, 548-49 (2000), this court, citing

Kanning v. Allstate Insurance Companies, 67 Ark. App. 135, 992 S.W.2d 831 (1999), held that "in Arkansas, although stacking of UIM coverages is not prohibited by statute, it may be precluded by an applicable anti-stacking clause in the policy." In the present case, the policy language clearly and unambiguously precludes the stacking of the underinsured-motorist coverage for all of the vehicles insured under the policy, and the trial court correctly granted appellee's motion for summary judgment.

Appellant also argues that appellee's anti-stacking language is against public policy; however, she cites no authority to support her proposition in her initial brief. Rather, she submits in her reply brief that the dissents in *Chamberlin v. State Farm Mutual Automobile Ins. Co.*, 343 Ark. 392, 36 S.W.3d 281 (2001), and *Clampit v. State Farm Mutual Automobile Ins. Co.*, 309 Ark. 107, 828 S.W.2d 593 (1992), "are the more reasoned viewpoint on stacking and neither case addressed the straightforward argument of appellant that public policy and the mandatory language of ACA 23-89-209 prevent appellee from enforcing an anti-stacking provision." However, the dissents are the minority view regarding anti-stacking provisions in insurance contracts in Arkansas, not the majority view.

In *Clampit*, the Clampits owned two vehicles insured under separate polices that contained underinsured-motorist coverage, and both policies had "owned-but-not-insured" exclusions that prevented recovery of underinsured-motorist coverage for accidents in a vehicle owned by the insured but not insured under the policy. When Mr. and Mrs.

Clampit and their daughter were killed in one of the vehicles, the underinsured- motorist coverage paid under the policy on the vehicle involved in the accident, but refused to pay under the separate policy insuring their other vehicle. In its majority opinion our supreme court held, "[W]e conclude that the exclusion in this case is reasonable. It excludes a material, unassumed risk for which the insurance company could be expected to charge a higher premium, and it would be unfair to ask other insureds to share the cost of the increased exposure." 309 Ark. at 114, 828 S.W.2d at 597.

In *Chamberlin*, our supreme court held that Arkansas public policy does not favor stacking, and it cited *Clampit*, *supra*, in explaining the public-policy rationale underlying its decisions, stating, "For example, if an insurer is required to insure against a risk of an undesignated but owned vehicle, it is required to insure against risks that it is unaware of and unable to charge a premium for. Of course, if more coverage is desired, an insured remains free to supplement coverage in an existing policy by paying additional premiums calculated to insure against the increasing covered risks." 343 Ark. at 398, 36 S.W.3d at 284 (citations omitted).

Appellant argues that the present case differs from *Clampit* and *Chamberlin* because appellee was aware of the risks in the present case due to the fact that all four of the vehicles were insured under a single policy. Simply because all of the vehicles were insured under a single policy does not mean that appellee assumed the risks of paying quadruple coverage when it had only received premiums on each separate vehicle and had

clearly limited its liability in the insurance policy. The position appellant advocates is an unassumed risk; appellee limited its liability clearly and unambiguously in the insurance policy. Had appellant and her husband desired higher policy limits, they were free to contract for them, but they instead chose lower limits, thereby obtaining lower coverage.

Affirmed.

ROBBINS and MILLER, JJ., agree.