IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

AUTO CLUB INSURANCE COMPANY OF FLORIDA,

Appellant,

v.

Case No. 5D18-3439

THE ESTATE OF NORMAN LEWIS AND BILLIE JARRARD,

Appellees.

_____/

Opinion filed December 13, 2019

Appeal from the Circuit Court
for Orange County,
Heather L. Higbee, Judge.

Wendy F. Lumish and Daniel A. Rock, of Bowman and Brooke LLP, Miami, for Appellant.

Jessica C. Conner, of Dean, Ringers, Morgan & Lawton, P.A., Orlando, for Appellee, The Estate of Norman Lewis.

No Appearance for Appellee Billie Jarrard.

Frank A. Shepherd and Lesley-Anne Marks, of Gray Robinson, P.A., Miami, Amicus Curiae for American Property Casualty Insurance Association.

EVANDER, C.J.

Auto Club Insurance Company of Florida ("AAA") appeals the final summary judgment entered against it in a declaratory judgment action that it filed against the Estate of Norman Lewis ("the estate"). The declaratory judgment action was brought to determine the extent of AAA's liability pursuant to the automobile insurance policy held by its insured, Billy Jarrard. In a separate action, it was alleged that Jarrard struck and killed Lewis while operating his vehicle. That action included loss of consortium claims on behalf of Lewis' parents. The limits of liability under the policy were $100,000 per person and $300,000 per occurrence. AAA contends that, under the terms of the policy, Lewis' parents' loss of consortium claims are subject to a single per person liability limit. The estate successfully argued to the trial court that Lewis' parents' loss of consortium claims are separate "bodily injury" claims such that their claims are not subject to a single per person limit. We reverse.

The relevant portions of the policy read as follows:

> **DEFINITIONS**
>
> . . . .
>
> Certain other words and phrases have a defined meaning when they are printed in ***bold italic*** type.
>
> . . . .
>
> ***Bodily injury –*** means bodily harm, sickness or disease, including death therefrom.
>
> . . . .
>
> **LIABILITY**
>
> . . . .

1. We will pay damages for which any ***insured*** is legally liable because of ***bodily injury*** . . . caused by an auto accident. Auto accident means an accident arising out of the ownership or ***use*** of an ***auto*** or ***trailer***.

    . . . .

LIMITS OF LIABILITY

1. The Bodily Injury limit stated on the declarations page for each ***person*** is the most we will pay for ***bodily injury*** to one ***person*** in any one accident. ***Bodily Injury*** to one ***person*** includes damages for care, loss of consortium, or loss of services sustained as the result of the same injuries by:

    a. the injured ***person***; and

    b. any other ***person***.

The Declarations page of the policy provides:

LIMIT OF LIABILITY PER PERSON/OCCURRENCE

BODILY INJURY 100,000/300,000.

The parties each filed motions for summary judgment on the issue of whether Lewis' parents' loss of consortium claims were subject to a single $100,000 per person limit. AAA argued that because the policy defines "bodily injury" as "bodily harm, sickness or disease, including death therefrom" and given that Lewis was the only person who sustained "bodily injury" in the accident, as defined by the policy, the bodily injury coverage limit of $100,000 per person was all that was available to the estate. In response, the estate argued that based on the language set forth in the "Limits of Liability" provision, bodily injury included damages for loss of consortium and, accordingly, each survivor suffered a separate "bodily injury" and was, therefore, entitled to his or her own "per person" liability limits.

In ruling for the estate, the trial court concluded that the policy was ambiguous as to the definition and scope of the term "bodily injury." Specifically, the trial court stated:

> While the policy defines "Bodily Injury" as "bodily harm, sickness or disease, including death therefrom", Section II-Limits of Liability-which specifically addresses the liability for bodily injury damage under the personal automobile coverage- clarifies and expands that definition by providing that:
>
> > The Bodily Injury limit stated on the declarations page for each person [$100,000.00] is the most we will pay for bodily injury to one person in any one accident. Bodily injury to one person includes damages for care, loss of consortium, or loss of services sustained as the result of the same injuries by:
> >
> > a. The injured person; and
> >
> > b. Any other person.
>
> The language can reasonably be interpreted to mean that damages for care, loss of consortium or loss of services is a "bodily injury" for insurance coverage purposes.

We disagree with the trial court's analysis. "[W]hen analyzing an insurance contract, it is necessary to examine the contract in its context and as a whole, and to avoid simply concentrating on certain limited provisions to the exclusion of the totality of others." *Swire Pac. Holdings, Inc. v. Zurich Ins. Co.*, 845 So. 2d 161, 165 (Fla. 2003). If the language used within the policy is plain and unambiguous, the policy must be interpreted in accordance with its plain meaning. *Travelers Indem. Co. v. PCR Inc.*, 889 So. 2d 779, 785 (Fla. 2004).

In contrast, if a policy's language is susceptible to more than one reasonable interpretation, one providing coverage and the other limiting coverage, the policy language is considered ambiguous. *Id.* "When language in an insurance policy is

ambiguous, a court will resolve the ambiguity in favor of the insured by adopting the reasonable interpretation of the policy's language that provides coverage as opposed to the reasonable interpretation that would limit coverage." *Id.* at 779. However, it is important to recognize that the mere fact that an insurance policy provision can be drafted in a clearer manner does not necessarily render the provision ambiguous. *State Farm Mut. Auto. Ins. Co. v. Pridgen*, 498 So. 2d 1245, 1248 (Fla. 1986).

Here, the term "bodily injury" is plainly and unambiguously defined in the Definitions section of the policy to mean "bodily harm, sickness or disease, including death therefrom." That definition can be readily inserted into the Limits of Liability provision. By doing so, that provision is properly read to mean that the bodily injury limit stated on the declarations page ($100,000) is the most that AAA will pay where there is a bodily injury (bodily harm, sickness or disease, including death therefrom) to one person and that the damages subject to that limit include damages for the care of the injured person and loss of consortium or loss of services sustained as the result of the same injuries by any other person (here, Lewis' parents).

The interpretation advocated by the estate—that the Limits of Liability provision "expands" the definition of bodily injury to include loss of consortium—is flawed in at least three major respects. First, it unnecessarily creates a conflict between the policy's Definitions provision and its Limits of Liability provision, thereby producing two different definitions for the term "bodily injury." Second, the proposed interpretation negates the "in any one accident" limit set forth in the first sentence of the Limits of Liability provision given that the parents were not injured in the accident. Third, the estate's suggested interpretation renders superfluous the words "to one person" in the second sentence of

the Limits of Liability provision. Because the estate's interpretation is unreasonable, it does not create an ambiguity in the policy.

Our conclusion finds support from the Florida Supreme Court's decision in *New Amsterdam Cas. Co. v. Hart*, 16 So. 2d 118 (Fla. 1943). In *Hart*, Alice Hart ("Mrs. Hart") was injured after an automobile accident caused by Pearl Held. 16 So. 2d at 118. Mrs. Hart sued Held for damages arising from her bodily injuries, mental pain and suffering, and permanent physical impairment. *Id.* Mrs. Hart's husband sued for damages for the expenses involved in caring for his wife and for loss of services and consortium. *Id.* Mrs. Hart obtained a judgment for $8,000 and Mrs. Hart's husband obtained a judgment for $2,500. *Id.*

New Amsterdam Casualty Company ("New Amsterdam") was the insurer through which Held maintained an automobile liability insurance policy. *Id.* New Amsterdam tendered $5,000 to the Harts, which the Harts accepted as satisfaction for the judgment obtained by Mrs. Hart. *Id.* However, Mrs. Hart's husband brought suit against New Amsterdam to recover the amount of his judgment against Held. *Id.* New Amsterdam's defense to the action was that it had tendered the limit of its policy, $5,000, where only Mrs. Hart sustained bodily injury. *Id.*

Judgment was entered against New Amsterdam and the judgment was appealed. *Id.* at 119. "The sole question for determination [was] as to the extent of the company's liability to its insured under the terms of the contract." *Id.* The declarations page of the policy maintained by Held indicated that the limit of liability was "$5000 each person, $10,000 each accident." *Id.* The policy contained the following provisions:

> 1. Coverage A-Bodily Injury Liability-To pay on behalf of the insured all sums which the insured shall become obligated

> to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.
>
> 2. Limits of Liability. (Coverage A) The limit of bodily injury liability stated in the declarations as applicable to 'each person' is the limit of the company's liability for all damages, including damages for care and loss of service, arising out of bodily injury, including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability stated in the declarations as applicable to 'each accident' is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident.

Id.

New Amsterdam contended that under the policy it was only required to tender $5,000 for all damages because only one person—Mrs. Hart—sustained bodily injury. *Id.* The Florida Supreme Court agreed, finding as follows:

> Giving the limitation clauses in the policy their natural meaning it is manifestly clear that while damages not to exceed $10,000 may be recoverable where several persons receive bodily injury as the result of one accident, the limit of the company's liability for all damages sustained where only one person receives bodily injury-whether the damages are direct or consequential in their nature-is only $5000.

Id.

Although the wording of the applicable provision in *Hart* is somewhat different, we agree with AAA that *Hart's* rationale is still applicable. *See also Allstate Ins. Co. v. Clohessy*, 32 F. Supp. 2d 1333 (M.D. Fla. 1998); *State Farm Mut. Auto. Ins. Co. v. Reis*, 926 So. 2d 415 (Fla. 1st DCA 2006).

The trial court erred in determining that the definition of "Bodily Injury" as expressly set forth in the policy was somehow "expanded" by the policy's Limits of Liability provision. Accordingly, we conclude that the trial court should have granted AAA's motion for summary judgment and denied the estate's summary judgment motion.

REVERSED and REMANDED.

SASSO, J., and JACOBUS, B.W., Senior Judge, concur.