



ATTORNEY FOR APPELLANT

Joseph Leon Payne
Payne Law Office, LLC
Austin, Indiana

ATTORNEY FOR APPELLEE

Kelly A. Roth
Madison, Wisconsin

IN THE
COURT OF APPEALS OF INDIANA

Paula Napier,
Appellant-Plaintiff,

v.

American Family Mutual
Insurance Company, S.I.,
Appellee-Defendant,

November 15, 2021

Court of Appeals Case No.
21A-PL-980

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause No.
72D01-1909-PL-000043

Robb, Judge.

Case Summary and Issue

[1] This appeal involves a claim for uninsured motorist benefits by Paula Napier against her auto insurer, American Family Mutual Insurance Company, S.I. (“American”). The trial court granted American’s motion for summary judgment which asserted Napier’s claim was barred by the two-year tort statute of limitations. Napier raises one issue for our review, which we restate as whether the trial court erred by granting American’s motion for summary judgment. Concluding there is no genuine issue of material fact and American is entitled to judgment as a matter of law, we affirm.

Facts and Procedural History

[2] On August 8, 2014, and January 20, 2015, Napier was involved in car accidents with unnamed operators of uninsured vehicles. At the time of the accidents, Napier had auto insurance through American. Napier’s policy included the following uninsured motorist coverage:

2. Uninsured Motorist - Bodily Injury and Property Damage Coverage

Under this coverage we will pay compensatory damages an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:

- a. Bodily injury to an insured person; and

- b. Property damage. But, we will only pay for property damage if the name and address of the owner or operator of the uninsured motor vehicle is provided to us.

The bodily injury or property damage must be caused by accident and arise out of the use of the uninsured motor vehicle.

If any suit is brought by you to determine liability or damages, the owner or operator of the uninsured motor vehicle must be made a defendant and you must notify us of the suit. Without our written consent we are not bound by any resulting judgment.

Appellant's Appendix, Volume 2 at 17.

- [3] On September 17, 2019, Napier filed a complaint against American to recover uninsured motorist benefits. American filed a motion for summary judgment claiming Napier's "suit [is] barred by the tort statute of limitations outlined in Part VI-General Provision, Paragraph 4 [the "Provision"] of the policy[.]" *Id.* at 32. The Provision states:

4. *Suit Against Us.* We may not be sued unless all the terms of this policy are complied with. We may not be sued under the Liability coverage until the insured's obligation to pay is finally determined at the trial and appeal, if any, or by written agreement of the insured, the claimant and us. We may not be sued under the Uninsured Motorist coverage on any claim that is barred by the tort statute of limitations.

Id. at 19. American argued that the applicable tort statute of limitations was the two-year limitation found in Indiana Code section 34-11-2-4(a).

[4] Subsequently, Napier filed a cross motion for summary judgment alleging she was entitled to judgment as a matter of law in her favor “upon the issue of whether the claims herein are barred by any contractual limitation upon the time of filing of the suit.” *Id.* at 108. Napier argued the applicable statute of limitations was either the six-year limitation found in Indiana Code section 34-11-2-9 or the ten-year limitation found in Indiana Code section 34-11-2-11. On April 22, 2021, the trial court issued an order granting American’s motion for summary judgment. Napier now appeals.

Discussion and Decision

I. Standard of Review

[5] When reviewing the grant or denial of summary judgment, we apply the same test as the trial court: summary judgment is appropriate only if the designated evidence shows there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Rose v. Martin’s Super Markets L.L.C.*, 120 N.E.3d 234, 238 (Ind. Ct. App. 2019), *trans. denied*. The fact that the parties have filed cross motions for summary judgment does not alter our standard of review, as we consider each motion independently to determine whether the moving party is entitled to judgment as a matter of law. *Berkshire Hathaway Homestate Ins. Co. v. Basham*, 113 N.E.3d 630, 633 (Ind. Ct. App. 2018), *trans. denied*. A grant of summary judgment will be affirmed if it is sustainable upon any theory supported by the designated evidence. *Miller v. Danz*, 36 N.E.3d 455, 456 (Ind. 2015). A case such as this one, involving the

interpretation of an insurance contract, is particularly appropriate for summary judgment because the interpretation of a contract is a question of law. *Burkett v. Am. Fam. Ins. Grp.*, 737 N.E.2d 447, 452 (Ind. Ct. App. 2000).

II. Uninsured Motorist Coverage Limitation

- [6] Napier argues that the trial court “erred in its application of the law to the terms of [her] insurance contract” with American. Appellant’s Brief at 9. Insurance contracts are subject to the same rules of construction as other contracts. *Burkett*, 737 N.E.2d at 452. When interpreting a contract, the court’s objective is to ascertain and enforce the intent of the contracting parties. *Id.* If the language is clear and unambiguous, it will be given its plain and ordinary meaning. *Id.*
- [7] We construe the insurance policy as a whole and consider all of the provisions of the contract and not just the individual words, phrases or paragraphs.” *Buckeye State Mut. Ins. Co. v. Carfield*, 914 N.E.2d 315, 318 (Ind. Ct. App. 2009) (internal citation omitted), *trans. denied*; see also *Askren Hub States Pest Control Servs., Inc. v. Zurich Ins. Co.*, 721 N.E.2d 270, 275 (Ind. Ct. App. 1999) (stating that an insurance contract “should be construed to further its basic purpose of indemnity.”).
- [8] The duty of an insurer to pay damages arises out of its contract with its insured. *Am. States Ins. Co. v. Williams*, 151 Ind. App. 99, 106, 278 N.E.2d 295, 300 (1972). Thus, we have previously held that in the absence of a contractual provision adopting a different period of limitation, the ten-year statute of limitations regarding contracts controls. See *Lumpkins v. Grange Mut. Cos.*, 553

N.E.2d 871, 872 (Ind. Ct. App. 1990). However, “insurers have the right to limit their coverage of risks and, therefore, their liability by imposing exceptions, conditions, and exclusions.” *Sheehan Constr. Co., Inc. v. Cont’l Cas. Co.*, 935 N.E.2d 160, 169 (Ind. 2010). Such limitations are enforceable only if clearly expressed. *Delaplane v. Francis*, 636 N.E.2d 169, 171 (Ind. Ct. App. 1994), *trans. denied*.

- [9] The Provision at issue limits Napier’s uninsured coverage by stating the following:

We may not be sued under the Uninsured Motorist coverage on any claim that is barred by the *tort* statute of limitations.

Appellant’s App., Vol. 2 at 19 (emphasis added).

- [10] First, Napier contends the Provision “does not clearly and unambiguously set forth a different limitation for filing of suit[.]” Appellant’s Br. at 12. Ambiguous terms in an insurance policy are to be construed against the insurer. *Am. States Ins. Co. v. Kiger*, 662 N.E.2d 945, 947 (Ind. 1996). An insurance policy is ambiguous if a provision is susceptible to more than one interpretation and reasonable persons would differ as to its meaning. *Adkins v. Vigilant Ins. Co.*, 927 N.E.2d 385, 389 (Ind. Ct. App. 2010), *trans. denied*. However, an ambiguity does not exist merely because the parties favor different interpretations. *Id.* The power to interpret insurance contracts “does not extend to changing their terms, and we will not give insurance policies an unreasonable construction to provide added coverage.” *Id.* In other words, we may not extend coverage beyond that

provided by the unambiguous language of the contract. *Sheehan Constr. Co., Inc.*, 935 N.E.2d at 169.

[11] Napier contends that the phrase “tort statute of limitations” in the Provision is ambiguous and could reference many different statutes of limitation involving torts.¹ Appellant’s Br. at 13. However, the Provision is specifically applicable to “the Uninsured Motorist coverage[.]” Appellant’s App., Vol. 2 at 19. And Napier’s uninsured motorist coverage only includes bodily injury and property damage, and only when Napier is “legally entitled to recover from the owner or operator of an uninsured motor vehicle[.]” *Id.* at 17. Therefore, the statute of limitations applicable to a case against the uninsured drivers for Napier’s damages from bodily injury or property damage is the “tort statute of limitation” applicable to a suit against American for uninsured coverage. *Id.* at 19.

[12] Pursuant to Indiana Code section 34-11-2-4(a), an action for:

- (1) injury to person or character;
- (2) injury to personal property; or
- (3) a forfeiture of penalty given by statute;

¹ As an example, Napier cites Indiana Code section 34-11-2-7, which provides a statute of limitation of six years for various claims including an action for relief against frauds. *See* Appellant’s Br. at 13.

must be commenced within two (2) years after the cause of action accrues.

Here, the accidents occurred in 2014 and 2015; however, Napier did not file suit against American until 2019. Under Indiana Code section 34-11-2-4(a), Napier would not be legally entitled to recover from the uninsured drivers due to the two-year statute of limitations on actions to recover for bodily injury. Therefore, we conclude that when considering the insurance policy as a whole, the “tort statute of limitation” in the Provision unambiguously refers to Indiana Code section 34-11-2-4(a) and Napier’s uninsured motorist coverage claim against American must have been brought within two years of the accidents.

[13] Second, Napier argues that interpreting the Provision to limit suits to two years after a loss goes against public policy. “It is well settled in Indiana that a provision in an insurance policy that limits the time in which a suit may be brought to a period less than that fixed by the statute of limitations is binding, unless it contravenes a statute or public policy.” *Buress v. Ind. Farmers Mut. Ins. Group*, 626 N.E.2d 501, 503 (Ind. Ct. App. 1993) (citation omitted), *trans. denied*; *see also Gheae v. Founders Ins. Co.*, 854 N.E.2d 419, 423 (Ind. Ct. App. 2006) (stating insurance companies can only limit their liability “in a manner consistent with public policy as reflected by case or statutory law.”).

[14] Indiana Code section 27-7-5-2 requires auto insurance policies to include uninsured motorist coverage. The purpose of the statute is to afford the same protection to a person injured by an uninsured motorist as they would have enjoyed if the offending motorist had themselves carried liability insurance. *Rice*

v. Meridian Ins. Co., 751 N.E.2d 685, 690 (Ind. Ct. App. 2001), *trans. denied*.

Thus, any limiting language in the insurance contract which has the effect of providing less protection than that made obligatory by the above statute would be contrary to public policy, and of no force and effect. *Scalf v. Globe Am. Cas. Co.*, 442 N.E.2d 8, 10 (Ind. Ct. App. 1982), *trans. denied*.

[15] In *Scalf*, we held that a one-year limitation on the recovery of uninsured motorist benefits “dilute[d] and diminish[ed] the protection of the uninsured motorist statute.” *Id.* We stated:

[T]o provide [the insured] with the same financial protection he would have had if he were injured by an insured motorist, he must be able to pursue his remedy against his insurance carrier for the same time period he would be able to pursue his claim against an insured tortfeasor’s insurance carrier.

Id. at 11.

[16] Here, the Provision affords Napier the same amount of time to bring an uninsured motorist coverage claim as Napier has to bring a claim against an insured tortfeasor. *See* Indiana Code § 34-11-2-4(a). Therefore, we conclude the limitation is not contrary to public policy.

Conclusion

[17] We conclude that the liability limiting provision at issue is not ambiguous and does not violate public policy. Accordingly, American is entitled to judgment as a matter of law and we affirm the trial court’s judgment in American’s favor.

[18] Affirmed.

Bradford, C.J., and Altice, J., concur.