IN THE COURT OF APPEALS OF IOWA

No. 8-686 / 08-0391
Filed November 26, 2008

KALE SWAINSTON and
STEPHANIE SWAINSTON,
Plaintiffs-Appellants,

vs.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

Insureds appeal from summary judgment granted in favor of insurer. **AFFIRMED.**

Steven Lawyer of Law Firm of Steven V. Lawyer & Associates, Des Moines, for appellants.

Coreen K. Sweeney and Anna W. Mundy of Nyemaster, Goode, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

HUITINK, P.J.

Kale and Stephanie Swainston appeal from the district court's ruling granting summary judgment in favor of the insurer, American Family Mutual Insurance Company. They contend the district court erred in determining Iowa Code section 516A.2(3) (2007) applies to their claim for uninsured motorist (UM) coverage under their insurance policy with American Family. They also argue that even if that section is applicable, the "other insurance" language of the policy shows that the policy allows stacking. Finally, they contend that in any event Stephanie is entitled to additional benefits under the uninsured limits of the American Family policy. We affirm.

I. Background Facts and Proceedings. On November 27, 2004, the Swainstons were injured in a collision while riding as passengers in a vehicle they did not own and which was insured by State Farm Insurance. As a result of the collision, State Farm paid its per-accident limit ($500,000) for uninsured motorist coverage. The proceeds were distributed among five individuals: Kale received $195,000 and Stephanie received $54,000.

At the time of the collision, the Swainstons were covered under an automobile insurance policy with American Family. The UM coverage of this policy provides the following "Limits of Liability":

> The limits of liability of this coverage as shown in the declarations apply, subject to the following:
> 1. The limit for "each person" [$100,000] is the maximum for all damages sustained by all persons as the result of bodily injury to one person in any one accident.
> 2. Subject to the limit for "each person," the limit for "each accident" [$300,000] is the maximum for bodily injury sustained by two or more persons in any one accident.

> We will pay no more that these maximums no matter how many vehicles are described in the declarations, or insured persons, claims, claimants, policies or vehicles are involved.
>
> The Limits of liability of this coverage will be reduced by:
> 1. A payment made by the owner or operator of the uninsured motor vehicle or organization which may be legally liable.
> 2. A payment under the Liability coverage of this policy.
> 3. A payment made or amount payable [under workers' compensation].
>
> OTHER INSURANCE
> If there is other similar insurance on a loss covered by this Part, we will pay our share according to this policy's proportion of the total limits of all similar insurance. But, any insurance provided under this Part for an insured person while occupying a vehicle you do not own is excess over any other similar insurance.

The State Farm policy issued to the driver of the vehicle in which the Swainstons were riding when they were injured carried higher policy limits for uninsured motorist benefits than the American Family policy issued to the Swainstons.

The Swainstons sued American Family, alleging it wrongfully refused to pay them under the UM provisions of the policy (Count I) and for bad faith (Count II). American Family moved for summary judgment on Count I, asserting the Swainstons had been reimbursed by the driver's insurance policy and that American Family was not required to pay under the antistacking provisions of Iowa Code section 516A.2. The district court granted summary judgment to American Family on Count I. The Swainstons voluntarily dismissed Count II and appealed the summary judgment ruling.

II. Standard of Review. This court reviews a summary judgment ruling on error. Iowa R. App. P. 6.4.; *Lee v. Grinnell Mut. Reins. Co.,* 646 N.W.2d 403, 406 (Iowa 2002). "A summary judgment will be affirmed when the moving party

has shown no genuine issues of material fact exist and the party is entitled to judgment as a matter of law." *Whicker v. Goodman,* 576 N.W.2d 108, 110 (Iowa 1998); *accord* Iowa R. Civ. P. 1.981(3). In a case such as the one before us, where the facts are undisputed, this court simply determines "whether the district court correctly applied the law." *Krause v. Krause,* 589 N.W.2d 721, 724 (Iowa 1999).

III. Discussion. The interpretation of an insurance policy is a question of law for the court. *Greenfield v. Cincinnati Ins. Co.*, 737 N.W.2d 112, 117 (Iowa 2007). We view the provisions of an insurance policy "in a light favorable to the insured." *A.Y. McDonald Indus. v. Insurance Co. of N. Am.,* 475 N.W.2d 607, 619 (Iowa 1991). "[T]he cardinal principle is that the intent of the parties must control; and except in cases of ambiguity this is determined by what the policy itself says." *Id.* at 618.

Notwithstanding the principle that the meaning of an insurance contract is generally determined from the language of the policy, statutory law may also affect our interpretation of policy provisions. In discussing the application and effect of Iowa's uninsured/underinsured motorist statute, chapter 516A, the supreme court has stated:

> A statute that authorizes a contract of insurance has application beyond merely permitting or requiring such a policy. The statute itself forms a basic part of the policy and is treated as if it had actually been written into the policy. The terms of the policy are to be construed in light of the purposes and intent of the applicable statute.

Lee, 646 N.W.2d at 406 (internal quotations and citations omitted). Thus, a determination of the coverage provided by the policy also requires an

interpretation of the pertinent statutes. With these general principles in mind, we turn to the issues at hand.

Chapter 516A controls uninsured, underinsured and hit-and-run motorist coverage in insurance policies. At issue here is section 516A.2, entitled "**CONSTRUCTION -- MINIMUM COVERAGE --STACKING.**"[1]

> 1. Except with respect to a policy containing both underinsured motor vehicle coverage and uninsured or hit-and- run motor vehicle coverage, nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in subsection 11 of section 321A.1. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.
>
> To the extent that *Hernandez v. Farmers Insurance Company*, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under section 516A.1.
>
> 2. Pursuant to chapter 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders, endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.
>
> 3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on

[1] We keep in mind that this case involves a "narrow coverage view." *Greenfield v. Cincinnati Ins. Co.*, 737 N.W.2d 112, 118 (Iowa 2007) (noting the policy distinction between uninsured motorist coverage—to make certain that an injured party receives minimum compensation for his or her injuries—and underinsured motorist coverage—to enhance the ability of claimant in an automobile accident to be made whole for his or her losses).

> behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.

The Swainstons contend that the language of the American Family policy allows stacking and section 516A.2 is inapplicable.

> Stacking is just another word to denote the availability of more than one policy, or one policy with multiple vehicles, providing reimbursement of the losses of the insured. Interpolicy stacking occurs when the insured recovers underinsured or uninsured benefits under more than one policy.

Farm Bureau Mut. Ins. Co. v. Ries, 551 N.W.2d 316, 318 (Iowa 1996).

> Our law governing stacking of insurance coverage is found in Iowa Code section 516A.2. . . . It first declares antistacking provisions contained in a motor vehicle insurance policy are enforceable. Iowa Code § 516A.2(1). . . . Thus, the first subsection of section 516A.2 clearly reflects legislative intent to permit insurers to include provisions in insurance policies which prohibit the stacking of uninsured and underinsured motorist benefits. . . .
>
> Secondly, the section establishes that the insured and insurer may contract to include stacking of uninsured and underinsured coverage in a policy. Iowa Code § 516A.2(2). Thus, even though antistacking provisions may be included in an insurance policy, the parties may contract for provisions that provide for stacking, and, presumably, pay an additional premium for the coverage.
>
> Finally, Iowa Code section 516A.2(3) provides if more than one policy is purchased containing uninsured or underinsured motorist coverage, an insured injured by an uninsured or underinsured motorist is entitled to recover up to an amount equal to the highest limit for such coverage "under any *one*" of the policies. It also provides the amount shall be paid by the insurers according to any priority of coverage provisions in the policies.

Mortensen v. Heritage Mut. Ins. Co., 590 N.W.2d 35, 38-39 (Iowa 1999) (internal citations and footnote omitted).

Relying upon *Mortensen*, the district court noted that where an insurance policy is silent as to interpolicy stacking, section 516A.2(3) is applicable and does not permit stacking of insurance coverage. The district court found that because there was no language in the American Family policy concerning stacking, section 516A.2(3) was to be read into the policy and the Swainstons were entitled to recover on the policy that had the highest policy limit (the State Farm policy) with no stacking of coverage.

The *Mortensen* court held that section 516A.2 prohibits stacking of uninsured motorist coverage unless specifically provided in the insurance policy. *Id.* at 40. The American Family policy does not address interpolicy stacking and therefore, if *Mortensen* applies, the district court properly concluded the Swainstons had already recovered on the policy with the highest limit.

The Swainstons contend there is nothing in their policy with American Family that prohibits interpolicy stacking. They argue that the district court erred in concluding that section 516A.2 was applicable. They assert that *Mortensen* is not controlling because the *Mortensen* case involved an interstacking question where the two policies at issue were both purchased by Mortensen. The Swainstons assert that section 516A.2(3) is not applicable in this instance because the State Farm policy was not "purchased by or on behalf of" the Swainstons.

American Family contends our supreme court has already addressed and rejected the argument in *Mewes v. State Farm Auto Insurance Co*., 530 N.W.2d 718 (Iowa 1995). In *Mewes*, the passengers in a car owned and insured by a third party sought to recover UM coverage. *Id*. at 720. The court wrote:

> The [Mewes] rely on the following language from the amendment to support their second argument:
>
> > 3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased *by or on behalf of an injured insured* and which provides uninsured, underinsured or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured [may not stack the coverages from the policies].
>
> Iowa Code § 516A.2(3). The Mewes point out that in *Hernandez* the injured insured had purchased one policy and his mother, with whom he lived, had purchased the other two policies. Her policies included as an insured a relative residing in her household, *i.e.* her son. In contrast, only three of the policies involved here were purchased by the Mewes. The other policy was purchased by Kraft, the owner of the vehicle in which Jane Mewes was riding at the time of the accident. *Kraft, they contend, is a third party unrelated to the Mewes.* Based on this factual distinction, the Mewes argue that this case falls outside the holding of *Hernandez* and therefore, outside the abrogation of *Hernandez* by the legislature [found in section 516A.2(1)].
>
> We are unable to accept this limited view of the legislature's intent in abrogating our *Hernandez* decision. *First, we think that a policy such as the one purchased by Kraft, which insured passengers in her vehicle, was purchased "on behalf" of any injured passenger within the meaning of section 516A.2(3).* Additionally, in the statute abrogating *Hernandez,* the legislature declared "that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given an insured under section 516A.1." *Id.* § 516A.2(1). This statement does not support an interpretation of section 516A.2(3) that would allow enforcement of antistacking provisions only part of the time. The Mewes have offered no reason why the antistacking provisions involved in *Hernandez* would not frustrate the protection given by section 516A.1 but the antistacking provisions involved here would.
>
> We conclude section 516A.2 applies here. Therefore, the district court properly gave effect to the antistacking provisions in the applicable policies.

Mewes, 530 N.W.2d at 724-25 (emphasis added).

Like the district court, we believe the supreme court has indeed found that the language "purchased by or on behalf of" is to be broadly construed to include

injured passengers like the Swainstons. The district court did not err in concluding section 516A.2(3) is applicable and that the Swainstons are not entitled to recover under the American Family policy.

The Swainstons argue, nonetheless, that the language of the American Family policy expressly allows for stacking. The district court found, and we agree, that the supreme court looked at nearly identical contract language in the *Mortensen* case and rejected this argument. The *Mortensen* court stated, "The other insurance clauses . . . address how much each company must contribute to an insured's loss when other insurance coverage for the same loss exists. They do not entitle an insured to stack policies." *Mortensen*, 590 N.W.2d at 40.

IV. Conclusion. The district court did not err in determining Iowa Code section 516A.2(3) applied to the Swainstons' claim for uninsured motorist coverage under their insurance policy with American Family. The "other insurance" language of the policy did not expressly allow stacking. Pursuant to section 516A.2(3), the Swainstons were entitled to recover up to an amount equal to the highest single limit for uninsured coverage "under any one" policy. They have recovered under the State Farm policy and therefore cannot recover further.

AFFIRMED.