

IN THE COURT OF APPEALS OF IOWA

No. 9-446 / 08-1634
Filed October 7, 2009

LAURA A. STONEKING,
Plaintiff-Appellant,

vs.

FEDERATED MUTUAL INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Plaintiff appeals from the district court's order granting defendant's motion
for summary judgment on her petition seeking payment of underinsured motorist
benefits from defendant. **AFFIRMED.**

Vance Jorgensen of Vance Jorgensen Law Firm, Mason City, for
appellant.

David H. Luginbill, James R. Wainwright, and Jason M. Craig of Ahlers &
Cooney, P.C., Des Moines, for appellee.

Heard by Vogel, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.

Laura Stoneking appeals from the district court's order granting Federated Mutual Insurance Company's motion for summary judgment. Stoneking filed a petition seeking payment of underinsured motorist (UIM) benefits from Federated after she was seriously injured in an automobile collision while a passenger in a vehicle operated by T.C. Ryan Lee Simon.¹ Stoneking's father, Dennis Stoneking, had a Federated motor vehicle insurance policy for his company Injection Technology Diesel Services, Inc. (ITDS) with a \$500,000 UIM coverage limit. Dennis Stoneking testified that when he purchased the Federated policy, he believed he had obtained UIM motorist coverage for his family members. However, Simon's vehicle was not on the schedule of covered ITDS automobiles, Simon was not an ITDS employee, and Stoneking was not otherwise an "insured" pursuant to the language in the ITDS policy.

Upon initial receipt of Stoneking's UIM claim, Federated Claims Supervisor Linda Harkins mistakenly informed Stoneking that she was "eligible for underinsured motorist benefits under the policy issued to Injection Technology Diesel Service, Inc." Pre-suit correspondence between the parties continued in which Harkins represented to Stoneking that she was eligible for benefits. The parties were not able to settle, however, due to numerous unresolved issues. As the statute of limitations loomed on Stoneking's claim, she filed the instant action

¹ Stoneking settled with Simon's insurance carrier for the policy limit of \$20,000. State Farm Insurance Company, which Stoneking's father had personal automobile insurance through, and Donna Backhaus, the other driver involved in the collision with Simon, were also named as defendants in Stoneking's petition seeking benefits. Stoneking has settled with State Farm for the underinsured policy limit of \$25,000. Stoneking has also settled with and dismissed her claim against Backhaus.

seeking payment of benefits.² Only after filing its answer to Stoneking's petition did Federated discover its error in admitting Stoneking was covered under the ITDS policy. Federated filed an amended answer denying Stoneking was covered under the policy, and thereafter moved for summary judgment.³

After a hearing, the district court granted Federated's motion and entered judgment in favor of Federated. Stoneking now appeals, contending the court erred in concluding (1) she was not an insured person under Federated's policy, (2) Federated's withdrawn pleading admitting she was an insured person under the policy was not an evidentiary admission creating a jury issue on coverage, and (3) no triable issue existed on her bad faith or equitable estoppel claims. Stoneking further argues the court erred in granting summary judgment under the reasonable expectations doctrine.

We review the district court's summary judgment ruling for the correction of errors at law. Iowa R. App. P. 6.4; *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008). Summary judgment is appropriate if, viewing the evidence in the light most favorable to the nonmoving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *Lobberecht*, 744 N.W.2d at 106. Due to the nature of an insurance policy, the benefit of the doubt in the drafting is interpreted against the insurance

² Stoneking's petition also included a bad faith claim against Federated. She later amended the petition to add ten more causes of action against Federated, including but not limited to: negligent misrepresentation by Dan Kennedy and Linda Harkins; detrimental reliance; equitable estoppel; and reasonable expectations.

³ Stoneking also moved for summary judgment against Federated.

company, and limits in coverage are construed strictly against the insurer. *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W.2d 24, 27 (Iowa 2005). Construction and interpretation of an insurance policy is a question of law for the court unless the parties offer extrinsic evidence on the meaning of policy language. *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 681 (Iowa 2008).

Contrary to Stoneking's claims, we agree with the trial court's decision in this case. We conclude there is no genuine issue of material fact and Federated is entitled to summary judgment on all claims raised by Stoneking. Stoneking, as a passenger in Simon's car, was not covered under the Federated policy purchased by Dennis Stoneking for ITDS, and she is therefore not entitled to receive UIM benefits.

The record does not contain any evidence creating a factual dispute as to whether Dan Kennedy represented to Dennis Stoneking that his family members would have UIM coverage as passengers in non-ITDS vehicles being driven by non-employees. Furthermore, any mistaken representations made by Federated to Stoneking after the accident are factually inapplicable in this case. Having reviewed the record, the briefs of the parties, and the district court's extensive ruling, we find no error. Any further discussion would add little to and not change the disposition of this case. We therefore affirm.

AFFIRMED.