SUPREME COURT OF LOUISIANA

No. 99-C-0942

BILLY BOULLT and JUDY BOULLT

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.

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ON WRIT OF CERTIORARI
TO THE COURT OF APPEAL,
SECOND CIRCUIT,
PARISH OF OUACHITA
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KNOLL, JUSTICE[*]

This writ concerns divorced parents with separately owned insurance policies seeking damages under their respective policies for the wrongful death of their daughter who was a guest passenger in a non-owned automobile. The issue is whether the parents' individual claims for the wrongful death of their child violates Louisiana's anti-stacking law. We conclude that each parent is seeking damages for an independent cause of action under a single policy for which he or she is the named insured and is not stacking one coverage on top of another. Thus, under the unique facts of this case, Louisiana's anti-stacking law does not bar recovery to the parents' individual claims.

FACTS

On November 6, 1993, Andrea Boullt ("Andrea") suffered fatal injuries in a one-car accident while a guest-passenger in a vehicle owned by Louis Costanza. It is undisputed that the sole cause of the accident was the negligence of the host driver. At the time of Andrea's death, her parents, Billy and Judy Boullt (the "Boullts"), were divorced, maintained separate households, and enjoyed joint custody of their daughter.

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[*] Marcus, J., not on panel. *See* Rule IV, Part 2, § 3.

It was stipulated that Andrea was considered a resident of each of the Boullts' separate households for coverage purposes at the time of her death. The Boullts settled Andrea's survival action with the host driver's insurer for policy limits of $100,000.

The Boullts each purchased separate automobile insurance policies from State Farm on their own vehicles.[1] Each was a named insured only under his or her respective policy. Each policy provided UM coverage to the insured with limits of $50,000 per accident. It was stipulated that each of the Boullts' wrongful death claims exceeded the limits of liability coverage paid from the host driver's policy and under the policies issued to the Boullts by State Farm. It was also stipulated that the Boullts were each seeking to satisfy their individual wrongful death claim by claiming a separate payment under his or her own UM policy. Notwithstanding, State Farm contended that the Boullts could recover only under one policy. State Farm tendered the limits of its UM policy issued solely to Billy Boullt by check made payable to Billy and Judy jointly and refused to pay the limits of Judy Boullt's UM policy, claiming that the anti-stacking statute precluded recovery under both policies, thus necessitating the Boullts bringing this wrongful death litigation for payment of their respective claims.

PROCEDURAL HISTORY

The trial court denied the Boullts' claims against State Farm and dismissed the suit with prejudice, citing *Schwankhart v. Louisiana Dep't of Transp. & Dev.*, 94-0735 (La.App. 4 Cir. 11/30/94), 646 So.2d 1242. The Second Circuit Court of Appeal reversed and held that the Boullts' claims against State Farm seeking recovery under their own individual UM policy did not violate Louisiana's anti-stacking statute because the Boullts were seeking separate recovery under his or her own separate UM

[1] Coincidently, State Farm was the insurer under both UM policies.

policy for his or her own individual wrongful death damages. *Boullt v. State Farm Mut. Auto. Ins. Co.*, 31,709 (La. App. 2 Cir. 3/1/99), 728 So.2d 1064, 1065. The court of appeal agreed with State Farm and recognized that had Andrea lived, as an "insured" under both her parents' policies, the anti-stacking statute would have limited her recovery to only one of her parents' UM policies. However, the appellate court reasoned that the wrongful death claims asserted by each of the Boullts for their own injuries were separate claims of damages sustained by each parent personally as a result of the loss of a child. The court also reasoned that, as it considered each parent an "insured" under the anti-stacking statute, allowing each to recover under their own policy did not violate the statute or its public policy. *Id.*

We granted State Farm's writ application to resolve a split among the circuits. *Boullt v. State Farm Mut. Auto. Ins. Co.*, 99-0942 (La. 5/28/99), __ So.2d __, 1999 WL 386295. The Fourth Circuit in *Schwankhart*, 646 So.2d at 1244, held that divorced parents seeking recovery for individual wrongful death claims under his or her own policy were limited to one policy concluding that "[m]ultiple persons recovering for a wrongful death should be restricted to the same total recovery which would have been available to the injured person if he had survived." Likewise, the Third Circuit in *Sheppard v. State Farm Ins. Co.*, 614 So.2d 208, 211-12 (La.App. 3 Cir. 1993); *Vincent v. State Farm Mutual Auto. Ins. Co.*, 526 So.2d 818, 820 (La.App. 3 Cir.), *on reh'g*, 526 So.2d 818, 823-24, *writ denied*, 532 So.2d 150 (La.1988); and *Salter v. State Farm Mut. Auto. Ins. Co.*, 520 So.2d 877, 879 (La.App. 3 Cir. 1987) has essentially held that Louisiana's anti-stacking statute restricts claimants for wrongful death damages to the full limits of UM liability coverage contained in one policy covering one vehicle.

State Farm argues that the court of appeal erred in concluding that the Boullts

could each collect the policy limits for the wrongful death of Andrea under their own UM policy. State Farm reasons that under La. R.S. 22:1406(D)(1)(c), had Andrea lived, she, as an occupant of a non-owned vehicle and a resident of each of the Boullts' households, could have recovered first from the host driver's liability policy and then from only one of her parents' UM policies. State Farm contends that the court of appeal's error resulted from its erroneous assessment that each parent was considered as the "insured" under La. R.S. 22:1406(D)(1)(c) and that clearly it is only the person who is injured or killed, *i.e.*, Andrea, who is the "insured." For authority, State Farm cites *Schwankhart*, 646 So.2d at 1242; *Vincent*, 526 So.2d at 818; *Salter*, 520 So.2d at 877; and the 1986 first edition of the MCKENZIE & JOHNSON, LOUISIANA CIVIL LAW TREATISE ON INSURANCE § 123 ("[M]ultiple persons recovering for a wrongful death should be restricted to the same total recovery which would have been available to the injured person if he had survived.").[2]

The Boullts counter that La. R.S. 22:1406 (D)(1)(c) is not applicable arguing that no stacking of policies has taken place because they are divorced parents, have separate UM policies insuring separate vehicles, have separate and independent causes of action, and are seeking separate recovery of their own individual damages arising from the wrongful death of Andrea. That is, each parent is asserting an independent cause of action for his or her own damages under a single policy and not attempting to stack recovery under two policies. The Boullts point out that, at the time of the accident, neither of the two was an insured under the other's policy and could not assert a claim under the other's policy. Thus, because the policies and claims are separate and distinct, Billy is entitled to seek satisfaction of his wrongful death claim from his

[2] The 1996 second edition of the MCKENZIE & JOHNSON treatise deleted this quote. The treatise now states: "If the deceased was limited to one coverage because he was occupying his own auto, claimants for his wrongful death likewise must share one policy limit." MCKENZIE & JOHNSON, § 123.

policy and Judy is entitled to seek satisfaction of her wrongful death claim from her policy. The Boullts also urge that State Farm's hypothetical argument premised upon Andrea having survived the accident and being limited to recovery under only one policy is irrelevant, because had she lived they would have no wrongful death claim to assert. As authority, the Boullts cite LA.CIV. CODE art. 2315.1(A), 2315.2; *Guidry v. Theriot*, 377 So.2d 319, 322 (La.1979); and *Rogers v. Ambassador Ins. Co.*, 452 So.2d 261 (La.App. 5 Cir.), *writ denied*, 457 So.2d 14 (La. 1984).

LAW AND ANALYSIS

State Farm stipulated that at the time of the fatal accident each of the Boullts' policies provided UM coverage to the insureds and that the respective policies covered this accident. Coverage was not disputed. Thus, our sole inquiry is whether allowing the Boullts to each seek recovery under their own UM policy for their own individual damages from the wrongful death of their daughter violates La. R.S. 22:1406(D)(1)(c)(i) by impermissibly stacking UM policies.

Stacking of UM coverages occurs when the amount available under one policy is inadequate to satisfy the damages alleged or awarded the insured and the same insured seeks to combine or stack one coverage on top of another for the same loss covered under multiple policies or under multiple coverages contained in a single policy. Interpolicy stacking occurs when the insured attempts to recover UM benefits under more than one UM coverage provision or policy, while intrapolicy stacking occurs when the insured attempts to recover UM benefits under a single policy of insurance covering multiple motor vehicles. *See* La. R.S. 22:1406(D)(1)(c); LEE. R. RUSS & THOMAS F. SEGALLA, COUCH ON INSURANCE 3D § 169.4, at 169-15 to -14, 169.7, at 169-20 to -21 (3d ed. 1998); *see also Wyatt v. Robin*, 518 So.2d 494, 496 (La.1988) (Lemmon, J., concurring).

With one exception, Louisiana's anti-stacking statute prohibits insureds from combining or stacking UM benefits either interpolicy or intrapolicy. As such, La. R.S. 22:1406 (D) provides in pertinent part that:

> (1)(c)(i) If the insured has any limits of uninsured motorist coverage in a policy of automobile liability insurance, in accordance with the terms of Subsection D(1), then such limits of liability shall not be increased because of multiple motor vehicles covered under said policy of insurance and such limits of uninsured motorist coverage shall not be increased when the insured has insurance available to him under more than one uninsured motorist coverage provision or policy; provided, however, that with respect to other insurance available, the policy of insurance or endorsement shall provide the following:
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> (ii) With respect to bodily injury to an injured party while occupying an automobile not owned by said injured party, resident spouse, or resident relative, the following priorities of recovery under uninsured motorist coverage shall apply:
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> (aa) The uninsured motorist coverage on the vehicle in which the injured party was an occupant is primary;
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> (bb) Should that primary uninsured motorist coverage be exhausted due to the extent of damages, then the injured occupant may recover as excess from other uninsured motorist coverage available to him. In no instance shall more than one coverage from more than one uninsured motorist policy be available as excess over and above the primary coverage available to the injured occupant.

Thus, under the first paragraph of the statute, an insured seeking recovery with multiple limits of UM coverage available either interpolicy or intrapolicy is limited to recovery under only one policy and may not combine or stack coverages. Under the second paragraph, an exception to stacking is permitted if: (1) the injured party is occupying an automobile not owned by him; (2) the UM coverage on the vehicle in which the injured party was an occupant is primary; and, (3) should that primary UM coverage be exhausted due to the extent of damages, then the injured occupant may recover as excess from other UM coverage available to him. *Nall v. State Farm Mut.*

Auto. Ins. Co., 406 So.2d 216, 218 (La. 1981); *see also Wyatt*, 518 So.2d at 495. Clearly, the second paragraph is not pertinent as neither of the Boullts meet the specified criteria. Thus, the inquiry is whether the first paragraph precludes the Boullts from separately seeking recovery under his or her respective policy.

The issue of stacking only arises once it has been determined that an individual insured has two or more policies or a single policy covering multiple vehicles applying to the same loss. It is also clear that in order for stacking to be an issue, the individual seeking to stack coverages must in fact be an insured as to the particular loss under more than one policy or a single policy covering multiple vehicles at issue, entitled to recover under all the policies or a single policy covering multiple vehicles, and that each policy or single policy covering multiple vehicles applies to the activity in question. "The question of 'stacking' only arises once it is determined that the person seeking to cumulate benefits on two or more uninsured motorist coverages is an insured under the terms of those policies." *Seaton v. Kelly*, 339 So.2d 731, 735 (La. 1976); *see also Magnon v. Collins*, 98-2822, at 4 (La. 7/7/99), __ So.2d __, 1999 WL 460066, at *4; *Taylor v. Rowell*, 98-2865, at 6 (La. 5/18/99), __ So.2d __, 1999 WL 330398, at *6; *Howell v. Balboa Ins. Co.*, 564 So.2d 298, 301-02 (La. 1990) (all noting that the plaintiff must be an "insured" under the policy to be entitled to UM coverage).

We agree with State Farm's observation that had Andrea lived, as an occupant of a non-owned vehicle, La. R.S. 22:1406(D)(1)(c)(ii) would have limited her recovery first from the host driver's liability policy and then from only one of the Boullts' UM policies. Indeed, we have held that the anti-stacking statute precludes the injured insured from stacking coverage beyond what the statute authorizes. *See Nall*, 406 So.2d at 218. Under these circumstances, the Boullts would have neither a cause of action for the wrongful death of Andrea nor would they have inherited a survival action

jointly. Thus, under the statute neither of the Boullts would have been an insured seeking recovery. Instead, only Andrea, as the injured insured, would have had a remedy under our codal law. This observation by State Farm, however, is irrelevant and immaterial to the inquiry before us. For this observation to be dispositive to our inquiry, we would have to be faced with a different set of facts and Andrea's claim for personal injuries would have to be synonymous with her parents' claims for her wrongful death.

This Court has recognized this critical distinction in our recent decision in *Walls v. American Optical Corp.*, 98-0455 (La. 9/8/99), __ So.2d __. In *Walls*, plaintiffs, the survivors of a sandblaster, sued the executive officers of the decedent's employer seeking damages for his wrongful death. As we made clear, the survival action and the wrongful death action are two separate and distinct causes of action that arise at different times, address themselves to the recovery of damages for different injuries and losses, and accrue to different tort victims. *Id.* at p. 14. The survival action comes into existence simultaneously with the tort, permits recovery only for the damages suffered by the victim from the time of injury to the moment of death, and is transmitted to the victim's beneficiaries upon his death. *Id.* Conversely, the wrongful death action arises only if and when the victim dies and compensates the beneficiaries for their own individual injuries that occur at the moment of the victim's death and thereafter. *Id.* at p. 9.

Analogously, Andrea's personal injury action had she lived versus the wrongful death action granted her parents because of her death are two separate and distinct causes of action that arise at different times, address themselves to the recovery of damages for different injuries and losses, and accrue to different tort victims. Had Andrea lived, her parents would have no cause of action. Instead, only Andrea would

have suffered injury and only she would have a remedy under our law. In *Walls*, we rejected the argument, similar to the one that State Farm makes in the case *sub judice*, that the wrongful death action was derivative of the tort victim's cause of action. *Id.* at p. 15. *See also Taylor v. Giddens,* 618 So.2d 834, 840 (La. 1993)*; Guidry,* 377 So.2d at 319; and LA.CIV. CODE art. 2315.2. The Boullts' codal rights to recover for their individual damages and injuries as a result of their daughter's death are independent of what Andrea's status or right would have been under the anti-stacking statute.

The unique facts and circumstances of this case include that the Boullts are divorced and have separate UM policies. Further, the Boullts are legal strangers not only to each other under the law but also to the other's UM policy. Separate premiums had been charged to and paid by different insureds for each of the separate UM policies. Further, the separate policies provided coverage to different insureds covering separate risks. Each parent suffered his and her own injuries although arising from a single occurrence, *i.e.*, Andrea's death. Judy was not an insured under the policy issued to Billy, and Billy was not an insured under the policy issued to Judy. The contracting parties under their respective policies each reasonably expected that only an insured would recover under his or her own policy if the policy provided coverage to the activity in question. The expectations of the contracting parties under Billy's policy were separate and independent of the expectations of the contracting parties under Judy's policy. State Farm contractually agreed to provide each of the Boullts with UM coverage. By allowing State Farm to collect separate premiums from each of the Boullts on their individual policy covering different risks and then deny recovery to the insureds under the polices would be tantamount to State Farm issuing illusory coverage to the parties, providing the insureds with less coverage than he or she paid

for, and would clearly violate the reasonable expectation of the contracting parties.[3] Louisiana's public policy strongly favors UM coverage and a liberal construction of the UM statutes. *Hoefly v. Government Employees Ins. Co.*, 418 So.2d 575 (La. 1982). Absent a clear violation of the anti-stacking statute, the parties' intent governs the rights and obligations of the parties. Indeed, an opposite finding today would serve only to frustrate the reasonable expectations of the contracting parties and would be directly contrary to the primary objective of the UM scheme — which is to promote recovery of damages for innocent automobile accident victims by making UM coverage available for their benefit when the tortfeasor is without insurance or is inadequately insured. *Tugwell v. State Farm Ins. Co.*, 609 So.2d 195, 197 (La. 1992). Simply stated, this case is not a situation of an insured stacking but of distinct and individual insureds each seeking separate recovery under separate policies covering the same event.

We find no support for State Farm's argument. We conclude that by allowing the Boullts to each seek recovery under their own policy for their own individual damages violates neither the letter nor the spirit of Louisiana's anti-stacking statute.[4] To the extent *Schwankhart*, 646 So.2d at 1242; *Sheppard*, 614 So.2d at 208; *Vincent*, 526 So.2d at 818; and *Salter*, 520 So.2d at 877 conflict with our holding today, they are overruled.

DECREE

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[3] Left unanswered by State Farm's argument are several question all of which underscore its position as untenable in law. For example, who determines which parent gets paid? Who determines which insurance policy is executed? If there are separate insurers, who determines which company pays? If the policies provided for different amounts of coverage, who would choose the coverage limit and how would it be divided between the parties? How can the insurer make a check payable to a parent/claimant who is not an insured under the policy? The absence of laws answering these basic questions show that the Legislature never intended such a result under the anti-stacking statute.

[4] Our holding today is consistent with the jurisprudence from our sister states. *See, e.g.*, *Kline v. American States Ins. Co.*, 924 P.2d 1150 (Colo. Ct. App. Div. III 1996); *South Carolina Ins. Co. v. Kokay*, 398 So.2d 1355 (Fla. 1981).

For the foregoing reasons, we affirm the judgment of the court of appeal reversing the trial court's judgment in favor of State Farm and rendering judgment in favor of Billy and Judy Boullt.

AFFIRMED.