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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1683**

State Farm Mutual Automobile Insurance Company,
Respondent,

vs.

American Country Insurance Company,
Appellant.

**Filed May 8, 2017
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-15-19449

Suzanne Wolbeck Kvas, Lutter, Gilbert & Kvas, LLC, Eagan, Minnesota (for respondent)

Daniel J. Stahley, Provo-Peterson & Associates, P.A., Lake Elmo, Minnesota (for
appellant)

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Kalitowski,
Judge.*

UNPUBLISHED OPINION

HOOTEN, Judge

In this insurance priority dispute, appellant insurance company challenges the
district court's dismissal of its complaint on summary judgment, arguing that the district

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

court erred by concluding that its coverage for personal injury protection (PIP) benefits had priority over that of respondent insurance company under Minn. Stat. § 65B.47, subd. 4 (2016). We affirm.

FACTS

This insurance priority dispute stems from an auto accident that occurred in January 2013, involving Abdullahi Hussein, who was driving a van registered to Nura Mohamud.¹ The van was insured in Mohamud's name by respondent State Farm Mutual Automobile Insurance Company. At the time of the accident, Hussein held a commercial auto policy with appellant American Country Insurance Company. The American Country policy covered Hussein's taxi cab.

As a result of the accident, Hussein suffered injuries and incurred medical expenses totaling approximately \$7,500. Hussein submitted a claim to American Country, which was denied. Hussein then filled out two affidavits of no insurance and submitted his claim to State Farm, which was paid.

In October 2015, State Farm brought a declaratory judgment action, seeking a judicial determination that American Country had priority for the payment of PIP benefits to Hussein. American Country brought a cross-claim, seeking a judicial determination that State Farm had priority. In June 2016, after cross-motions for summary judgment, the

¹ There is a lack of clarity regarding Mohamud's name and gender. In communication between counsel, State Farm refers to Mohamud as "her" and both parties refer to Mohamud as "Ms. Nura Mohamud" or "Ms. Mohamud" throughout their briefs. However, the vehicle registration information identifies the registrant of the van to be Ahmed Mohomud Nura, a male.

district court granted State Farm’s motion for summary judgment, declared that American Country had statutory priority for the PIP benefits, and determined that there were no disputes of material fact to warrant trial. American Country now appeals.

D E C I S I O N

I.

American Country first argues that factual disputes exist that make summary judgment inappropriate in this case. The district court determined that summary judgment was appropriate because American Country failed to provide specific evidence of a genuine issue of material fact.

Summary judgment is only appropriate where “there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997); *see also* Minn. R. Civ. P. 56.03. We review a district court’s grant of summary judgment de novo, accepting all undisputed facts as true and construing any disputed facts in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

Once a motion for summary judgment is made and supported, the burden is on the nonmoving party to “present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. Those facts must raise more than a “metaphysical doubt as to a factual issue,” but instead must be “sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc.*, 566 N.W.2d at 71.

Persons injured in an auto accident in the state of Minnesota have “a right to no-fault benefits for their economic loss.” *Amco Ins. Co. v. Indep. Sch. Dist. No. 622*, 627 N.W.2d 683, 685 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001); *see* Minn. Stat. § 65B.46 (2016). This type of statutorily mandated coverage is commonly known as PIP coverage. *See Wakefield v. Federated Mut. Ins. Co.*, 344 N.W.2d 849, 851 (Minn. 1984). In situations where the person injured in the accident was not driving a business vehicle, the statute provides a priority scheme for PIP benefit payments. *See* Minn. Stat. § 65B.47, subd. 4.

The statute assigns the primary-level priority to the issuer of the policy “under which the injured person is an insured.” *Id.*, subd. 4(a). The statute defines an “insured” as both the person named in the policy, as well as relatives of the person named in the policy, provided that the relative lives with the person named in the policy and the relative does not have insurance in his or her own name. Minn. Stat. § 65B.43, subd. 5 (2016). If the injured person is not “an insured” for purposes of the highest level of priority, the statute assigns second-level priority to the policy covering the vehicle involved in the accident. Minn. Stat. § 65B.47, subd. 4(b).² A second-level priority policy issuer that reimburses an injured person has a statutorily granted subrogation right to recover those payments from a higher priority policy issuer. *Id.*, subd. 6.

American Country claims that there is a dispute as to whether Hussein and Mohamud were cohabitating relatives. Even if American Country’s allegations that

² The statute delineates three priority levels, but the third priority level is not implicated in this dispute. *See* Minn. Stat. § 65B.47, subd. 4.

Hussein and Mohamud are related are true, it points to no probative evidence that Hussein and Mohamud resided in the same household at the time of the accident. *See* Minn. Stat. § 65B.43, subd. 5 (defining “insured” as including relatives who reside with named insured). The accident report lists Hussein as having a Minneapolis address, and Mohamud as having an Eagan address. American Country’s policy with Hussein and both affidavits of no insurance list Hussein as having the Minneapolis address. State Farm’s policy with Mohamud lists Mohamud’s address as the Eagan address, and Mohamud’s van is registered to the Eagan address as well.

The only evidence in the record that Hussein and Mohamud might reside together is found in Hussein’s first, handwritten affidavit of no insurance, which lists “Max Nurd Mohamud” or “Max Mud Mohamud” as a cohabitating “friend.” However, American Country provides no evidence that either “Max Nurd Mohamud” or “Max Mud Mohamud” is the same person as Nura Mohamud, instead stating that “[i]t is possible that this individual is Nura Mohamud.” This evidence does not rise above the level of “metaphysical doubt” as to whether Hussein and Mohamud reside together.

American Country also asserts that Hussein might have been operating Mohamud’s van as a taxi at the time of the accident because he owns a taxi, and the van was formerly registered as a taxi in 2012. If true, this would exempt the van from the PIP priority scheme of section 65B.47, subd. 4. However, there is no evidence in the record to support this assertion, which also does not rise above the level of “metaphysical doubt” as to whether Hussein was operating the van in a business capacity.

In sum, American Country has failed to present sufficient probative facts that demonstrate there is a genuine issue of material fact for trial, and therefore summary judgment was appropriate in this case.

II.

American Country argues that the district court erred in granting summary judgment in favor of State Farm because, based on the language of its policy with Hussein, American Country is not a provider of PIP coverage as Hussein is only covered by his American Country policy when operating the taxi. The district court determined that American Country is the primary-level priority insurer for purposes of section 65B.47, subdivision 4, and has priority over State Farm, which is the second-level priority insurer. Our review of the language of the American Country policy leads us to the same conclusion.

“The interpretation of an insurance policy’s language is a question of law that a reviewing court determines de novo.” *Bemboom v. Dairyland Ins. Co.*, 529 N.W.2d 467, 469 (Minn. App. 1995). Where an insurance contract includes endorsements, as the American Country policy does here, we examine the policy as a whole including all endorsements. *Steele v. Great W. Cas. Co.*, 540 N.W.2d 886, 888 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996). Although we endeavor to “construe a policy so as to give effect to all provisions,” if there is a conflict between the endorsement and policy, “the provisions of the endorsement govern.” *Id.*

American Country is correct that the language of its policy with Hussein specifically limits PIP coverage to accidents involving the taxi. However, the Minnesota

PIP endorsement to that policy expands its coverage to include coverage for the injuries sustained by Hussein here.

The endorsement states, at the top of the page, in bold block lettering, “This endorsement changes the policy.” The endorsement then states that American Country will pay “in accordance with the Minnesota No-Fault Automobile Insurance Act, [PIP] benefits incurred with respect to ‘bodily injury’ sustained by an ‘insured’ caused by an ‘accident’ arising out of the maintenance or use of a ‘motor vehicle’ as a vehicle.”

In defining who qualifies as an “insured” for purposes of PIP coverage, the endorsement includes coverage for both:

1. The Named Insured or any “family member” who sustains “bodily injury” while “occupying” a “*motor vehicle*,”
.....
2. Any other person who sustains “bodily injury” while “occupying” the “*insured motor vehicle*,”

(Emphasis added.)

As the named insured, Hussein qualifies as an insured under the first part of the definition, and is therefore entitled to PIP coverage whenever he sustains bodily injury when occupying “a motor vehicle.” In comparison, other persons are entitled to PIP coverage only when they sustain bodily injury while occupying “the insured motor vehicle,” which is the taxi. To read the endorsement as limiting Hussein’s PIP coverage to only injuries sustained while occupying the taxi, as American Country suggests, would render this distinction in the definition of “insured” meaningless.

As primary priority under Minn. Stat. § 65B.47, subd. 4, is assigned to the policy under which the “injured person is an insured,” American Country has priority over State

Farm for the payment of PIP benefits. Because State Farm has already paid Hussein PIP benefits, State Farm is entitled to subrogation to recover those payments from American Country.³ *See* Minn. Stat. § 65B.47, subd. 6.

Accordingly, we affirm the district court’s grant of summary judgment in favor of State Farm.

Affirmed.

³ American Country also makes a series of challenges to State Farm’s right to subrogation, all of which are premised on an argument that even if Hussein is “an insured” under American Country’s policy, he is “an insured” under State Farm’s policy as well, due to language in State Farm’s policy which covers “any other person” who occupies Mohamud’s van. However, the statute forecloses this argument, as the statutory definition of “insured” includes only the named insured and certain resident relatives. *See* Minn. Stat. § 65B.43, subd. 5. As discussed above, American Country offers no probative evidence that Hussein and Mohamud are resident relatives.