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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0078

American Family Insurance,
Appellant,

vs.

Cory Klingehoets,
Respondent.

Filed September 14, 2020
Reversed and remanded
Reyes, Judge

Wright County District Court
File No. 86-CV-18-3666

David W. VanDerHeyden, Nicholas M. Rotar, VanDerHeyden Law Office, P.A., Rochester, Minnesota (for appellants)

Cory A. Klingelhoets, Elk River, Minnesota (pro se respondent)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

Appellant insurer of a passenger injured by respondent-uninsured-motorist argues that the district court improperly dismissed its subrogation claim at summary judgment based on the determination that the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2018), precludes the claim. We reverse and remand.

FACTS

The parties do not dispute the limited factual record, including the request for admissions served by appellant American Family Insurance (American Family), to which respondent Corey Klingelhoets[1] did not respond. *See* Minn. R. Civ. P. 36.01-.02. On October 5, 2012, Klingelhoets drove his vehicle while intoxicated through a stop sign and into a ditch at a high rate of speed. He struck a utility pole, severing the pole from the ground and injuring passenger A.B., an insured of American Family. Klingelhoets had no insurance. Klingelhoets pleaded guilty to and was convicted of criminal vehicular operation, bodily harm, under Minn. Stat. § 609.21, subd. 1(2)(i) (2012). American Family paid A.B. $160,000 in uninsured-motorist (UM) bodily injury coverage.

American Family initiated this negligence action in July 2017 against Klingelhoets, seeking $160,000 for the UM benefits it paid to A.B. as a result of Klingelhoets's driving conduct. A.B. is not a party to this action. American Family filed a motion for summary judgment. The district court denied the motion and informed American Family that it would sua sponte grant summary judgment to respondent, but it allowed American Family time to file a motion opposing the dismissal. Following American Family's response, the district court granted summary judgment to respondent. It determined that the No-Fault

[1] The final judgment entered by the district court administrator spells respondent's last name "Klingehoets," without the second "*l*," which the caption on appeal must match. *See* Minn. R. Civ. App. P. 143.01. However, because the district court's orders as well as documents in the record, such as the title for respondent's vehicle and police report from the accident, spell his name Klingelhoets, we use this spelling in the body of this opinion.

Act did not allow American Family to bring a UM subrogation claim in an independent action when it was not preventing double recovery by A.B. This appeal follows.[2]

D E C I S I O N

American Family argues that the district court incorrectly determined that insurers have subrogation rights to UM benefits only to prevent duplicate recovery, and it asserts instead that an insurer "becomes subrogated to the claimant[']s action against the uninsured motorist when it makes payment to its insured." We agree that the district court misapplied the law.

We review a district court's grant of summary judgment de novo. *Kelly v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017). "A district court may grant summary judgment when there is no genuine issue as to any material fact" and a party, as a matter of law, "is entitled to a judgment." *Id.* (quoting Minn. R. Civ. P. 56.03) (quotation marks omitted). We must view the evidence "in the light most favorable to the nonmoving party." *Id.* A district court has the inherent authority to enter summary judgment on its own motion. *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 591-92 (Minn. 1975).

"Subrogation rights under the Minnesota No-Fault Act present a difficult area." *Preferred Risk Mut. Ins. Co. v. Pagel*, 439 N.W.2d 755, 756 (Minn. App. 1989), *review denied* (Minn. July 12, 1989). The No-Fault Act requires every automobile insurer to provide UM benefits, which an insured can receive by showing damages and fault by an uninsured driver. *See* Minn. Stat. §§ 65B.43, subd. 18 (defining UM coverage), .49, subd.

[2] Klingelhoets did not file a brief, and we therefore review the case on its merits under Minn. R. Civ. App. P. 142.03.

3a (2018) (requiring UM coverage); *see also Hegseth v. Am. Family Mut. Ins. Grp.*, 877 N.W.2d 191, 195 (Minn. 2016) (distinguishing UM claims from underinsured-motorist (UIM) claims).

The No-Fault Act does not address subrogation of UM benefits. However, the common law gives "a reparation obligor [an insurer] . . . a right to subrogation upon payment of uninsured motorist benefits to the extent that the insured will achieve a duplicate recovery." *Flanery v. Total Tree, Inc.*, 332 N.W.2d 642, 645 (Minn. 1983). This requires the insured to be fully compensated first. *See Pagel*, 439 N.W.2d at 755 (holding insurer can "recover the value of uninsured motorist benefits paid to its insured, provided the insured has first been fully compensated"). The No-Fault Act does not relieve an uninsured driver from tort liability. Minn. Stat. § 169.797, subd. 1 (2018) (providing penalties for failure to maintain vehicle insurance). And an insurer may assert a UM subrogation claim against an uninsured tortfeasor. *See Ill. Farmers Ins. Co. v. Wright*, 391 N.W.2d 519, 522 (Minn. 1986) (allowing UM subrogation action against tortfeasor); *Pagel*, 439 N.W.2d at 757 (concluding *Flanery*, which "upheld the insurer's right to recover from the tortfeasor," is controlling).

UM benefits stand in contrast to basic economic-loss benefits, coverage of which the No-Fault Act also requires, in which an insurer must pay regardless of the fault of its insured or another driver. *See* Minn. Stat. § 65B.44 (2018). The No-Fault Act limits tort liability for basic economic-loss benefits and permits subrogation of these benefits by insurers only if the underlying action is "based upon negligence in another state, or arises from claims *other than* negligence in the maintenance, use, or operation of a motor

vehicle." *Ayers v. Kalal*, 925 N.W.2d 291, 301 (Minn. App. 2019) (citing Minn. Stat. § 65B.53 (2018)).[3]

In dismissing American Family's complaint at summary judgment, the district court stated, "To be sure, this is not a case where [American Family] is attempting to stop double recovery from its insured. [American Family] thus cannot maintain an independent action for recovery of benefits paid to its insured against [Klingelhoets]." In reaching this conclusion, the district court referred interchangeably to basic economic-loss benefits, and related caselaw, and UM benefits. But the No-Fault Act does not preclude American Family from pursuing a subrogation claim against Klingelhoets, provided that A.B. has been fully compensated, as discussed below. Summary judgment is therefore improper due to this misapplication of law.

American Family also appears to argue that *State Farm Mut. Auto. Ins. Co. v. Galloway* permits an insurer to pursue a subrogation claim upon payment of UM benefits, without first showing that the insured has been fully compensated. 373 N.W.2d 301 (Minn. 1985). In discussing how UM benefits operate when the only tortfeasor is the uninsured

[3] Some cases, such as *Ayers*, refer to no-fault insurers' subrogation rights generally as being limited to these two situations described in Minn. Stat. § 65B.53 or state that "[s]ubrogation for *no-fault benefits*" exists only under the No-Fault Act. *See* 925 N.W.2d at 301 (emphasis added); *see also Great W. Cas. Co. v. Northland Ins. Co.*, 548 N.W.2d 279, 280-81 (Minn. 1996) (describing "principle that subrogation *in the no-fault context* is exclusively a creature of statute" (emphasis added) (citing *Milbrandt v. Am. Legion Post of Mora*, 372 N.W.2d 702, 705-06 (Minn. 1985)). These cases use "no-fault benefits" to refer to basic economic-loss benefits. While the No-Fault Act mandates coverage of both UM and basic economic-loss benefits, these cases involve subrogation of only basic economic-loss benefits. *See, e.g.*, *Ayers*, 925 N.W.2d at 293. We therefore do not read them to overrule caselaw stating that an insurer's right to subrogation of UM benefits exists under common law.

motorist, *Galloway* states that the insured "will ordinarily seek to collect uninsured motorist benefits from her own carrier. The carrier, having paid the benefits, is then subrogated to the claimant's action against the uninsured motorist and attempts to obtain full or partial reimbursement." *Id.*at 304. But in a footnote to that sentence, it states that "[t]he No-Fault Act does not expressly provide for subrogation rights for an uninsured motorist carrier but we have recognized such a right, *provided the claimant has first been made whole*." *Id.* at 304 n.1 (emphasis added). It also thereafter states, "*If [the] claimant receives full compensation in uninsured motorist benefits* from her carrier, the carrier is subrogated to claimant's personal injury claim . . . ." *Id.* at 304. Further, while *Galloway* refers to the situation of an uninsured motorist as the only tortfeasor, it involved three tortfeasors, only one of whom was uninsured, and its holding focuses on when an insurer that has not yet paid UM benefits can require its insured to obtain its consent to settle with a tortfeasor. *Id.* at 303, 305-06. *Galloway* therefore does not relieve an insurer of the requirement that its insured be fully compensated before it can seek subrogation of UM benefits. To the extent that American Family is arguing this, its argument fails.

In addition, an issue of material fact exists as to whether A.B. has been fully compensated. *Cf. Pagel*, 439 N.W.2d at 756 (noting district court's finding that insured was fully compensated for total damages).[4] American Family did not assert until its

[4] Cases involving an action by the insured against the tortfeasor or a settlement with the tortfeasor commonly indicate that the insured signed a "release and trust agreement" for the benefit of the insurer. *See, e.g.*, *Wright*, 391 N.W.2d at 520; *State Farm Ins. Cos. v. Galajda*, 316 N.W.2d 564, 565 (Minn. 1982); *Maday v. Yellow Taxi Co. of Minneapolis*, 311 N.W.2d 849, 850 (Minn. 1981); *Pagel*, 439 N.W.2d at 756; *see also Flanery*, 332

appellate brief that its payments to A.B. compensated her in full. For that assertion, it cites to its request for admissions and a transaction summary showing its payments to A.B. American Family's request for admissions states that it paid A.B. $160,000 in UM benefits "for damages incurred as a direct result of [the] accident." Its transaction summary shows that it paid A.B. $160,000 in UM benefits. Finally, American Family's complaint also asserts that it paid A.B. $160,000 in UM benefits. But none of these explicitly state that those benefits fully compensated A.B. for her losses. Nevertheless, viewing this evidence in the light most favorable to American Family, there is a genuine issue of material fact regarding whether A.B. has been fully compensated. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (stating genuine issue of material fact exists regarding element of nonmoving party's case when evidence would "permit reasonable persons to draw different conclusions").

Because the district court misapplied the law and because an issue of material fact exists regarding whether A.B. has been fully compensated, we reverse and remand for the district court to apply the law consistent with this opinion and to reopen the record for evidence of whether A.B. has been fully compensated.

Reversed and remanded.

N.W.2d at 643 & n.2 (noting insurer "reserved its right of subrogation" and insured settled with tortfeasor in agreement that reserved insurer's subrogation right).