STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1411

Rodney W. Steele,
Appellant,

vs.

American National Property and Casualty Company,
Respondent.

Filed October 14, 2008
Affirmed
Minge, Judge

Koochiching County District Court
File No. C7-06-545

Steven A. Nelson, 210 Fourth Avenue, International Falls, MN 56649 (for appellant)

John M. Colosimo, Adam J. Licari, Colosimo, Patchin, Kearney, Lindell & Brunfelt, Ltd., 301 Chestnut Street, Virginia, MN 55792 (for respondent)

Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Schellhas, Judge.

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

MINGE, Judge

Appellant challenges the denial of his motion for summary judgment and the entry of summary judgment in favor of respondent insurance company on appellant's claim for underinsured-motorist benefits. Because we conclude that allowing appellant passenger

to collect underinsured-motorist benefits under the negligent driver's insurance policy would convert the first-party coverage in that policy into third-party liability coverage in violation of the terms of the policy, we affirm.

FACTS

In November 2000, appellant Rodney W. Steele was a passenger in a truck owned and operated by his son, Shaun Steele. Appellant was injured when the truck was involved in a single-vehicle accident, and he filed a personal-injury action against Shaun Steele. The truck was insured through a policy with respondent American National Property and Casualty Company (ANPAC), which provided liability coverage and uninsured- and underinsured-motorist coverages. ANPAC, as Shaun Steele's insurer, initially appeared to defend Shaun Steele in the personal-injury action. But ANPAC subsequently filed a separate declaratory-judgment action against Shaun Steele and appellant, seeking to be relieved of its obligation to defend or indemnify Shaun Steele due to his failure to cooperate in the defense. Shaun Steele did not answer ANPAC's complaint, and the district court ultimately entered a default judgment against Shaun Steele, relieving ANPAC of its duty to defend or indemnify him.

Subsequently, appellant's personal-injury action went to trial, where appellant's injuries were found to have been caused by Shaun Steele's negligent operation of the truck, and appellant was awarded $120,000 in damages. Unable to collect any damages from Shaun Steele personally, or, for reasons described above, under Shaun's liability policy, appellant brought a claim against his own automobile insurer, Travelers Insurance Company, seeking to recover under either his uninsured-motorist or underinsured-

motorist coverage. In that action, the district court concluded that the declaratory judgment releasing ANPAC from its duty to defend or indemnify Shaun Steele for his liability "squarely places [appellant]'s claim [against Travelers] within the uninsured motorist policy provision" and awarded appellant the policy limit of $50,000 in uninsured-motorist coverage.

Appellant then filed this action against ANPAC, seeking to recover the portion of his damages for which he remained uncompensated. Appellant claims coverage from the underinsured-motorist portion of Shaun Steele's policy with ANPAC. Appellant's complaint alleges that ANPAC's policy provides underinsured-motorist coverage to injured occupants of Shaun Steele's vehicle and that this coverage was not excluded by the 2003 default judgment relieving ANPAC of its duty to defend or indemnify Shaun Steele. Both parties moved for summary judgment on appellant's claim. The district court entered judgment in favor of ANPAC, and this appeal follows.

D E C I S I O N

On appeal from summary judgment when there are no disputed facts, we review de novo whether the district court erred in its application of the law. *Kelly v. State Farm Mut. Auto. Ins. Co.*, 666 N.W.2d 328, 330 (Minn. 2003). "We will affirm the judgment if it can be sustained on any grounds." *Myers through Myers v. Price*, 463 N.W.2d 773, 775 (Minn. App. 1990), *review denied* (Minn. Feb. 4, 1991).

The extent of an insurer's liability is generally governed by the insurance contract, so long as the policy does not omit coverage required by law or violate applicable statutes. *Kelly*, 666 N.W.2d at 331. Under the Minnesota No-Fault Automobile

Insurance Act, Minn. Stat. §§ 65B.41-.71 (2000) (the No-Fault Act), automobile insurance policies issued in Minnesota are required to provide coverage for injuries caused by an underinsured motorist (UIM). Minn. Stat. § 65B.49, subd. 3a(1). Because UIM provides coverage and benefits directly to the insured, it is called first-party coverage, meaning it follows the insured and compensates the insured "when someone else's negligence causes injury to the insured and the tortfeasor has insufficient liability coverage." *Lynch ex rel. Lynch v. Am. Family Mut. Ins. Co.*, 626 N.W.2d 182, 188 (Minn. 2001). Insurance policies also must provide liability coverage. Minn. Stat. § 65B.49, subd. 3(1). Liability coverage is referred to as third-party coverage, meaning it pays for damages the insured is legally obligated to pay to another person, a third party, for bodily injury arising out of the insured's negligence. *Lynch*, 626 N.W.2d at 188.

Occasionally, a driver's negligence causes injuries to his passengers. In such a situation, the passenger first seeks coverage for his damages from the negligent driver's liability insurance. *Meyer v. Ill. Farmers Ins. Group*, 371 N.W.2d 535, 537 (Minn. 1985). If that amount is inadequate to compensate the passenger for his damages, Minn. Stat. § 65B.49, subd. 3a(5) then directs the passenger to look to the UIM coverage for the vehicle involved in the accident. *Thommen v. Ill. Farmers Ins. Co.*, 437 N.W.2d 651, 652-53 (Minn. 1989). If successful, such claims would effectively convert first-party UIM coverage into additional third-party liability coverage, further compensating injured passengers for the driver's negligence. *Id.* at 654; *see also Petrich by Lee v. Hartford Fire Ins. Co.*, 427 N.W.2d 244, 246 (Minn. 1988) (noting that first-party coverage and third-party coverage "contemplate different risks" and, therefore, are priced differently).

Because the insurer may provide more coverage than required, this coverage conversion, while disfavored by insurers, is not prohibited as a matter of law. *Lynch*, 626 N.W.2d at 189-90. But an insurer may prevent coverage conversion from taking place by including a term in its UIM policy that removes from the definition of an "underinsured motor vehicle" any vehicle owned by the named insured on the liability policy. *Kelly*, 666 N.W.2d at 330-31. Such exclusions do not conflict with the requirements of the No-Fault Act because their effect is "not to deny required UIM benefits, but rather to prevent the use of UIM coverage as a substitute for liability coverage." *Lynch*, 626 N.W.2d at 189. And because the purpose of the exclusion is to prevent "the conversion of one type of insurance into another," the exclusion is enforceable regardless of whether third-party coverage is actually available. *Petrich*, 427 N.W.2d at 246 (denying claim for first-party coverage when the owner insured two of his three vehicles and stepson, who was injured while a passenger in the uninsured vehicle, asserted that absence of third-party coverage precluded application of policy provision excluding coverage).

Here, appellant's claim for UIM benefits under the ANPAC policy is premised on the assertion that Shaun Steele's vehicle was an "underinsured motor vehicle." But the ANPAC UIM policy contains an exclusion for owned vehicles stating that an "[u]nderinsured motor vehicle . . . does not mean a vehicle . . . owned by" the named insured, i.e., Shaun Steele. This provision is valid because it prevents Shaun Steele's UIM coverage from supplementing or substituting for his liability coverage in situations where Shaun Steele's negligence caused injuries to his passengers. *See Lynch*, 626 N.W.2d at 188 (noting that compensating an injured person for damages caused by the

tortfeasor's negligence is "the essence of liability coverage"). Appellant emphasizes that Shaun Steele paid a premium for third-party liability coverage, that this coverage was lost due to Shaun's failure to cooperate with ANPAC, and that this is an important factor distinguishing his situation from cases like *Petrich* and others where no premiums were paid, or where coverage was sought in excess of the limits of the third-party coverage purchased. Appellant's argument is not persuasive. Minnesota courts have repeatedly upheld the policy provisions precluding underinsurance coverage on the insured's vehicle. *See id.* at 189 (summarizing such cases).

Because the UIM policy that Shaun Steele purchased from ANPAC excludes Shaun Steele's vehicle from the definition of an "underinsured motor vehicle," and because this provision is allowed by law, appellant cannot collect UIM benefits under the ANPAC policy. Accordingly, we affirm the district court's grant of summary judgment in favor of ANPAC.

Affirmed.

Dated: