STATE OF MINNESOTA
IN COURT OF APPEALS
A10-759

Cindy Engelke and Kurt Speich, co-trustees
for the next of kin of Melissa A. Speich, decedent,
Appellants,

vs.

State Farm Fire and Casualty Company,
Respondent,

Preston Doyle, et al.,
Defendants.

Filed January 4, 2011
Affirmed
Johnson, Chief Judge

Hennepin County District Court
File No. 27-CV-09-19495

Philip Sieff, Vincent J. Moccio, Patricia Yoedicke, Robins, Kaplan, Miller & Ciresi L.L.P., Minneapolis, Minnesota (for appellants)

Kay Nord Hunt, Reid R. Lindquist, Diane M. Odeen, Lommen, Abdo, Cole, King & Stageberg P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Johnson, Chief Judge; and Huspeni, Judge.[*]

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

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

JOHNSON, Chief Judge

Melissa Speich died of injuries sustained in an automobile accident that occurred while she was driving a car belonging to her fiancé, Adam Doyle. Her parents seek to establish that an umbrella policy issued by State Farm Fire and Casualty Company to Adam Doyle's parents provides underinsured motor vehicle coverage. The district court concluded that Melissa Speich was not an insured under the umbrella policy and granted summary judgment to the insurer. We affirm.

FACTS

On April 8, 2007, an intoxicated driver ran a red light and collided with a 2000 Toyota Celica driven by Melissa Speich. The vehicle was titled in the name of Melissa Speich's fiancé, Adam Doyle. Melissa Speich died 12 days later. Her parents, Cindy Engelke and Kurt Speich, were appointed co-trustees for her next of kin.

Engelke and Speich obtained compensation from two sources of insurance. First, the intoxicated driver's insurance company tendered the full $50,000 bodily-injury liability limit on his policy. Second, State Farm Mutual Automobile Insurance Company ("State Farm Mutual"), which issued an automobile policy on the Toyota Celica to Adam Doyle and his mother, Judith Doyle, tendered the full $100,000 limit of underinsured motor vehicle coverage. It is undisputed that Melissa is within the definition of an "insured" for purposes of that automobile policy, which defines "insured" to include "any other ***person*** while ***occupying*** . . . ***your car*** . . . . Such vehicle has to be used within the scope of the consent of ***you*** or ***your spouse***." (Emphasis in original.)

Engelke and Speich also sought underinsured motor vehicle coverage from an umbrella policy that State Farm Fire and Casualty Company ("State Farm Fire") issued to Judith Doyle and her husband, Preston Doyle. State Farm Fire denied coverage on the ground that Melissa Speich was not within the policy's definition of an "insured." In July 2009, Engelke and Speich commenced this action against State Farm Fire, seeking a declaratory judgment that Melissa Speich was covered by the underinsured motor vehicle coverage of the umbrella policy. Both parties moved for summary judgment. In March 2010, the district court granted summary judgment to State Farm Fire. Engelke and Speich appeal.

D E C I S I O N

Appellants challenge the district court's grant of summary judgment to State Farm Fire on two grounds. First, appellants argue that the district court erred by concluding that Melissa Speich was not an insured under the Doyles' umbrella policy on the ground that Judith Doyle was not an owner of the Toyota Celica. Second, appellants argue in the alternative that State Farm Fire waived its right to deny coverage on the ground that Judith Doyle was not an owner of the Toyota Celica.

A district court must grant a motion for summary judgment "if 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 either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751

N.W.2d 558, 564 (Minn. 2008). We apply a *de novo* standard of review to a grant of summary judgment, and we view the evidence in the light most favorable to the non-moving party. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009).

I. Underinsured Motor Vehicle Coverage

Appellants argue that the district court erred by concluding that Melissa Speich was not an insured under the Doyles' umbrella policy because Judith Doyle was not an owner of the Toyota Celica. Appellants' argument requires us to interpret the language of the umbrella insurance policy. We apply general principles of contract construction when interpreting an insurance policy. *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998). We give the language used in the policy its "natural and ordinary meaning." *American Family Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn. 2001). If a contract is "clear and unambiguous," a court "should not rewrite, modify, or limit its effect by a strained construction." *Valspar Refinish, Inc.*, 764 N.W.2d at 364-65. "Whether a contract is ambiguous is a question of law," which we review *de novo*. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

In this case, the umbrella policy's underinsured motor vehicle coverage extends to Melissa Speich only if she was an "insured." The term "insured" is defined as:

> a. the **named insured**;
>
> b. the following residents of the **named insured's** household:
>
> (1) the **named insured's relatives**; and

(2) anyone under the age of 21 under the care of a person named **above**; and

c. a person . . . while using or holding an **automobile** . . . owned by, rented by, or loaned to the **named insured**, provided that the **named insured** gave permission for the type of use.

(Emphasis in original.) The parties agree that only paragraph c of the definition is relevant to this case. As the language of paragraph c indicates, Melissa Speich was an "insured" only if two conditions are met: first, if the Toyota Celica was "owned by" Preston Doyle or Judith Doyle and, second, if Preston Doyle or Judith Doyle gave Melissa Speich permission to drive the Toyota Celica when the accident occurred.

To determine whether the first condition is satisfied, we must identify the owner or owners of the Toyota Celica. The umbrella policy does not define "owned" or "owner." If an insurance policy does not define that term, "we look to Minnesota law for guidance." *Auto-Owners Ins. Co. v. Forstrom*, 669 N.W.2d 617, 619 (Minn. App. 2003) (citing *Vue v. State Farm Ins. Co.*, 582 N.W.2d 264, 266 (Minn. 1998)), *aff'd*, 684 N.W.2d 494 (Minn. 2004).

Under Minnesota law, there is a conclusive presumption that the person listed as the owner on a vehicle's certificate of title is the owner of the vehicle. *American Nat'l Gen. Ins. Co. v. Solum*, 641 N.W.2d 891, 899 (Minn. 2002). This presumption is based on the Motor Vehicle Certificate of Title Act, which was enacted in 1971. 1971 Minn. Laws ch. 162, § 10, at 333-34 (codified at Minn. Stat. § 168A.10 (2008)). Before 1971, a certificate of title was only *prima facie* evidence of vehicle ownership. *Solum*, 641 N.W.2d at 896. The title gave rise to a presumption, which "'was rebuttable rather than

conclusive on the issue of ownership.'" *Id.* (quoting *Welle v. Prozinski*, 258 N.W.2d 912, 916 (Minn. 1977)). The Motor Vehicle Act changed the presumption from rebuttable to conclusive. *Id.* at 899; *Forstrom*, 684 N.W.2d at 497-99.

The conclusive presumption identified by *Solum* has narrow exceptions. A party may introduce extrinsic evidence of ownership only in two limited circumstances. First, a party may seek to prove ownership contrary to a certificate of title if "a transferor who had not complied with the transfer provisions of the Motor Vehicle Act [is] attempting to avoid vicarious liability." *Solum*, 641 N.W.2d at 896-97; *see also Welle*, 258 N.W.2d at 916. Second, a party may seek to prove ownership contrary to a certificate of title to defend against a liability claim under the compulsory provisions of the Minnesota No-Fault Act. *Solum*, 641 N.W.2d at 897-98; *see also Arneson v. Integrity Mut. Ins. Co.*, 344 N.W.2d 617, 619 (Minn. 1984). Neither party argues that either exception applies in this case.

Appellants argue that, contrary to *Solum*, the opinion in *Quaderer v. Integrity Mut. Ins. Co.*, 263 Minn. 383, 116 N.W.2d 605 (1962), permits a court to define vehicle ownership in ways that are contrary to a vehicle's certificate of title. In this case, appellants seek to prove that Judith Doyle "owned" the Toyota Celica because she had an insurable interest in the automobile. But the *Quaderer* opinion was issued almost a decade before the enactment of the 1971 Motor Vehicle Act. Before the Act, the terms "owned" and "ownership" were ambiguous; the supreme court noted that it was unclear "whether they mean registered owner, or one having legal title to the vehicle, or simply one who may be exposed to liability as a registered owner pursuant to statutes." *Id.* at

388, 116 N.W.2d at 608. To resolve the ambiguity, the Motor Vehicle Act "was intended to provide a single filing system of vehicle registration on which all parties could rely for determining who was the owner of a motor vehicle." *Solum*, 641 N.W.2d at 899. "As a result [of the Motor Vehicle Act], parties to a commercial transaction . . . were able to rely with practical certitude on what was inscribed on the certificate of title with respect to ownership . . . ." *Bank North v. Soule*, 420 N.W.2d 598, 602 (Minn. 1988). The supreme court later made clear in *Solum* that, for purposes of insurance coverage, the person whose name appears on the vehicle's certificate of title is the owner of the vehicle. *Solum*, 641 N.W.2d at 899. Thus, *Quaderer* no longer is good law for the purpose of determining the owner of a vehicle in the insurance coverage context.

Under *Solum*, only Adam Doyle owned the Toyota Celica. The certificate of title to the Toyota Celica lists Adam Doyle as the sole owner of the vehicle. The certificate of title establishes a conclusive presumption that neither Preston Doyle nor Judith Doyle was an owner of the Toyota Celica. In light of that conclusion, we need not address the second requirement of coverage, that a named insured gave permission for the use of the vehicle. Because Melissa Speich was not an insured under the umbrella policy, the policy does not provide underinsured motor vehicle coverage to her. Thus, there is no genuine issue as to any material fact on appellants' claim that underinsured motor vehicle coverage exists.

II. Waiver

Appellants argue in the alternative that State Farm Fire waived its right to deny coverage on the ground that Judith Doyle was not an owner of the Toyota Celica. More

specifically, appellants argue that State Farm Fire waived that right because Preston Doyle drafted the underlying policy issued by State Farm Mutual, which deemed Judith Doyle to be an owner of the Toyota Celica.

"Waiver is the intentional relinquishment of a known right; it is the expression of an intention not to insist upon what the law affords." *Seavey v. Erickson*, 244 Minn. 232, 241, 69 N.W.2d 889, 895 (1955) (quotation omitted). "Waiver is ordinarily a question of fact for the jury" unless "only one inference can be drawn from the facts," in which case the question becomes one of law. *Engstrom v. Farmers & Bankers Life Ins. Co.*, 230 Minn. 308, 312, 41 N.W.2d 422, 424 (1950).

Appellants' waiver argument fails for several reasons. First, State Farm Fire never expressed any intent to relinquish its right to enforce the umbrella policy's requirement of ownership for purposes of underinsured motor vehicle coverage. Second, State Farm Fire's alleged knowledge of Preston Doyle's identification of Judith Doyle as an owner in the underlying policy is inconsequential. Appellants have not cited any caselaw stating that the waiver doctrine may override *Solum*'s conclusive presumption of ownership. Third, the underlying policy was issued by State Farm Mutual, a different entity. The underlying policy and the umbrella policy are two separate contracts; there is nothing unlawful or improper in defining the scope of coverage differently in each policy. "Under general contract law, as applied to insurance policies, the parties are free to agree to exclude from coverage particular risks, losses, or persons." *Bundul v. Travelers Indem. Co.*, 753 N.W.2d 761, 764 (Minn. App. 2008), *review denied* (Minn. Oct. 1, 2008). Fourth, the case cited by appellants in support of their waiver argument,

Centennial Ins. Co. v. Zylberberg, 422 N.W.2d 18, 21 (Minn. App. 1988), is not pertinent to appellants' argument because it concerns the doctrine of ratification, not the doctrine of waiver. Thus, there is no genuine issue as to any material fact on appellants' waiver claim.

In sum, State Farm Fire is entitled to a judgment as a matter of law, and the district court did not err by granting State Farm Fire's motion for summary judgment.

Affirmed.