STATE OF MINNESOTA

IN SUPREME COURT

A18-1204

Court of Appeals — Gildea, C.J.

Amanda Grace Visser,

Appellant,

vs.

Filed: February 12, 2020
Office of Appellate Courts

State Farm Mutual Automobile Insurance Company,

Respondent.

Matthew J. Barber, James S. Ballentine, Mark H. Gruesner, Schwebel Goetz & Sieben, P.A., Minneapolis, Minnesota, for appellant.

Emilio Giuliani, Kimberly C. Scriver, LaBore, Giuliani & Viltoft, Ltd., Hopkins, Minnesota, for respondent.

S Y L L A B U S

Because the statutory priority scheme in Minn. Stat. § 65B.49, subd. 3a(5) (2018), requires an injured person to look to the policy covering the vehicle she occupied at the time of the accident for primary underinsured motorist benefits, the district court properly granted summary judgment on the injured party's claim for additional primary underinsured motorist benefits under a policy that covered a vehicle that was not involved in the accident.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

The question presented in this case is whether a person injured in a car accident can recover additional primary underinsured motorist (UIM) benefits under a policy that provides coverage for a vehicle that was not involved in the accident. Appellant Amanda Grace Visser was injured while she was driving a 2000 Pontiac Grand Prix, and she sought additional primary UIM benefits under an insurance policy that covered a separate vehicle, a Chevrolet. Respondent State Farm Mutual Automobile Insurance Company insured both the Pontiac and the Chevrolet. The district court held that Visser is not entitled to primary UIM benefits under the Chevrolet policy, and the court of appeals affirmed. Because Minn. Stat. § 65B.49, subd. 3a(5) (2018), requires an injured person to look first and exclusively to the policy covering the occupied vehicle for primary UIM benefits, and because the policies do not explicitly alter the statutory priority scheme, we affirm.

FACTS

On February 1, 2013, Visser was injured in a car accident with an underinsured motorist. That motorist was intoxicated, drove through a stop sign, and struck the Pontiac Grand Prix that Visser was driving. The motorist's $50,000 insurance liability limit did not cover Visser's claimed damages. Accordingly, she sought UIM benefits from her personal State Farm automobile insurance policy.

The parties agree that Visser qualifies as "an insured" under two State Farm insurance policies that Visser's mother had purchased for her two vehicles: the Pontiac policy and the Chevrolet policy. The Pontiac policy specifically covers the Pontiac Grand

Prix that Visser was driving at the time of the accident. The Chevrolet policy specifically covers a Chevrolet vehicle not involved in the accident.

The only other relevant difference between the two policies is the amount of UIM coverage. The Pontiac policy provides for UIM benefits with an upper limit of $100,000 per person. The Chevrolet policy provides for UIM benefits with an upper limit of $250,000 per person. Under both policies, State Farm agreed to "pay compensatory damages for bodily injury an insured is legally entitled to recover from the owner or driver of an underinsured motor vehicle."

Visser first sought primary UIM benefits under the Pontiac policy. State Farm paid Visser the Pontiac policy's UIM benefits limit of $100,000. But Visser then brought another claim against State Farm, asserting that she is entitled to additional primary UIM benefits under the Chevrolet policy, even though the Chevrolet was not involved in the accident. Visser claimed that she suffered damages that exceeded the amounts she recovered from the at-fault motorist and State Farm under the Pontiac policy. State Farm denied that the Chevrolet policy applies to Visser's claim.

The parties filed cross-motions for summary judgment. State Farm argued that Minn. Stat. § 65B.49, subd. 3a(5), limits Visser's primary UIM benefits to the limit specified in the policy covering the vehicle that Visser occupied at the time of the accident and that neither policy provides for additional primary UIM benefits. Visser disagreed, arguing that both policies provide primary UIM coverage for her injury and that she is entitled to additional primary UIM benefits up to the Chevrolet policy's limit of $250,000.

The district court granted State Farm's motion for summary judgment and denied Visser's motion. The district court determined that the language in both policies "merely defines how benefits are apportioned *if* more than one policy applies." To decide whether more than one policy applied, the court turned to Minn. Stat. § 65B.49, subd. 3a(5), and then held that the Chevrolet policy did not apply under that statute.

The court of appeals affirmed. *Visser v. State Farm Mut. Auto. Ins. Co.*, No. A18-1204, 2019 WL 1757888 (Minn. App. Apr. 22, 2019). The court of appeals determined that the district court did not err when it relied, in part, upon Minn. Stat. § 65B.49, subd. 3a(5), to determine that the Chevrolet policy does not apply to Visser's claims. 2019 WL 1757888, at *4. The court of appeals therefore concluded that the district court did not err in granting summary judgment to State Farm. *Id*.

We granted Visser's petition for review.

ANALYSIS

This case comes to us on appeal from summary judgment, and our review is de novo. *See Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). Neither party argues that there is an issue as to any material fact. Instead, the dispute here is whether the lower courts misapplied the law—specifically, Minnesota's No-Fault Automobile Insurance Act (No-Fault Act), Minn. Stat. §§ 65B.41–.71 (2018), and the State Farm policies. Statutory interpretation is a question of law that we review de novo. *West Bend Mut. Ins. Co. v. Allstate Ins. Co.*, 776 N.W.2d 693, 698 (Minn. 2009). The "[i]nterpretation of an insurance policy, and whether a policy provides coverage in a

particular situation, are [also] questions of law that we review de novo." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013).

A.

Visser seeks UIM benefits, so we begin with the statute that requires those benefits—Minn. Stat. § 65B.49. The No-Fault Act requires all motor vehicle insurance policies issued in Minnesota to provide certain minimum limits of UIM coverage. Minn. Stat. § 65B.49, subd. 3a(1)–(2). In general, "UIM coverage is triggered when a tortfeasor's liability coverage is insufficient to fully compensate the injured person for the actual damages sustained in an accident." *Latterell v. Progressive N. Ins. Co.*, 801 N.W.2d 917, 922 (Minn. 2011); *see also* Minn. Stat. § 65B.43, subd. 17 (defining "underinsured motor vehicle"); *id.*, subd. 19 (defining "underinsured motorist coverage"). At a minimum, the UIM limits must be $25,000 for "one person in any accident" and $50,000 for "two or more persons in any accident." Minn. Stat. § 65B.49, subd. 3a(1). The No-Fault Act also establishes "priorities among multiple possible sources" of UIM coverage. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 46 (Minn. 2008). Specifically, Minn. Stat. § 65B.49, subd. 3a(5), "governs the source" of UIM coverage. *Carlson*, 749 N.W.2d at 47 n.4.

The dispute here involves the source of primary UIM benefits. The No-Fault Act specifies that "the limit of liability for" primary UIM benefits "is the limit specified for" the motor vehicle that the injured person was "occupying" at the time of the accident. Minn. Stat. § 65B.49, subd. 3a(5).[1] As relevant here, we have explicitly recognized that

[1] The second and third sentences of subdivision 3a(5) address excess UIM benefits. The second sentence provides that an injured person is entitled to excess UIM benefits only

subdivision 3a(5) reflects a legislative intent "to tie [UIM] and other coverage to the particular vehicle involved in an accident." *Hanson v. Am. Family Mut. Ins. Co.*, 417 N.W.2d 94, 96 (Minn. 1987); *see also Latterell*, 801 N.W.2d at 923 (explaining that primary UIM coverage "follows the vehicle rather than the insured"). And we have explained that "subdivision 3a(5) generally operates 'to require the injured occupant to look first and exclusively to the policy limits on the occupied vehicle' " for primary UIM benefits. *West Bend Mut. Ins. Co.*, 776 N.W.2d at 699 (quoting *Vue v. State Farm Ins. Cos.*, 582 N.W.2d 264, 267 (Minn. 1998)). In other words, we read the first sentence of subdivision 3a(5) to be a clear command, in plain language, that generally operates to limit the primary UIM coverage available to the injured person.[2]

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if "the injured person is occupying a motor vehicle of which the injured person is not an insured." Minn. Stat. § 65B.49, subd. 3a(5). The third sentence limits excess UIM coverage to the "damages sustained" and to the amount of UIM coverage on the other vehicle that "exceeds the limit of liability of the coverage available to the injured person from the occupied motor vehicle." *Id.* Visser has been clear that she is seeking primary UIM benefits, not excess UIM benefits.

[2] If there were any ambiguity about the meaning of the first sentence of subdivision 3a(5), the legislative history would support our reading. Subdivision 3a(5) codifies the closeness to the risk concept. *See Thommen v. Ill. Farmers Ins. Co.*, 437 N.W.2d 651, 653 (Minn. 1989). The closeness to the risk concept arose prior to 1985—back when insurance coverage followed the person—to prioritize coverage when at least two policies insured the same risk, but those policies did not specify how to apportion liability. *See Integrity Mut. Ins. Co. v. State Auto. & Cas. Underwriters Ins. Co.*, 239 N.W.2d 445, 446–47 (Minn. 1976). In *Integrity Mutual*, we concluded that, of the five policies that covered the person, the policy that "specifically contemplate[d] injuries to [the injured person] while riding [in the covered automobile]" was the closest to the risk. *Id.* at 448. And subdivision 3a(5) codifies this concept, limiting a person's primary UIM benefits to the occupied vehicle. *See Thommen*, 437 N.W.2d at 653. Accordingly, even if an injured person is insured under more than one insurance policy, the priority scheme of subdivision 3a(5) requires that the injured person collect primary UIM benefits from the policy covering the occupied vehicle. The legislative history also supports the proposition

Consistent with the plain language of Minn. Stat. § 65B.49, subd. 3a(5), and our precedent interpreting that provision, Visser is limited to primary UIM benefits under the policy that covers the vehicle she occupied at the time of the accident—the Pontiac policy.

B.

In urging us to reach a different result, Visser argues that we should not look to the No-Fault Act, but to State Farm's policies. Visser contends that the No-Fault Act is a minimum-requirement statute and, when parties contract for more coverage than the No-Fault Act requires, as she contends was done here, the statute should be disregarded. To support her argument, Visser cites the general proposition that "an insurer is governed by the contract they enter into." *Bobich v. Oja*, 104 N.W.2d 19, 24 (Minn. 1960). We are not persuaded.

If we were to accept Visser's argument, we would effectively undo the Legislature's policy choice that primary UIM benefits follow the vehicle. *See Hanson*, 417 N.W.2d at 96 (noting that amendments to the No-Fault Act "reflect a broad policy decision to tie uninsured motorist and other coverage to the particular vehicle involved in an accident"). But, Visser argues, Minn. Stat. § 65B.49, subd. 7, allows parties to contract for more coverage than the No-Fault Act requires, and she contends that the parties did that here.

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that subdivision 3a(5) governs all automobile insurance contracts. In the 1985 special session, the Legislature specifically repealed the language, "[u]nless the language of the policy provides otherwise," as an introductory clause to subdivision 3a(5). *Compare* Act of June 27, 1985, ch. 10, § 68, 1985 Minn. Laws 1st Spec. Sess. 1781, 1840–41 (codified as amended at Minn. Stat. § 65B.49, subd. 3a (5) (2018)), *with* Act of June 27, 1985, ch. 13, § 191, 1985 Minn. Laws 1st Spec. Sess. 2072, 2213–15. Removing that language suggests that subdivision 3a(5) governs every insurance policy, regardless of the policy's terms.

Subdivision 7 provides: "Nothing in sections 65B.41 to 65B.71 shall be construed as preventing the insurer from offering other benefits or coverages in addition to those required to be offered under this section." Minn. Stat. § 65B.49, subd. 7. In particular, Visser argues that both the Pontiac and Chevrolet policies provide primary UIM coverage for her injury because both policies provide coverage for "bodily injury [she] is legally entitled to recover from the owner or driver of an underinsured motor vehicle." According to Visser, the policies do not specifically limit primary UIM coverage to bodily injury she suffered while occupying the vehicle involved in the accident.

The question we must answer, however, is whether the policies can upset the priority scheme for primary UIM benefits that the Legislature clearly established in section 65B.49, subdivision 3a(5). We addressed a similar question in *West Bend Mutual Insurance Co. v. Allstate Insurance Co.*, 776 N.W.2d 693, 698 (Minn. 2009).

In *West Bend*, the injured party argued that two insurance policies shared "co-primary underinsurance liability." *Id.* The injured party, who owned an automobile repair business, was injured while he was driving a car owned by one of his customers. *Id.* at 696. The injured party recovered primary UIM benefits from his customer's insurance policy, which specifically covered the vehicle he was driving at the time of the accident. *Id.* But the injured party argued that he was also entitled to "additional primary UIM benefits" from a business liability insurance policy, *id.* at 699, which he argued "use[d] expansive language that provide[d] primary UIM benefits," *id.* at 700.

We rejected that argument. Despite the broad language providing coverage for all vehicles in the shop for repair, we concluded that other language in the policy made it clear that the business policy did not override the priority scheme in the statute. *Id*. at 701.

We reach the same conclusion here. Visser points to the broad grant of UIM coverage in the Chevrolet policy, which provides that State Farm would "pay compensatory damages for bodily injury an insured is legally entitled to recover from the owner or driver of an underinsured motor vehicle," to support her argument that the Chevrolet policy is co-primary. Although the Chevrolet policy contains a broad grant of UIM coverage, the Chevrolet policy does not insure a vehicle that was involved in the accident. Relying on this broad grant of UIM coverage to support Visser's entitlement to primary UIM benefits is inconsistent with the result in *West Bend* and would effectively undo the priority scheme the Legislature set up in section 65B.49, subdivision 3a(5).

Visser also points to the following provision in the Chevrolet policy:

> *If* Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to you or any resident relative by the State Farm Companies apply to the same bodily injury, then:
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> . . . .
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> b. the maximum amount that may be paid from all such policies combined is *the single highest applicable limit provided by any one of the policies*. We may choose one or more policies from which to make payment.

(Emphasis added.) Visser argues that the parties contracted around the priority scheme in section 65B.49, subdivision 3a(5), when State Farm agreed to pay "the single highest applicable limit provided by any one of the policies." We disagree.

The policy provision Visser cites includes a conditional phrase, and she has not shown that the condition exists. As the district court correctly recognized, this provision does not provide coverage at all. The provision simply says that *if* more than one policy applies to the same injury, then State Farm will pay the "highest applicable limit." The statute makes clear that only one policy—the policy insuring the vehicle involved in the accident—applies here. And nothing in the policy clearly indicates otherwise.

In sum, neither the policy provisions that Visser cites, nor any other provision in the State Farm policies, shows that the parties explicitly contracted around the priority scheme in section 65B.49, subdivision 3a(5). Put another way, even assuming that parties can contract around the priority scheme, no explicit language in the State Farm policies actually does so.

Based on our analysis, we hold that Visser cannot recover additional primary UIM benefits under the Chevrolet policy.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.