AFFIRM; and Opinion Filed April 12, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01387-CV

JOHN KIDD, INDIVIDUALLY AND AS WRONGFUL DEATH BENEFICIARY AND ON BEHALF OF THE ESTATE OF LAURENNE KRYSTEAN HALL, Appellant
V.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND STATE FARM FIRE AND CASUALTY COMPANY, Appellees

On Appeal from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-02267

MEMORANDUM OPINION

Before Justices Francis, Brown, and Stoddart
Opinion by Justice Brown

Appellant John Kidd, individually and as wrongful death beneficiary on behalf of the estate of Laurenne Krystean Hall, appeals the trial court's order granting summary judgment in favor of appellees State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Company (jointly, State Farm). In three issues, Kidd contends a family member exclusion in a Texas personal auto policy does not preclude coverage for his claim arising from an automobile collision and a similar provision in a personal liability umbrella policy is void as against public policy. We affirm the trial court's judgment.

BACKGROUND

In July 2008, Hall was killed in an automobile accident while a passenger in a vehicle driven by her stepfather David McDonald. MacDonald also died in the accident. At the time, Hall was eighteen and lived with MacDonald and her mother Kristina MacDonald.

David MacDonald was insured by a Texas personal auto policy (auto policy)[1] and a personal liability umbrella policy (umbrella policy)[2], both issued by State Farm. The auto policy contains standard form endorsement 593E with the following family member exclusion:

> We do not provide Liability Coverage for you or any *family member* for bodily injury to you or any *family member*, except to the extent of the minimum limits of Liability Coverage required by Texas Civil Statutes, Article 6701h, entitled "Texas Motor Vehicle Safety-Responsibility Act."[3]

At the time, the article 6701h minimum limits of liability was $25,000. *See* Act of May 15, 2007, 80th Leg., R.S., ch. 1298, § 1, sec 601.072(a)(1), Tex. Gen. Laws 4365, 4365 (expired Dec. 31, 2010). The auto policy defines "you" and "your" as the "named insured" shown in the auto declarations and "[t]he spouse, if a resident of the same household." The declarations show David and Kristina MacDonald as the named insured. "Family member" is defined as "a person who is a resident of your household and related to you by blood, marriage, or adoption."

The umbrella policy also contains a family member exclusion provision, which precludes coverage for "personal injury to the named insured, spouse, or anyone within the meaning of parts a. or b. of the definition of insured." The umbrella policy defines "named insured" as the person named in the declarations and the spouse, if the spouse is a member of the same household; the

[1] Auto policy number G17-8367-C07-43M, effective March 7, 2008 through September 7, 2008, contains policy limits of $250,000 per person and $500,000 per occurrence.

[2] Umbrella policy number 43-BA-A85-8, effective November 1, 2007 through November 1, 2008, has limits to $1,000,000 for liability in excess of the limits of the auto policy.

[3] Article 6701h is now found at TEX. TRANSP. CODE ANN. §§ 601.001-.054 (West 2011).

declarations show David and Kristina MacDonald as the named insured. The umbrella policy defines "insured" 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.

Following the accident, Kidd sued David MacDonald's estate, asserting causes of action under the wrongful death and survival statutes, and obtained a final judgment in the amount of $427,347.40. Kidd then made a demand on State Farm for payment of the judgment and accrued interest. State Farm tendered a check for $25,000, contending the family member exclusion in the auto policy excluded coverage except to the extent of $25,000, the minimum limit of liability coverage required by article 6701h of the Texas Motor Vehicle Safety Responsibility Act. State Farm also denied coverage under the umbrella policy because the policy's family member exclusion precluded coverage as well.

Kidd refused the $25,000 tender and filed this suit against State Farm and David MacDonald's estate alleging he is entitled to payment in the full amount of the judgment. Both parties sought a declaratory judgment and filed cross-motions for summary judgment. The sole issue for summary judgment was whether Hall was a family member within the meaning of the policies and, if so, the family member exclusions limited coverage under the policies to the $25,000 tendered by State Farm. The trial court granted State Farm's summary judgment motion and denied Kidd's motion. Upon a joint agreed motion by the parties, the trial court severed the claims against State Farm, rendering a final judgment subject to appeal.

APPLICABLE LAW

We review a trial court's summary judgment de novo. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). To prevail on a traditional summary judgment motion,

the movant has the burden of showing there are no genuine issues of material fact and it is entitled to judgment as a matter of law. *See id.* at 215-16; TEX. R. CIV. P. 166a(c). When both parties move for summary judgment, each party bears the burden of establishing it is entitled to judgment as a matter of law. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 356 (Tex. 2000). If the parties move for summary judgment on the same issue and the trial court grants one motion and denies the other, we consider each party's summary judgment evidence and determine all questions presented. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). If we determine the trial court erred, we must render the judgment the trial court should have rendered. *Id*.

We apply the rules of construction for contracts when interpreting the terms of an insurance policy. *See Mid-Continent Cas. Co. v. Castagna*, 410 S.W.3d 445, 456 (Tex. App.—Dallas 2013, pet. denied). To interpret a policy, we consider all of its parts, reading all of them together and giving them all effect. *Greene v. Farmers Ins. Exch.*, 446 S.W.3d 761, 766 (Tex. 2014). We ordinarily look to the language of a contract to ascertain the intent of the parties as expressed in the contract, but if, as here, an insurance policy is a standard form prescribed by the Texas Board of Insurance, "the intent of the parties in not what counts because they did not write the contract." *Id*. Instead, we interpret the policy language "according to the ordinary, everyday meaning of its words to the general public." *Id.* An insurance policy provision with only one reasonable interpretation is unambiguous, and we construe it as a matter of law and enforce it as written. *Harrison v. Great Am. Assur. Co.*, 227 S.W.3d 890, 893 (Tex. App.—Dallas 2007, no pet.). However, if a provision is ambiguous, we construe it in favor of the insured as long as the construction is reasonable. *Id.*

ANALYSIS

In his first issue, Kidd contends the auto policy's family member exclusion does not apply in this case because "you" refers only to David McDonald and, as a stepparent, he is not related to Hall by blood, marriage, or adoption. In his second issue, Kidd maintains that, in the event the auto policy is ambiguous, the family member exclusion cannot exclude coverage because we must construe any ambiguity against the insurer.

The auto policy's family member exclusion precludes coverage for "you or *any family member* for bodily injury to you or any *family member*" except to the extent of the statutory minimum limits. "You" and "your" is defined as both the named insured shown in the declarations and the spouse, if a resident of the same household. The declarations name David and Kristina MacDonald as insureds. Thus, "you" and "your" in the auto policy's provisions refer to either David MacDonald or Kristina MacDonald. The auto policy defines a "family member" as "a person who is a resident of your household and related to you by blood, marriage or adoption." Hall, as a resident of David and Kristina MacDonald's household and related by blood to her mother Kristina MacDonald, falls within the auto policy's definition of "family member." Applying these definitions to the family member exclusion, the auto policy unambiguously excludes coverage for David MacDonald for bodily injury to Hall except to the extent of the statutory minimum limits.

Kidd nevertheless contends "you" in this case applies only to David MacDonald for purposes of the family member exclusion because he was "the named insured and at-fault party (driver)" and, unlike his wife Kristina, he was not related to Hall by blood, marriage, or adoption. Nothing in the auto policy, however, limits the definition of "you" to an at-fault insured, and Kidd

does not direct us to any authority in support of his position.[4] Moreover, even if "you" in the "family member" definition were to refer only to David MacDonald, we disagree with Kidd's position that David MacDonald is not related to Hall by blood, marriage, or adoption. Giving the relevant words their ordinary, everyday meaning, David became related to Hall by marriage, or affinity, when he married Kristina, Hall's mother, in 2001. *See, e.g.*, TEX. GOV'T CODE ANN. § 573.024 (West 2012) ("Two individuals are related to each other by affinity if . . . the spouse of one of the individuals is related by consanguinity to the other individual."); Black's Law Dictionary 70 (10th ed. 2014) (defining affinity as "[t]he relation that one spouse has to the blood relatives of the other spouse; relationship by marriage").

Considering the auto policy's family member exclusion together with the policy's relevant definitions and giving them all effect, the only reasonable interpretation is that the policy unambiguously excludes coverage for David MacDonald for injury to Hall except to the extent of the statutory minimum limits. Having concluded that the auto policy is unambiguous, we need not address Kidd's second issue. Accordingly, we overrule Kidd's first and second issues.

In his third issue, Kidd urges us to find the umbrella policy void as against public policy. Kidd concedes the umbrella policy's family member exclusion is broader than the auto policy's, excluding coverage for personal injury to, among others, a household resident under the age of 21 and under the "care of a person named above," which would include Kristina. Kidd asserts that, under the facts of this case, the exclusion should be void as against public policy because it protects

[4] Under his second issue, Kidd urges us to imply a common law separation of insureds doctrine, viewing each insured separately in construing the family member exclusion, in the event we conclude the exclusion is ambiguous. Kidd cites *Verhoev v. Progressive Cty. Mut. Ins. Co.*, 300 S.W.3d 803 (Tex. App.—Fort Worth 2009, no pet.), *op. withdrawn*, No. 02-08-00055-CV, 2009 WL 4547125 (Tex. App.—Fort Worth Dec. 3, 2009, no pet.) (mem. op.), but, having been withdrawn, that opinion has no binding effect. *See Continental Cas. Co. v. Street*, 364 S.W.2d 184, 188 (Tex. 1963); *Dallas Nat'l Ins. Co. v. Calitex Corp*., 458 S.W.3d 210, 226-27 (Tex. App.—Dallas 2015, no pet.). Further, the *Verhoev* court's authority for applying a common law separation of insureds doctrine was a Texas Supreme Court case interpreting an insurance policy containing an explicit "severability of interests" provision. *See Commercial Standard Ins. Co. v. American Gen. Ins. Co.*, 455 S.W.2d 714, 721 (Tex. 1970) (recognizing insurance policies may contain a separation, or severability, of interest provision requiring coverage to apply separately to each insured against whom claim is made or suit is brought). In discussing the provision's history, the supreme court simply cited to Ninth Circuit, Louisiana, and Wisconsin cases that had recognized a common law severability of interests. *Id*. There is no express separation of insureds provision in the State Farm auto policy, and we decline to imply one. Moreover, doing so would not alter the result of our construction of the policy's family member exclusion.

strangers to the auto policy up to the policy's limits of liability but limits an innocent adult stepchild living with the insured to the $25,000 state minimum.

Precedent, however, requires us to conclude otherwise. In *National County Mutual Fire Ins. Co. v. Johnson*, 879 S.W.2d 1, 5-6 (Tex. 1993) (Cornyn J., concurring and dissenting), a plurality of the Texas Supreme Court upheld the family member exclusion in auto policies so long as the insurer provides the minimum statutory limits required by state law. Only months later, the supreme court unanimously held "the family member exclusion is invalid only to the extent it conflicts with the Texas Safety Responsibility Act, that is, to the statutorily-imposed minimum limit of automobile liability insurance imposed by the Act." *Liberty Mut. Fire Ins. Co. v. Sanford*, 879 S.W.2d 9, 9 (Tex. 1993) (per curiam) (quoting and adopting plurality opinion in *Johnson*). Other Texas courts of appeals have recognized family member exclusions as valid and enforceable and not contrary to public policy, including most recently *Johnson v. State Farm Mut. Auto. Ins. Co.*, 520 S.W.3d 92, 99-100 (Tex. App.—Austin 2017, pet. denied) ("The Texas Supreme Court has determined that Texas public policy as reflected in the Texas Motor Vehicle Safety Responsibility Act does not require more than the statutory minimum limits of liability regardless of whether the negligent driver injures a stranger or a family member."). The same public policy considerations apply to the family member exclusion contained in the umbrella policy, which is intended to provide only liability coverage in excess of the auto policy's underlying liability limits. *See Johnson*, 914 S.W.2d at 111, and *Sidelnik v. American States Ins. Co.*, 914 S.W.2d 689, 693-94 (Tex. App.—Austin 1996, writ denied) (describing nature of umbrella policies generally). The requirement that an insurer provide the statutory minimum limits is satisfied by the underlying auto policy. Accordingly, we overrule Kidd's third issue.

Because we conclude State Farm established it was entitled to judgment as a matter of law, we affirm the trial court's order granting State Farm's motion for summary judgment.

/Ada Brown/
ADA BROWN
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JOHN KIDD, INDIVIDUALLY AND AS WRONGFUL DEATH BENEFICIARY AND ON BEHALF OF THE ESTATE OF LAURENNE KRYSTEAN HALL, Appellant

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Opinion delivered by Justice Brown;
Justices Francis and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND STATE FARM FIRE AND CASUALTY COMPANY recover their costs of this appeal from appellant JOHN KIDD, INDIVIDUALLY AND AS WRONGFUL DEATH BENEFICIARY AND ON BEHALF OF THE ESTATE OF LAURENNE KRYSTEAN HALL.

Judgment entered this 12th day of April, 2018.