STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ROSE L. THOMAS, AS ADMINISTRATRIX OF THE ESTATE OF DENNIS L. THOMAS,
Plaintiff Below, Petitioner

vs.) No. 11-0750 (Monongalia County 10-C-56)

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant Below, Respondent

FILED
October 19, 2012
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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

The petitioner herein, Rose L. Thomas ("Mrs. Thomas"), Administratrix of the Estate of Dennis L. Thomas (hereinafter "Mr. Thomas"), appeals from an order entered April 1, 2011, by the Circuit Court of Monongalia County. By that order, the circuit court granted summary judgment to the respondent herein, State Farm Mutual Automobile Insurance Company ("State Farm"). The circuit court concluded that Mr. Thomas may not recover underinsured motorist ("UIM") benefits under his policy of motor vehicle insurance, insuring his personal automobile, for the injuries he sustained when his tractor was hit by a car because the parties did not reasonably expect the policy to provide such coverage. On appeal to this Court, Mrs. Thomas argues that the circuit court erred by granting summary judgment to State Farm and failed to consider whether the policy's owned but not insured exclusion operated to bar her husband's, Mr. Thomas's, recovery of UIM benefits.

Having considered the parties' arguments, appendix record, and pertinent authorities, we affirm the circuit court's decision awarding summary judgment to State Farm because the plain language of the owned but not insured exclusion in Mr. Thomas's motor vehicle policy precludes coverage under the facts of this case. Insofar as this case does not present a new or significant issue of law, we find this matter to be proper for disposition in accordance with Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

On August 9, 2008, the instant proceeding arose when Mr. Thomas was driving his farm tractor on a public roadway in Monongalia County, West Virginia. Mr. Thomas had loaned his tractor to a neighbor and was driving it back to his son's house, where he kept the tractor.[1] Before he reached his son's property, Mr. Thomas's tractor was hit by a car driven

[1]Mr. Thomas's property adjoins his son's property.

by Charlotte Cain (hereinafter "Ms. Cain"). Mr. Thomas sustained severe injuries in this collision and later died as a result of those injuries.

Mrs. Thomas then filed the instant proceeding against Ms. Cain seeking to recover for Mr. Thomas's injuries and his wrongful death. Ms. Cain's insurer offered its limits of liability coverage to Mrs. Thomas, to which settlement State Farm agreed. After this settlement, Mrs. Thomas sought to recover UIM benefits from the policy of motor vehicle insurance Mr. Thomas had purchased for his personal automobile from State Farm.[2] State Farm denied coverage based upon the policy's owned but not insured exclusion, which provides:

> THERE IS NO COVERAGE:
>
> . . . .
>
> 2. FOR AN ***INSURED*** WHO SUSTAINS ***BODILY INJURY*** WHILE ***OCCUPYING*** OR OTHERWISE USING A MOTOR VEHICLE OWNED BY YOU OR ANY ***RESIDENT RELATIVE*** IF IT IS NOT YOUR CAR OR A ***NEWLY ACQUIRED CAR*** AND IT IS:
>
> a. NOT INSURED FOR UNDERINSURED MOTOR VEHICLE COVERAGE; OR
>
> b. INSURED FOR UNDERINSURED MOTOR VEHICLE COVERAGE UNDER ANOTHER POLICY ISSUED BY ***US***.

(Emphasis in original). After denying UIM coverage based upon this exclusion, State Farm moved the circuit court for summary judgment.

By order entered April 1, 2011, the Circuit Court of Monongalia County awarded summary judgment to State Farm. The entirety of the circuit court's succinct ruling stated that,

> [b]ased upon the argument of counsel, and pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, the Court determined that no genuine issues of material fact existed with respect to State Farm's obligation to provide UIM benefits to the Plaintiff or the deceased, Dennis L. Thomas.

[2]Mr. Thomas did not have insurance providing coverage for his tractor.

> Additionally, the Court determined that, as a matter of law, State Farm had no duty to provide UIM benefits to the Plaintiff or her deceased husband as neither had a reasonable expectation of insurance coverage because the tractor driven by the deceased at the time of the accident at issue was never insured for coverage.

On appeal to this Court, Mrs. Thomas challenges the decision of the circuit court to grant State Farm's motion for summary judgment. Pursuant to West Virginia Rule of Civil Procedure 56(c), summary judgment should be awarded "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 the moving party is entitled to a judgment as a matter of law." Thus, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. pt. 3, *Aetna Cas. & Sur. Co. v. Federal Ins. Co. of New York*, 148 W. Va. 160, 133 S.E.2d 779 (1963). We accord a plenary review to the circuit court's order granting summary judgment: "[a] circuit court's entry of summary judgment is reviewed *de novo*." Syl. pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994).

For her first assignment of error, Mrs. Thomas asserts that the circuit court should have based its decision upon the pertinent policy language and not upon the lack of reasonable expectations insofar as no evidence had been taken as to the parties' intent regarding the anticipated coverage provided by the subject policy. Given the plain meaning of the controverted policy language at issue herein, we agree with Mrs. Thomas's contention that the circuit court erred by basing its decision on the doctrine of reasonable expectations. "[T]he doctrine of reasonable expectations is limited to those instances . . . in which the policy language is ambiguous." *National Mut. Ins. Co. v. McMahon & Sons, Inc.*, 177 W. Va. 734, 742, 356 S.E.2d 488, 496 (1987) (citations omitted), *overruled on other grounds by Potesta v. United States Fid. & Guar. Co.*, 202 W. Va. 308, 504 S.E.2d 135 (1998). Here, the exclusionary language employed by State Farm is clear and unambiguous; thus the doctrine of reasonable expectations is not applicable to the facts of this case.[3] Nevertheless, the circuit court did not err by awarding summary judgment to State Farm because the insurer was entitled to judgment as a matter of law based upon the operation of the owned but not

[3]Although this Court has, on occasion, found the doctrine of reasonable expectations to apply to cases in which the language of the subject insurance policy was plain, none of those unique facts or circumstances are present in the case *sub judice*. *See generally Luikart v. Valley Brook Concrete & Supply, Inc.*, 216 W. Va. 748, 613 S.E.2d 896 (2005) (per curiam) (compiling cases applying doctrine of reasonable expectations).

insured exclusionary language which precludes UIM coverage for Mr. Thomas's injuries. *See* W. Va. R. Civ. P. 56(c). Thus, because "[t]his Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground, reason or theory assigned by the lower court as the basis for its judgment,"[4] we conclude that the circuit court's reliance on the doctrine of reasonable expectations is not reversible error because we find alternative grounds upon which to affirm the lower court's decision.[5]

Mrs. Thomas next argues that State Farm improperly based its declination of coverage on the language of the owned but not insured exclusion contained in Mr. Thomas's policy of motor vehicle insurance providing coverage for his personal automobile. This Court has held that, "[w]here provisions in an insurance policy are plain and unambiguous and where such provisions are not contrary to a statute, regulation, or public policy, the provisions will be applied and not construed." Syl. pt. 2, *Shamblin v. Nationwide Mut. Ins. Co.*, 175 W. Va. 337, 332 S.E.2d 639 (1985). Moreover, "[i]nsurers may incorporate such terms, conditions and exclusions in an automobile insurance policy as may be consistent with the premium charged, so long as any such exclusions do not conflict with the spirit and intent of the uninsured and underinsured motorists statutes." Syl. pt. 3, *Deel v. Sweeney*, 181 W. Va. 460, 383 S.E.2d 92 (1989).

The language of the owned but not insured exclusion at issue herein, set forth previously in this decision, seeks to preclude optional UIM coverage when the insured is injured while using or occupying a motor vehicle that he/she owns but for which he/she has not purchased UIM coverage. As noted previously, the parties do not dispute either that Mr.

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[4]Syl. pt. 3, *Barnett v. Wolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965).

[5]Nonetheless, we would be remiss if we did not also address the insufficient findings of fact and conclusions of law contained in the summary judgment order issued by the circuit court in the case *sub judice*. We have admonished circuit courts that summary judgment orders should contain sufficient detail to permit this Court to understand the basis for the lower court's ruling. "Although our standard of review for summary judgment remains de novo, a circuit court's order granting summary judgment must set out factual findings sufficient to permit meaningful appellate review. Findings of fact, by necessity, include those facts which the circuit court finds relevant, determinative of the issues and undisputed." Syl. pt. 3, *Fayette Cnty. Nat'l Bank v. Lilly*, 199 W. Va. 349, 484 S.E.2d 232 (1997). Here, the circuit court issued a cursory summary judgment order devoid of findings of fact, conclusions of law, and the authorities upon which such legal rulings were based. In the future, the circuit court is directed to comply with this Court's directives regarding the proper content of, and format for, a summary judgment order.

Thomas owned the tractor that he was driving at the time of the accident or that he had not purchased motor vehicle insurance for the tractor. Accordingly, pursuant to the plain language of the subject owned but not insured exclusion, Mr. Thomas was not entitled to collect UIM benefits under his personal automobile motor vehicle liability policy for injuries he sustained while operating his tractor.[6]

Mrs. Thomas additionally contends that, even if the policy's owned but not insured exclusion is valid and enforceable, the policy's exception thereto operates to provide UIM coverage to Mr. Thomas for his injuries. The referenced exception states "[t]his exclusion [owned but not insured exclusion] does not apply to the first ***person*** shown as a named insured on the Declaration Page and that named insured's spouse who resides primarily with that named insured, while ***occupying*** or otherwise using a motor vehicle not owned by one or both of them." (Emphasis in original). This language is clear and, as noted previously, plain and unambiguous insurance policy provisions are to be applied as they are written and not construed. *See* Syl. pt. 2, *Shamblin*, 175 W. Va. 337, 332 S.E.2d 639. In other words, the policy's owned but not insured exclusion does not apply to the named insured or his/her spouse if they are occupying or using a motor vehicle that neither of them owns. Here, the

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[6]There is a split of authority among other courts considering whether an owned but not insured exclusion precludes UIM coverage for injuries sustained when an insured owns and operates a tractor and seeks to recover UIM benefits under the policy of motor vehicle insurance covering his/her personal automobile. *See, e.g., James v. American States Ins. Co.*, No. 02-0688, 2003 WL 1044613 (Iowa Ct. App. Mar. 12, 2003) (enforcing exclusion to deny UIM coverage); *Welchans v. United Servs. Auto. Ass'n*, 645 N.W.2d 1 (Iowa Ct. App. 2002) (same); *Trierweiler v. Frankenmuth Mut. Ins. Co.*, 216 Mich. App. 653, 550 N.W.2d 577 (1996) (same). *But see, e.g., Dupin v. Adkins*, 17 S.W.3d 538 (Ky. Ct. App. 2000) (finding tractor did not come within statutory or policy definition of "motor vehicle," thus concluding that UIM coverage was not barred by owned but not insured exclusion); *Steffen v. Progressive N. Ins. Co.*, 276 Neb. 378, 754 N.W.2d 730 (2008) (allowing insured to collect UIM benefits based upon language of Nebraska UM/UIM statutes which specifically excluded farm tractors from definition of "motor vehicle"); *Allender v. Nationwide Mut. Fire Ins. Co.*, No. 03-CA-13, 2004 WL 540928 (Ohio Ct. App. Mar. 18, 2004) (allowing insured, who was injured while driving tractor, to collect UIM benefits under motor vehicle insurance policy because statutory definition of "motor vehicle" specifically excluded farm tractors). *Cf. Hare v. Lumbermens Mut. Cas. Co.*, 471 A.2d 1041 (Me. 1984) (remanding case for determination of whether ambiguous term "motor vehicle" includes farm tractors); *Clayton v. Grange Ins. Ass'n*, 74 Wash. App. 875, 875 P.2d 1246 (1994) (finding term "motor vehicle" to be ambiguous as to whether it includes farm tractors and remanding for determination of parties' intent as to meaning of "motor vehicle").

parties concede that Mr. Thomas owned the tractor that he was driving at the time of the accident. Because Mr. Thomas, a named insured, was using a motor vehicle that he owned, *i.e.*, the tractor, when he sustained his injuries, the exception to the owned but not insured exclusion does not operate to provide UIM coverage under the facts of this case.

Lastly, Mrs. Thomas urges this Court to extend the holding of our prior opinion in *Imgrund v. Yarborough*, 199 W. Va. 187, 483 S.E.2d 533 (1997), to invalidate owned but not insured exclusions because they limit an insured's recovery of UIM benefits purchased as a result of the insurer's statutory duty to offer such optional coverage. We considered the validity of an owned but not insured exclusion that precluded the recovery of UIM benefits in *Deel v. Sweeney*, 181 W. Va. 460, 383 S.E.2d 92 (1989), and found such a limitation of coverage to be valid and enforceable. In *Imgrund*, we distinguished the *optional* UIM coverage at issue in the *Deel* case from the *mandatory* UM coverage that was at issue in *Imgrund*. *See Imgrund*, 199 W. Va. at 191-93, 483 S.E.2d at 537-39. Mindful of this critical difference between UM and UIM coverage, we based our holding in *Imgrund* on this specific distinction and limited the enforceability of owned but not insured exclusions that apply to limit the recovery of *UM* benefits only. *See* Syl. pt. 4, *Imgrund*, 199 W. Va. 187, 483 S.E.2d 533. Because this Court previously has considered and rejected the public policy arguments asserted by Mrs. Thomas herein, and because our decision in *Imgrund* involved a completely different type of coverage (UM) than that involved in the instant proceeding (UIM), we decline the invitation to extend our prior holdings to provide relief to the insured in the case *sub judice*.

For the foregoing reasons, we conclude that the owned but not insured exclusion contained in Mr. Thomas's policy of motor vehicle insurance operated to preclude coverage under the facts of this case. Accordingly, we affirm the April 1, 2011, order of the Circuit Court of Monongalia County awarding summary judgment to State Farm.

Affirmed.

ISSUED: October 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh