

IN THE COURT OF APPEALS OF IOWA

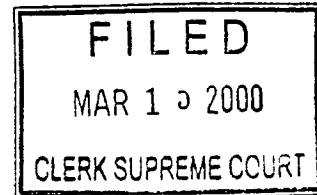
No. 1999-417 (9-670) / 99-599

Filed March 15, 2000

**WILLIAM O. OPPERMAN and
DEBRA J. OPPERMAN,**
Husband and Wife,
Plaintiffs-Appellants,

vs.

**SARA M. PRUISNER,
CYNTHIA D. GITCH and
ALLIED MUTUAL INSURANCE CO.,**
Defendants-Appellees.



Appeal from the Iowa District Court for Black Hawk County, K.D. Briner,
Judge.

Oppermans appeal from the court's grant of summary judgment for Allied in a
personal injury case. **AFFIRMED.**

Jay A. Nardini of Nardini Law Office, Cedar Falls, for appellants.

John B. Grier of Cartwright, Druker & Ryden, Marshalltown, for appellee.

Heard by Streit, P.J., Vaitheswaran, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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VAITHESWARAN, J.

William and Debra Opperman have a personal automobile insurance policy with Allied Mutual Insurance Company. The policy prohibits suit against Allied for underinsurance coverage "on any claim that is barred by the tort statute of limitations." We must decide whether this language bars the Oppermans' action against Allied. We conclude it does, and affirm.

I. Background Facts and Proceedings

On December 18, 1995, the Oppermans stopped their car at a Waterloo intersection. Sara Puisner ran a red light at the intersection and hit another car driven by Cynthia Gitch, which in turn ran into the Oppermans' car.

On December 7, 1997, the Oppermans sued Puisner and Gitch for damages resulting from the accident. On October 9, 1998, the district court granted the Oppermans leave to amend the petition to add an underinsurance claim against Allied. Allied moved for summary judgment, asserting a statute of limitations defense. The district court granted the motion. This appeal followed.

II. Standard of Review

We review summary judgments at law. Iowa R. App. P. 4. Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Compiano v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 462, 464 (Iowa 1999). During oral arguments, the Oppermans conceded no genuine issue of material fact existed. Therefore, we need only decide whether Allied is entitled to judgment as a matter of law.

III. Statute of Limitations

The parties ask us to construe the following language contained in the Oppermans' policy: "[w]e may not be sued under the Underinsured Motorist coverage on any claim that is barred by the tort statute of limitations." The tort statute of limitations in Iowa is two years. Iowa Code § 614.1(2) (1997). The Oppermans contend this policy provision required them to sue only the tortfeasors and not the underinsurance carrier within two years from the date of the accident. Because they did so, the Oppermans assert they tolled the statute of limitations as to their claim against Allied. Allied counters that this policy language required the Oppermans to also sue their underinsurance carrier within two years. Because the Oppermans failed to do so, Allied maintains their suit is time barred.

We construe an insurance policy only when the terms are ambiguous or unclear. *Farm & City Ins. Co. v. Anderson*, 509 N.W.2d 487, 490-91 (Iowa 1993). The test for ambiguity is whether a reasonable person would read more than one meaning into the words. *Id.* at 491. The parties' mere disagreement as to the meaning of terms does not automatically establish an ambiguity. *Id.*

We conclude the only reasonable interpretation of the disputed clause is the one proffered by Allied. Because the language is not susceptible to two reasonable interpretations, the clause is not ambiguous. See *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Farmland Mut. Ins. Co.*, 568 N.W.2d 815, 819 (Iowa 1997).

While the parties have presented us with an issue of first impression, the Iowa Supreme Court's holding in *Morgan v. American Family Mutual Insurance Co.*, 534 N.W.2d 92 (Iowa 1995) is enlightening. There, the court was asked to construe

the word "claim" in an insurance policy clause identical to the language at issue here, with the single exception that the clause pertained to uninsured rather than underinsured motorist coverage. *Morgan*, 534 N.W.2d at 99. The court held:

We believe the only reasonable interpretation of the language is that the word 'claim' refers to an action against the uninsured tortfeasor. Therefore, the policy provides the statute of limitations for a personal injury action in the state where the accident occurred shall be the length of time the insured has for bringing suit against [the insurer] for coverage under the uninsured motorist provision of the policy.

Id. We find no reason to deviate from the *Morgan* court's conclusion that the policy unambiguously requires suit against both the tortfeasor and insurer within two years from the accident date.

The Oppermans contend we need not follow *Morgan* because the policy at issue there provided uninsured rather than underinsurance coverage. It is true the Iowa Supreme Court has construed underinsurance coverage more broadly than uninsured coverage. See *Veach v. Farmers Ins. Co.*, 460 N.W.2d 845, 848 (Iowa 1980). Indeed, the court has stated "the purpose of uninsured motorist coverage is to ensure minimum compensation to victims of uninsured motorists. . . . The goal of underinsured motorist coverage, on the other hand, is full compensation to the victim to the extent of the injuries suffered." *Id.* However, we are not dealing with a coverage issue, as was the case in *Veach*, but with a statute of limitations clause. This limitations language does not directly implicate the differing goals of uninsured and underinsured coverage. See *Morgan*, 534 N.W.2d at 98 (deciding statute of limitations issue solely on basis of plain reading of policy language). Accordingly, we see no reason to read the clause differently here than the court did in *Morgan*.

We are also unpersuaded by the Oppermans' attempt to distinguish *Morgan* on its facts. They point out that, in *Morgan*, the statute of limitations expired before the insureds sued the tortfeasors. Therefore, they assert, the court was not faced with the precise issue of whether a timely filed action against the tortfeasor tolls the statute of limitations against the insurer. While appealing at first blush, this contention ignores the court's unequivocal statement that the same limitation period governs actions against the insurer and the tortfeasor. Additionally, Iowa law does not require an insured to first file suit against a tortfeasor before seeking compensation from its own insurance carrier. See *Douglass v. Am. Family Mut. Ins. Co.*, 508 N.W.2d 665, 667 (Iowa 1993); *Leuchtenmacher v. Farm Bureau Mut. Ins. Co.*, 461 N.W.2d 291, 294 (Iowa 1990). We accordingly reject this contention.

Finally, the Oppermans ask us to permit suit against Allied outside the limitations period as long as Allied would not suffer any prejudice. In support of their contention, they cite *Alcazar v. Hayes*, 982 S.W.2d 843 (Tenn. 1998). In *Alcazar*, the issue was whether an insured who failed to comply with a policy's notice provision could enforce the policy absent prejudice to the insurer. *Alcazar*, 982 S.W.2d at 847. The court held the state's public policy of permitting tort victims to recover compensation for injuries would "be thwarted by harsh application of the legalistic traditional approach." *Id.* at 852.

The undisputed record here reflects Allied knew of the Oppermans' claim before suit was filed and, therefore, would not have been prejudiced by surprise. However, Allied correctly points out that limitations clauses are designed to avoid stale claims and we have found them valid and enforceable. See *Fisher v. McCrary-Rost Clinic*, 580 N.W.2d 723, 725 (Iowa 1998); *Douglass*, 508 N.W.2d at

668. Accordingly, we decline to adopt *Aleazar's* "no prejudice" standard under the circumstances of this case.

The Oppermans articulated compelling policy reasons for delaying suit against their underinsurance carrier. However, they did not contend, either before the district court or in their appeal briefs that the contract language is adhesive and should be written out of the contract for this reason. Therefore we are unwilling to override the unambiguous language of their policy. We accordingly affirm the district court's conclusion that:

Under the policy in force at the time of the accident Oppermans were required to bring the UIM action against Allied within two years after . . . December 18, 1995. Because they did not do so, their claim against Allied is barred by the policy terms.

AFFIRMED.