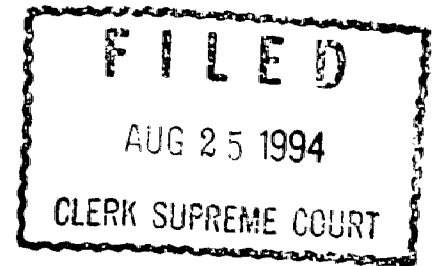


IN THE COURT OF APPEALS OF IOWA

No. 3-606 / 93-215



DANIEL O. OBERBRECKLING
and LINDA OBERBRECKLING,
Individually and also in
their Capacities as Parents,
Guardians, and Next Friends
of BERNIE J. OBERBRECKLING
and JASON D. OBERBRECKLING,
Appellants,

vs.

AMERICAN FAMILY INSURANCE
GROUP and BILL J. DRISCOLL,
Agent and Servant of American
Family Insurance Group,
Appellees.

Appeal from the Iowa District Court for Linn County,
William L. Thomas, Judge.

Plaintiffs appeal two district court orders granting
partial summary judgment in favor of the defendant American
Family Insurance Group arising from plaintiffs' action for
damages under the uninsured motorist provisions of four
automobile insurance policies. **AFFIRMED.**

John A. Maher of Maher, Nidey & Pence, Cedar Rapids,
for appellants.

J. Michael Weston of Moyer & Bergman, Cedar Rapids, for
appellees.

Considered by Donielson, C.J., and Habhab and Huitink,
JJ.

HUITINK, J.

Daniel and Linda Oberbreckling appeal two district court orders granting partial summary judgment in favor of American Family Insurance Group arising from their action for damages under the uninsured motorist provisions of four automobile insurance policies. We affirm.

In December 1987 Jason and Bernard Oberbreckling, both minors, sustained injuries in an automobile collision while riding in an automobile owned by their older sister, Angela, who resided in the family home. The car was operated by Angela's consent driver. The vehicle was insured by American Family with policy limits of \$25,000 per person for injuries caused by an uninsured motorist.

The boys' father, Daniel Oberbreckling, also had three other auto policies with American Family, each with uninsured motorist limits of \$100,000. Daniel and his wife, Linda, filed claims against the uninsured motorist policies for pain and suffering and permanent scarring, loss of consortium, and reimbursement for medical expenses.

American Family argued Daniel's policies were unavailable to compensate for his and Linda's losses, since the "owned-but-not-insured" clause contained in their insurance policies prevented their recovery. Daniel and Linda argued these clauses are intended to prevent duplication of benefits, and since their claims for loss of consortium and medical expenses were entirely separate and

distinct from those of the boys, there was no potential for duplication of benefits.

Daniel also claimed the insurance agent, Bill Driscoll, failed to discuss any uninsured or underinsured motorist coverage at all, and he substituted his own judgment for Daniel's when he selected uninsured coverage limits for Angela of only \$25,000 per person. Daniel argued he would have put a \$100,000 policy limit on Angela as he did on all of his other policies. Daniel alleged that Driscoll failed to meet the standards of Iowa Code section 516A.1 (1989).

American Family and Driscoll filed motions for summary judgment on the issue of the policy limits and the alleged negligence of Driscoll. In March 1991 the court ruled (1) the boys, as well as their parents, were limited to the coverage provided by Angela's policy and (2) the parents are limited by the "each person" limit of that same policy. In December 1992 the court ruled there was no evidence of an expanded agency relationship between the Oberbrecklings and Driscoll. Both motions for partial summary judgment filed by Driscoll and American Family were granted.

Our review is for errors at law. Iowa R. App. P. 4. This court applies the same principles that guide the trial court's consideration of a motion for summary judgment. Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. If the motion is properly supported, however, the resisting party "must set forth specific facts showing that there is a genuine issue for trial." Iowa R. Civ. P. 237(e). The language of our rule and case law are substantially similar or identical to that of rule 56 of the Federal Rules of Civil Procedure, see, e.g., Matsushita Elec. Indust. Co. v. Zenith Radio Corp., 475 U.S. 574,

585-88, 106 S. Ct. 1348, 1355-56, 89 L. Ed. 2d 538, 551-53 (1986), from which we may draw for guidance in interpreting our own rule, Sherwood, 179 N.W.2d at 339.

The purpose of uninsured motorist coverage is to provide minimum compensation to those injured, while the purpose of underinsured coverage is to provide full compensation to the victim to the extent of the injuries suffered. Veach v. Farmers Ins. Co., 460 N.W.2d 845, 848 (1990). Thus, we assume a broad coverage view of underinsured coverage and a narrow coverage view of uninsured motorist coverage. There is no duplication of benefits until the purpose of the coverage has been met. Id.

Daniel and Linda contend that since their claims are entirely separate and independent from the claims of their children this entitles them to recover under their own three policies, notwithstanding the exclusionary "owned-but-not-insured" clauses in these policies. We disagree.

Even though the parents' claims are entirely separate from those of their sons, this is not enough to escape the antistacking provisions of Iowa Code section 516A.2. Daniel and Linda are limited to recovery under Angela's policy only, as the "owned-but-not-insured" exclusions in their own policies are valid. See Chia v. Irons, 509 N.W.2d 492, 493-94 (Iowa 1993) (reaffirming Kluiter v. State Farm Mut. Auto. Ins. Co., 417 N.W.2d 74 (Iowa 1987)).

Since Angela's policy has limits of \$25,000 per person and \$50,000 per accident, the parents' claims can be compensated only out of that limit. The statutory minimum is \$20,000 per person and \$40,000 per accident. Iowa Code §§ 321A.1, 516A.2 (1991). The Oberbrecklings received \$50,000 to compensate them for all injuries suffered. This amount exceeded the minimum compensation level and satisfied the policies and purposes of Iowa uninsured motorist law as set forth in Iowa Code sections 321A.1 and 516A.1 (1991).

Viewing the evidence in the light most favorable to the Oberbrecklings, we find there is no genuine issue of material fact as to whether the parents' claims for loss of consortium and medical expenses arising from the injuries suffered by their children are compensable under their own insurance policies. The district court is affirmed on this issue.

Daniel and Linda also contend their insurance agent substituted his own judgment for theirs in selecting uninsured motorist coverage for Angela's auto, thus failing to procure adequate insurance for Angela. We disagree.

Generally an insurance agent owes the insured the duty to use reasonable care, diligence, and judgment to accomplish the object of the agent's employment. Collegiate Mfg. Co. v. McDowell's Agency, Inc., 200 N.W.2d 854, 857 (Iowa 1972). However, this duty can be expanded to include the duty to decide the type and amount of

insurance for the insured, provided there is an agreement between the parties to expand the agent's duty beyond the general duty. Id. The mere fact an insured relied on the agent, had great confidence in the agent, and had followed the agent's advice in the past does not create such an expanded agency relationship. Id.

Our review of the record discloses no evidence of an expanded agency relationship between the Oberbrecklings and their insurance agent, Driscoll. There was only a brief meeting between Daniel and Bill Driscoll about Angela's coverage. Daniel stated he assumed he would get coverage for Angela that was similar to his other policies but did not request this. Merely assuming similar coverage would be provided is an insufficient basis for asserting the existence of an expanded agency agreement. See Sandbulte v. Farm Bureau Mut. Ins. Co., 343 N.W.2d 457, 464 (Iowa 1984).

Viewing the record in the light most favorable to the Oberbrecklings, we fail to find a the existence of a genuine issue of material fact concerning the existence of an expanded agency agreement between themselves and Driscoll. We therefore affirm the district court.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. The parties shall be responsible for their respective costs.

AFFIRMED.