IN THE COURT OF APPEALS OF IOWA

No. 3-449 / 93-296



**IOWA MUTUAL INSURANCE COMPANY,**
Plaintiff-Appellee,



**vs.**

**ARTHUR JOHN PEDERSEN, JR., As Father and Next Friend of JESSE NOHA PEDERSEN,**
Defendant-Appellant,

**and**

**ARTHUR JOHN PEDERSEN, JR., and KATHARINA SIMMONS,**
Intervenors-Appellants.

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Appeal from the Iowa District Court for Mills County, Glen M. McGee, Judge.

Defendant and intervenors appeal the district court's grant of summary judgment to plaintiff in this declaratory judgment action for interpretation of an underinsured motorist provision. **AFFIRMED.**

Tim B. Streff and J. Patrick Green of Wintroub, Rinden and Sens, Omaha, Nebraska, for appellants.

Roy M. Irish of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

Plaintiff Iowa Mutual Insurance Company issued an automobile insurance policy to Craig and Norma Williams. On May 6, 1991, their minor son, Jeremy Williams, was operating a pickup truck insured under the policy and Jesse Pedersen was a passenger. An accident occurred and Jesse was injured. Jesse is the minor son of Arthur Pedersen and Katharina Simmons (the Pedersens).

Iowa Mutual offered to pay the Pedersens $300,000, which is the limit of the liability portion of the Williams' policy. The Pedersens refused the settlement, claiming they were entitled to an additional $300,000 under the Williams' underinsured motorist coverage.

Iowa Mutual filed the present declaratory judgment action in district court seeking a declaration of the parties' rights under the insurance contract. The Pedersens admitted the facts of the petition.

Iowa Mutual filed a motion for summary judgment. The company relied on a limit of liability in the underinsured motorist coverage portion of the policy, which provided:

> Any amounts otherwise payable for damages under this coverage shall be reduced by all sums:
>
> 1. Paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A of this policy.

The company also claimed the vehicle involved in the accident was not an underinsured motor vehicle.

The district court granted the motion for summary judgment. The court found there were no undisputed facts and the terms of the policy clearly barred the Pedersens' claims. The Pedersens appealed.

The Pedersens contend the terms of the insurance policy do not limit them from obtaining a joint recovery under the liability coverage and the underinsured motorist coverage.

The Iowa supreme court discussed this issue in Poehls v. Guaranty National Insurance Co., 436 N.W.2d 62 (Iowa 1989). In Poehls, as in the present case, the plaintiff sought to recover under the liability portion of the tortfeasor's insurance coverage and under the underinsured portion of the same policy. Id. at 63. The underinsured motorist coverage there contained a limitation which provided that any amounts payable would be reduced by a payment under the liability coverage of the policy. Id. The court upheld the limitation and ruled the underinsured benefits payable under the policy must be reduced by any amounts paid to the plaintiff pursuant to the liability provision. Id. at 65.

The court distinguished that case from instances in which injured plaintiffs sought to recover underinsurance benefits from their own policies, in addition to benefits paid under the tortfeasors' liability policies. Id. at 64. See McClure v. Northland Insurance Co., 424 N.W.2d 448, 450 (Iowa 1988); American States Insurance Co. v. Estate of Tollari, 362 N.W.2d 519, 522 (Iowa 1985). The court found that to allow a plaintiff to recover for the tortfeasor's negligence under both the liability and underinsurance provisions of the tortfeasor's policy would in effect amount to a duplicate payment of liability benefits. Poehls, 436 N.W.2d at 64.

We find Poehls is dispositive of the issue before us. The limitation of coverage in the underinsured motorist portion of the Williams' policy is similar in scope and purpose to the limitation found in Poehls. We therefore find that as a matter of law the Pedersens may not recover under both the liability and underinsurance provisions of the Williams' policy.

The Pedersens have also raised an issue concerning whether the vehicle involved in the accident comes within the definition of an underinsured motor vehicle under the terms of the policy. Because Iowa Mutual has offered the full limit of the liability portion of the insurance policy and therefore the Pedersens cannot recover under the underinsured provisions of the same policy, we need not address this issue.

We affirm the district court's grant of summary judgment to Iowa Mutual.

**AFFIRMED.**