

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

BEVERLY PHILLIPS,

)

Plaintiff-Appellant,

)

Filed November 20, 1984

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vs.

)

**FARMERS INSURANCE GROUP
OF COMPANYS,**

)

4-358
83-1338

)

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County - Dick Strickler,
Judge.

Plaintiff, insured, appeals from judgment on the pleadings in favor of
defendant, insurer, in an action for breach of insurance contract. Plaintiff asserts
that the underinsured motorist endorsement on her policy is ambiguous on its face
and the endorsement limitation on her policy violates Iowa Code Chapter 516A.
AFFIRMED.

Thomas R. Isaac of Isaac & Wilmoth, Des Moines, for plaintiff-appellant.

Michael J. Lacey, Jr. of Patterson, Lorentzen, Duffield, Timmons, Irish,
Becker & Ordway, Des Moines, for defendant-appellee.

Considered by Oxberger, C.J., and Snell and Sackett, JJ.

PER CURIAM

Plaintiff, Beverly Phillips, sustained personal injuries in an automobile accident. At the time of the collision, she was insured by the defendant, Farmers Insurance Group of Companies. Her policy contained an underinsured motorist coverage endorsement. The endorsement limit was \$50,000 per person, \$100,000 per occurrence. The limit was to be reduced by the amount paid by the liability insurer of the at-fault party. After recovering \$50,000 from the insurer of the at-fault motorist, plaintiff filed a claim with defendant under the underinsured provision. Defendant denied plaintiff's claim stating that no payment was owed due to the limitation of the policy and the recovery from the at-fault motorist.

Plaintiff filed this action against defendant seeking damages for an additional amount sufficient to fully compensate her for her injuries sustained in the auto accident. Defendant admitted all the allegations of plaintiff's petition except for breach of contract for failure to pay the claim and filed a motion for judgment on the pleadings. Plaintiff resisted stating that the true issue was whether the provision violated Iowa Code chapter 516A. The district court sustained defendant's motion and plaintiff appealed.

Plaintiff presents two propositions in support of her claim that she is entitled to recovery: (1) the underinsured motorist clause is ambiguous; and (2) that the clause should not be effective when it prohibits an injured party from being fully compensated.

A recent Iowa Supreme Court case, Davenport v. AID Ins. Co., 334 N.W.2d 711 (Iowa 1983), is dispositive of the issue of the effect to be given to clauses which limit an insurance company's liability on uninsured and underinsured motorist claims. The court stated that, in view of the language of Iowa Code section 516A.2, an insurance policy provision allowing the insurer to offset any recoveries from a third party against its liability under an uninsured motorist clause was valid. Section 516A.2 states:

[N]othing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto . . . to afford limits in excess of those that would be afforded had the insured thereunder been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits for bodily injury or death prescribed in subsection 10 of section 321A.1. Such forms of coverage may include terms, exclusions, limitations, conditions, and offsets which are designed to avoid duplication of insurance or other benefits.

Iowa Code § 516A.2 (1983) (emphasis added). The language of chapter 516A indicates that it covers both uninsured and underinsured motorists. See Iowa Code, Chapter 516A (Iowa 1983). In Davenport, the court went to great lengths to distinguish the Iowa position from the majority position, which would allow recovery when the injured party has not been fully compensated. The court concluded that "the plain language of section 516A.2 compels us to reject the majority view and to allow insurers the right to prepare policies which prevent 'duplication of insurance or other benefits.'" Davenport, 334 N.W.2d at 715. In view of the holding in Davenport, we find the underinsured motorist clause limiting the company's liability to be valid.

We also reject the plaintiff's claim that the clause is ambiguous. The portion of the underinsured motorist coverage endorsement entitled Limits on Liability states:

The bodily injury liability limit for UNDERinsured Motorist Coverage shall be the limits shown above. The limits shall be reduced by the amount paid by the liability insurer of the party recovered against.

If a term in an insurance policy is ambiguous, it must be construed against the insurer and in favor of the policyholder. Mallinger v. State Farm Mutual Automobile Ins. Co., 253 Iowa 222, 226-27, 111 N.W.2d 647, 648-49 (1961). However, "the mere fact that the parties disagree on the meaning of a phrase does not establish ambiguity for purposes of this rule The test is an objective one: Is the language fairly susceptible to two interpretations?" Farm Bureau Mut. Ins. Co. v. Sandbulte, 302 N.W.2d 104, 108 (Iowa 1981).

We find the provision in question to be clear and unambiguous. It specifically states the limits of the company's liability on an underinsured motorist's claim to "\$50,000 per person."

A party is entitled to a judgment on the pleadings when the pleadings, taken alone, entitle a party to a judgment. See Iowa R. Civ. P. 222; Hurd v. Odgaard, 297 N.W.2d 355, 356 (Iowa 1980). The defendant admitted all allegations save the claim of breach of contract. The facts, therefore, are uncontroverted and the sole question is whether the insurance company was liable under the underinsured motorist clause to further compensate the plaintiff. We agree with the trial court ruling that it was not.

The findings of the trial court are affirmed.

AFFIRMED.