IN THE COURT OF APPEALS OF IOWA

No. 8-429 / 97-2284

DUANE SPARENBORG, BARRY SPARENBORG, Individually and as Guardian of KRISTIN SPARENBORG, and the GUARDIANSHIP OF KRISTIN SPARENBORG,

Plaintiffs-Appellants,

vs.

JAMES REEDER and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendants-Appellees.

FILED
SEP 30 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Grundy County, Thomas N. Bower, Judge.

Plaintiffs appeal from the district court order granting defendants summary judgment. **AFFIRMED.**

Catherine K. Levine, Des Moines, Larry D. Krpan, Des Moines, and Gregory Brown, Merrillville, Indiana, for appellants.

Gene Yagla and Karla J. Shea of Yagla, McCoy & Riley, Waterloo, for appellees.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

SACKETT, P.J.

Plaintiffs-appellants Duane Sparenborg, Barry Sparenborg, individually and as guardian of Kristin Sparenborg, and the Guardianship of Kristin Sparenborg sued defendant-appellee State Farm Mutual Automobile Insurance Company seeking to recover underinsurance coverage on two policies defendant wrote on the two automobiles owned by plaintiff Barry Sparenborg and his wife, Rebecca. The trial court entered summary judgment applying Indiana law to defeat the claim finding no ambiguity in the policies and determining there was no factual dispute on the issue of reasonable expectations. Plaintiffs appeal contending the district court (1) should have decided the questions under Iowa law, (2) should have found the policy ambiguous, and (3) should have applied the doctrine of reasonable expectations. We affirm.

The grant of a motion for summary judgment is reviewed for error. *Benavides v. J. C. Penney Life Ins. Co.*, 539 N.W.2d 352, 354 (Iowa 1995). Summary judgment is to be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237. Construction of a written contract is a question of law for which summary judgment is appropriate. *Johnson v. Farm Bureau Mut. Ins. Co.*, 533 N.W.2d 203, 206 (Iowa 1995); *Illinois Farmers Ins. v. Tyson*, 634 N.E.2d 1355, 1358 (Ind. App. 1994).

Duane Sparenborg owned a vehicle titled in Iowa that carried underinsurance coverage of $100,000 per person or $300,000 per accident. Duane's vehicle, driven by Barry, was struck in Iowa by an underinsured Iowa driver who assumed

responsibility for the accident. Duane, Rebecca, and Kristin, the daughter of Barry and Rebecca, were passengers in the car at the time, as was Leona Sparenborg, Duane's wife. Rebecca and Leona were killed.

The responsible party had insufficient insurance to pay for the injuries. After the tortfeasor's $300,000 liability insurance policy was exhausted,[1] Duane's company paid $300,000, the limits of his underinsurance coverage.[2]

Plaintiffs then sued State Farm, Barry and Rebecca's insurance carrier. The plaintiffs sought to recover $100,000[3] for each of them from the two policies with State Farm insuring vehicles owned by Barry and Rebecca. The policies provided underinsured coverage on Barry's vehicle and Rebecca's vehicle. Barry and Rebecca were named insureds under the policies.

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[1] The responsible driver's policy was disbursed as follows:

Duane Sparenborg	$32,288.60
Estate of Leona Sparenborg	100,000.00
Estate of Rebecca Sparenborg	100,000.00
Guardianship of Kristin Sparenborg	32,288.60
Barry Sparenborg	32,288.60
A passenger in the responsible party's car	3,134.20
TOTAL	$300,000.00

[2] Duane's underinsured motorist coverage, with limits of $100,000 per person and $300,000 per accident, was distributed as follows:

Duane Sparenborg	$33,333.34
Estate of Leona Sparenborg	100,000.00
Estate of Rebecca Sparenborg	100,000.00
Guardianship of Kristin Sparenborg	33,333.33
Barry Sparenborg	33,333.33
TOTAL	$300,000.00

[3] The question of whether their injuries justified that amount is not at issue.

Barry and Rebecca's vehicles were titled in the State of Indiana; the State Farm policies were purchased from a State Farm agent located in Indiana. The policies each provided underinsured motorist coverage of $100,000 per person or $300,000 per accident. State Farm contended its policies provided underinsured motorist coverage would be paid only if its limits exceeded the limits of insurance on the primary vehicle, in this case Duane's. Because Duane's carrier had paid $300,000, an amount equal to the limits of each of Barry and Rebecca's policies, State Farm contended they had no further liability under the underinsured policy provisions of either policy.[4]

In ruling on State Farm's motion for summary judgment, the district court agreed with State Farm's position finding (1) Indiana law supporting the anti-stacking provisions of the State Farm policies controlled, (2) the policies were unambiguous, and (3) plaintiffs' claim Barry had reasonable expectations the coverage would stack had no basis because plaintiffs did not show circumstances attributable to State Farm that fostered coverage expectations of the policies such that an ordinary lay person would misunderstand its coverage.

Plaintiffs contend Iowa law should apply because (1) the policies are ambiguous, and (2) Iowa has the more substantial contacts and consequently its law should control.

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[4] State Farm agrees Duane and Kristin are persons who would receive underinsured coverage under the policies, and their claim was denied on the same basis as Barry's.

The policies had no choice-of-law provision. Plaintiffs argue, therefore, the trial court should have found the insurance policies ambiguous and applied Iowa law.[5] Plaintiffs advance the provision in the policies entitled "Where Coverage Applies"

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[5] Iowa provides statutorily for recovery of all liability benefits in addition to the single highest limit of any available underinsured benefit. *See* Iowa Code § 516A.2 (1995), which provides:

> Construction--minimum coverage--stacking
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> 1. Except with respect to a policy containing both underinsured motor vehicle coverage and uninsured or hit-and-run motor vehicle coverage, nothing contained in this chapter shall be construed as requiring forms of coverage provided pursuant hereto, whether alone or in combination with similar coverage afforded under other automobile liability or motor vehicle liability policies, 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.
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> To the extent that *Hernandez v. Farmers Insurance Company*, 460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking of uninsured or underinsured coverages in contravention of specific contract or policy language, the general assembly declares such decision abrogated and declares that the enforcement of the antistacking provisions contained in a motor vehicle insurance policy does not frustrate the protection given to an insured under section 516A.1.
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> 2. Pursuant to chapter 17A, the commissioner of insurance shall, by January 1, 1992, adopt rules to assure the availability, within the state, of motor vehicle insurance policies, riders, endorsements, or other similar forms of coverage, the terms of which shall provide for the stacking of uninsured and underinsured coverages with any similar coverage which may be available to an insured.
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> 3. It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased by or on behalf of an injured insured and which provides uninsured, underinsured, or hit-and-run motor vehicle coverage to an insured injured in an accident, the injured insured is entitled to recover up to an amount equal to the highest single limit for uninsured, underinsured, or hit-and-run motor vehicle coverage under any one of the above described motor vehicle insurance policies insuring the injured person which amount shall be paid by the insurers according to any priority of coverage provisions contained in the policies insuring the injured person.

Iowa Code § 516A.2.

states, "1. In the United States of America" supports their position we should find the policy ambiguous and apply Iowa law. We disagree. The provision defines where the insureds have coverage. It does not address how the type of coverage is determined.

Plaintiffs next contend Iowa law should apply because Iowa had more substantial contacts.

To determine choice-of-law issues in insurance policy cases, the court looks to the intent of the parties or the most significant relationship test. *See Cole v. State Auto. & Cas. Underwriters*, 296 N.W.2d 779, 781 (Iowa 1980). Where, as here, there is no choice-of-law clause in the policy, we determine the rights of the parties according to the state that has the most significant relationship to the transaction and the parties. *See Gabe's Constr. Co. v. United Capitol Ins. Co.*, 539 N.W.2d 144, 146 (Iowa 1995).

In *Cole*, the court determined choice-of-law questions were to now be determined under a test as to the intent of the parties or the most significant relationship.[6] *Cole*, 296 N.W.2d at 781. The contacts taken into account include:

> (a) the place of contracting;
> (b) the place of negotiation of the contract;
> (c) the place of performance;
> (d) the location of the subject matter of the contract; and
> (e) the domicile, residence, nationality, place of incorporation, and place of business of the parties.

Gabe's Constr. Co., 539 N.W.2d at 146.

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[6] In doing so, the court applied the Restatement (Second) test and noted it had discarded the rules of the first Restatement.

Plaintiffs claim Iowa has the most significant relationship. State Farm contends it is Indiana. The insurance policies were purchased in Indiana by Barry, then a resident of that state. The policies were purchased from an Indiana agent. State Farm sells insurance in both Indiana and Iowa. State Farm is incorporated in Indiana. Barry and Rebecca's vehicles were titled in Indiana and generally garaged in Indiana. At the time of the accident, Barry and Rebecca were visiting Iowa. One of their vehicles was physically located in Indiana. The second vehicle was physically located in Iowa. The accident happened in Iowa while Barry was driving a car licensed in Iowa, titled in the name of a resident of Iowa, and garaged in Iowa. We agree with the trial court Indiana had the most significant relationship with the insurance policies and Indiana law should apply.

The language of the policies limits the stacking of underinsured motorist coverage. Anti-stacking provisions are enforceable under Indiana's statutory law concerning underinsured motorist coverage.[7] Ind. Code Ann. § 27-7-5-5 (Michie 1994); *see also Ansert v. Indiana Farmers Mut. Ins. Co.*, 659 N.E.2d 614, 621 (Ind. App. 1995); *American Economy Ins. Co. v. Motorists Mut. Ins. Co.*, 593 N.E.2d

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[7] Indiana Code section 27-7-5-5 provides in part:

> (c) The maximum amount payable for bodily injury under uninsured or underinsured motorist coverage is the lesser of:
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> (1) The difference between:
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> (A) The amount paid in damages to the insured by or for any person or organization who may be liable for the insured's bodily injury; and
>
> (B) The per person limit of uninsured or underinsured motorist coverage provided in the insured's policy.

Ind. Code Ann. § 27-7-5-5 (c)(1)(A) & (B).

1242, 1244-45, *rev'd in part on other grounds*, 605 N.E.2d 162, 164-65 (Ind. 1992), *but aff'd on this issue*, 605 N.E.2d at 165; *High v. United Farm Bureau Mut. Ins. Co.*, 533 N.E.2d 1275, 1278 (Ind. App. 1989). The trial court in applying Indiana law correctly determined the anti-stacking provisions of the policies controlled. We affirm on this issue.

Plaintiffs next contend Barry has shown he had reasonable expectations the underinsured provisions would stack. Plaintiffs contend if they do not stack, State Farm, in selling Barry and Rebecca the second policy, sold them nothing. Plaintiffs advance because of the limitation on stacking in the policy, the most Barry could ever receive is the amount of one policy.

The doctrine of reasonable expectation is only applicable if the insured proves circumstances attributable to the insurer that fostered coverage expectations, or the policy is such that an ordinary lay person would misunderstand its coverage. *Benavides*, 539 N.W.2d at 357. If one of these two prerequisites is met, the doctrine of reasonable expectations may be relied upon to avoid an exclusion that: (1) is bizarre or oppressive, (2) eviscerates terms explicitly agreed to, or (3) eliminates the dominant purpose of the transaction. *Id.* at 356. The Iowa courts[8] have held "the cardinal principal in construing insurance policies is the intent of the parties must control; and except in cases of ambiguity, this is determined by what the policy itself says." *Johnson*, 533 N.W.2d at 206. In examining an insurance policy, however, we

[8] Plaintiffs have cited Iowa case law, so we apply it.

will not write a new contract of insurance between the parties where there is no ambiguity. *Cairns v. Grinnell Mut. Reinsurance Co.*, 398 N.W.2d 821, 824 (Iowa 1987). There is no evidence the parties had an agreement outside the policies.

Plaintiffs' contention that State Farm's position shows Barry and Rebecca purchased nothing by buying underinsured motorist coverage on the second car is without merit. The policies provide persons insured for underinsured coverage are:

> 1. the first *person* named in the declarations;
> 2. his or her *spouse*;
> . . . .
> . . . [W]hile *occupying*:
> a. *your car*, a *temporary substitute car*, a *newly acquired car*
> . . . .
> b. a car not owned by *you*, *your spouse* or any *relative* . . . .

Furthermore, an Indiana statute provides:

> (b) When the coverage specified in this chapter is written to apply to one (1) or more motor vehicles under a single automobile liability policy, such coverage applies only to the operation of those motor vehicles for which a specific uninsured or underinsured motorist premium charge has been made and does not apply to the operation of any motor vehicles insured under the policy or owned by the named insured for which a premium charge has not been made.

Ind. Code Ann. § 27-7-5-5(b).

Consequently, there is only underinsured coverage on specific vehicles for which the insured or spouse has purchased coverage. We therefore do not agree there was no benefit in purchasing coverage on the second vehicle. Had underinsured coverage not been purchased on one of the vehicles, and had that vehicle been in an accident, there would have been no underinsured coverage.

Plaintiffs contend the policy provisions providing underinsured motorist coverage are ambiguous and should be construed against State Farm. Plaintiffs point to the following policy provision:

> 3. If the *insured* sustains *bodily injury* while *occupying* a vehicle not owned by *you, your spouse* or any *relative*, and:
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> a. such vehicle is described on the declarations page of another policy providing underinsured motor vehicle coverage,
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> . . . .
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> . . . [T]his coverage applies:
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> a. as excess to any underinsured motor vehicle coverage which applies to the vehicle . . . but
>
> b. only in the amount by which it exceeds the primary coverage.
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> If coverage under more than one policy applies as excess:
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> a. the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess; and
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> b. we are liable only for our share. Our share is that percent of the damages that the limit of liability of this coverage bears to the total of all underinsured motor vehicle coverage applicable as excess to the accident.

Plaintiffs contend the language is ambiguous because Barry equated the word "coverage" with "payment" and plaintiffs should each be paid the difference between $33,333.33, which they contend they received under Duane's policy, and $100,000. We disagree.

The trial court correctly ruled on the motion for summary judgment. We affirm.

AFFIRMED.