FILED
MAY 23 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-136 / 91-1474

BETTY LOU DUNCAN, Individually, and as Mother and Next Friend of ANN MARIE DUNCAN,
Plaintiffs-Appellants,

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vs.

RICKY STILL and TERESA GIER,
Defendants,

and

NATIONAL INSURANCE ASSOCIATION,
Defendant-Appellee.

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

Plaintiffs appeal the district court's summary judgment ruling that the automobile insurance policy issued by National Insurance Association to Ricky Still does not provide coverage for injuries Ann Duncan sustained while riding as a passenger on a motorcycle. **AFFIRMED.**

F.E. Ebersold of Cohen & Dodge, Omaha, Nebraska, for appellant.

Edward F. Noethe of Sodoro, Daly & Sodoro, Omaha, Nebraska, for appellee National Insurance Association.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

On May 11, 1990, Ann Marie Duncan was a passenger on a motorcycle owned by Teresa Gier and driven by Ricky Still. While traveling westbound on Interstate 480 to Omaha, Nebraska, Still lost control of the motorcycle, and Duncan was injured. As a result of the accident she incurred medical bills in excess of $60,000.

At the time of the accident Teresa Gier was insured by Midwest Mutual Insurance Company. Midwest paid the primary liability coverage to its policy limit of $20,000, but there was no underinsurance coverage. Ricky Still was insured by defendant National Insurance Association under National's automobile liability insurance policy. On Teresa's behalf Duncan's mother sought recovery under National's policy and included National as a defendant to her litigation against Still and Gier.

Before the district court National moved for summary judgment. It took the position that there was no coverage for excess liability coverage because Still was operating a motorcycle and not a "4-wheel land motor vehicle of the passenger or station wagon type" as required by its policy terms. Because Duncan is not a covered member of Still's family nor was she occupying a covered automobile, National argued that underinsurance coverage was not provided by its policy. The district court agreed with National and granted it summary judgment. Duncan appeals.

Summary judgment is appropriate only if there exists no genuine issue of material fact. 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, id., and the evidence must be viewed in the light most favorable to the nonmoving party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. Id. A fact issue is generated if reasonable minds can differ on how the issue should be resolved. Id. If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423.

Duncan first argues the district court erred in concluding there was no genuine issue of material fact that allowed the court to conclude as a matter of law that coverage did not exist. She contends two different definitions for "private passenger automobile" in the policy generate a fact question as to whether a motorcycle is covered. She believes different inferences and conclusions can be reached from the undisputed facts. Second, she argues she is entitled to underinsurance coverage under the National policy.

The parties stipulated to many facts. We believe these stipulated facts contain all material facts relevant to how

the accident occurred. The parties agreed: Ricky Still was operating a motorcycle owned by Teresa Gier; Still was not a member of Gier's family; Ann Duncan was a passenger on Gier's motorcycle at the time of the accident; Still's negligence was the sole proximate cause of Duncan's injuries; and Duncan sustained medical bills in excess of $60,000. In addition, the parties also stipulated about the insurance policies in effect at the time of the accident. They agreed the National Insurance Association policy in question was in effect at the time of the accident and contained an endorsement called "Use of Other Private Passenger Automobiles." This policy was incorporated by reference into the stipulated facts.

Both parties made a motion for summary judgment. The district court applied the stipulated facts to the terms of the National policy and its endorsements, and granted National's motion for summary judgment. The court found:

> 1. The first question is whether or not a motorcycle not owned by the insured is covered under his liability policy. Although it is difficult to locate in the policy, the Court finds that the definition of private passenger automobile as contained in Section "D" "IV" "a 4-wheel land motor vehicle" excludes a motorcycle.
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> 2. The second question relates to under insurance coverage, and the Court finds that plaintiff is not a covered person under the terms of the policy and, therefore, not entitled to recover on the under insurance provisions.

We agree with the court's findings and determine the conflict here deals only with legal consequences flowing from undisputed facts. See Milne, 424 N.W.2d at 423. We

affirm the court's summary judgment ruling in favor of National.

The "Use of Other Private Passenger Automobiles Endorsement" specifically states the provisions of the policy owned by Still apply "with respect to any other private passenger automobile . . ." The policy then defines a private passenger type of automobile as "a 4-wheel land motor vehicle of the passenger or station wagon type." We find there is no coverage for Duncan's motorcycle accident injuries under this policy.

The policy defines an automobile as "a land motor vehicle, trailer or semi-trailer designed for travel on public roads . . ." Duncan feels this definition should be used and that it encompasses a motorcycle. We find no merit in these arguments.

Duncan's second argument is that she is entitled to underinsurance coverage under the National policy. We again agree with the trial court. Ann Duncan was not a "covered person" as required by the insurance contract. To be a covered person, she must be a member of Still's family or occupying Still's covered automobile, a 1982 Pontiac. Neither of these two requirements are met under the stipulated facts surrounding this accident. We find the trial court correctly ruled there was no underinsurance coverage afforded to Duncan under the insurance policy in question.

After consideration of all arguments raised, we affirm the trial court. Because we find there is no coverage for either liability or underinsurance coverage, we do not address the limit of liability issue.

AFFIRMED.