2011 IL App (2d) 110154-U
No. 2-11-0154
Order filed November 2, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

AMERICAN FAMILY MUTUAL INSURANCE GROUP,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 10-MR-525
NICK VIDAKOVIC, Administrator of the Estate of William Vidakovic, and THOMAS VIDAKOVIC,	)	Honorable Margaret J. Mullen,
Defendants-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Zenoff concurred in the judgment.

ORDER

Held: The trial court correctly ruled that the automobile insurance policy unambiguously precluded stacking uninsured motorist coverage. Therefore, we affirmed its grant of summary judgment in plaintiff's favor.

¶ 1 Defendants, Nick Vidakovic, Administrator of the Estate of William Vidakovic, and Thomas Vidakovic, appeal from the trial court's grant of summary judgment in favor of plaintiff, American Family Mutual Insurance Group. The trial court ruled that the language in plaintiff's automobile

insurance policies unambiguously precluded the "stacking" (*i.e.* aggregating) of uninsured motorist benefits from two separate policies. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On May 8, 2008, William Vidakovic was killed when the bicycle he was riding was struck by a hit-and-run driver. William did not own a vehicle and did not have a driver's license. It is undisputed that at the time of his death, William resided with his mother and brother Nick Vidakovic at 121 College Avenue in Winthrop Harbor. Nick had an automobile insurance policy with plaintiff which provided for uninsured motorist coverage of up to $100,000 per person and $300,000 per occurrence. William's estate made a claim for uninsured motorist coverage as a relative living in Nick's household, and plaintiff paid the policy limit of $100,000 to the estate.

¶ 4 William's brother Thomas had a separate automobile insurance policy with plaintiff with the same coverage limits of $100,000 per person and $300,000 per occurrence. The policy was issued to Thomas and his wife, and the residence indicated on the policy was in North Chicago. William's estate also made a claim under Thomas's policy, stating that Thomas had been living at 121 College Avenue at the time of William's death. Plaintiff denied the claim, taking the position that the policy specifically precluded stacking Thomas's policy limits on top of monies already paid under Nick's policy. Plaintiff sought a court declaration to this effect, filing suit on April 5, 2010. Plaintiff filed a first amended complaint on October 19, 2010. Count I alleged that the policy language prohibited stacking. Count II, pleaded in the alternative, alleged that prior to the accident, Thomas never informed plaintiff that he was no longer living with his wife at the residence indicated on the policy.

¶ 5 The relevant language in the policy issued to Thomas is identical to that in Nick's policy. "**Relative**" is defined in the beginning of the policy as "a person living in **your** household, related to **you** by blood, marriage or adoption." (Emphases in original.) "**You** and **your**" are defined as

"the policyholder named in the declarations and spouse, if living in the same household." (Emphases in original.) Part III of the policy pertains to uninsured motorist coverage. In this part, "**Insured person**" is defined as "**You** or a **relative**." (Emphases in original.) "**Uninsured motor vehicle**" is defined as, among other things, a hit-and-run vehicle "which causes **bodily injury** to **you** or a **relative**." (Emphases in original.) The policy states as follows in part III under the heading "**LIMITS OF LIABILITY**":

> "The limits of liability of this coverage as shown in the declarations apply, subject to the following:
>
> 1. The limit for 'each person' is the maximum for all damages sustained by all persons as a result of **bodily injury** to one person in any one accident.
>
> 2. ***
>
> **We** will pay no more than these maximums no matter how many vehicles are described in the declarations, or **insured persons**, claims, claimants, policies or vehicles are involved." (Emphases in original.)

¶ 6 Under the heading "**OTHER INSURANCE**" in part III, the policy states:

¶ 7 "If there is other similar insurance on a loss covered by this Part, **we** will pay **our** share according to this policy's proportion of the total limits of all similar insurance. But, any insurance provided under this Part for an **insured person** while **occupying** a vehicle you do not own is excess over any other similar insurance." (Emphases in original.)

In a separate part of the policy entitled "**PART VI- GENERAL PROVISIONS**," it states in relevant part: "Two or More Cars Insured. The total limit of **our** liability under all policies issued to **you** by **us** shall not exceed the highest limit of liability under any one policy." (Emphases in original.)

¶ 8 On October 8, 2010, plaintiff moved for summary judgment. It argued that its policy unambiguously precluded the stacking of uninsured motorist coverages in this case. Specifically, it argued that the "Limits of Liability" clauses stated that it would pay no more than one limit for all damages sustained in one accident and would pay no more than the maximums no matter how many insured persons, claims, or policies might be involved in a single accident. Plaintiff argued that the "insured person" seeking coverage under both the policies was William, and he had one liability limit available to him, which plaintiff paid out. Plaintiff also argued that Thomas's policy was issued to him and his wife at their marital address three weeks before William's accident. Plaintiff maintained that the parties' intent was that the insurance cover the marital household rather than the household at 121 College Avenue.

¶ 9 After filing their amended complaint, plaintiff limited its motion for summary judgment to count I of the complaint. On December 15, 2011, defendants filed a cross-motion for summary judgment. Defendants argued that the policy's limitation language was ambiguous, requiring that it be construed in their favor to permit stacking. They further argued that they contracted separately and paid individual premiums for the specific coverages set forth in their policies, and that Thomas was a co-resident with William at the time of William's death.

¶ 10 A hearing on the cross-motions for summary judgment took place on January 13, 2011. The trial court issued its ruling on January 27, 2011, granting summary judgment for plaintiff and denying defendants' cross-motion for summary judgment. It found as follows. The three relevant portions of the policy were "General, Limits of Liability & Other Insurance." It rejected plaintiff's argument "as to the General provision [for two or more cars] in that it pertains to 'you' as the named insured." The "Other Insurance" provision did not apply but also did not create an ambiguity, unlike *United Security Insurance Co. v. Mason*, 59 Ill. App. 3d 982 (1978), and *Glidden v. Farmers*

Automobile Insurance Ass'n, 57 Ill. 2d 330 (1974). The two separate declarations pages did not create an ambiguity, per *In re Estate of Striplin*, 347 Ill. App. 3d 700 (2004). The limits of liability language was not as clear as in *Putzbach v. Allstate Insurance Co.*, 143 Ill. App. 3d 1077 (1986), and *In re Estate of Striplin*, "and not on all 4's as in" *Menke v. Country Mutual Insurance Co.*, 78 Ill. 2d 420 (1980). It further found:

> "Reading the policy provision to give meaning to clear language, 'we will pay no more than these maximums no matter how many vehicles are described on the declaration' means no matter how many vehicles are insured by the company; 'or insured persons' meaning no matter how many named insureds or members of household, the provision goes on 'claims, claimants, policies, or vehicles involved' all of which indicate to the court that the policy is unambiguously limiting the liability of the company for any one accident, which is the language just above the quoted language - this reading being the only way to give effect to the entire clause."

The trial court ruled that there was no coverage available under Thomas's policy. Defendants timely appealed.

¶ 11 II. ANALYSIS

¶ 12 Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010). When parties file cross-motions for summary judgment, they agree that only a question of law is involved and that the court should decide the issue based on the record. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010). We review *de novo* a grant of summary judgment. *Id.* Also, the

construction of an insurance policy is a question of law, to which *de novo* review applies. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010).

¶ 13 The court's primary objective in construing an insurance policy's language is to ascertain and give effect to the parties' intent, as expressed in their agreement. *Id.* We will give clear and unambiguous policy terms their plain and ordinary meaning. *Id.* at 455-56. The policy will be applied as written if its language is unambiguous, unless it contravenes public policy. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). If terms are susceptible to more than one meaning, they are ambiguous and will be strictly construed against the insurer, who drafted the policy. *Wilson*, 237 Ill. 2d at 456. Provisions that limit or exclude coverage will be interpreted liberally in the insured's favor and against the insurer (*id.*), though this rule of construction applies only where the policy language is ambiguous (*Hobbs*, 214 Ill. 2d at 17). We must construe the policy as a whole, considering the type of insurance purchased, the nature of the risks involved, and the contract's overall purpose. *Wilson*, 237 Ill. 2d at 456.

¶ 14 The Illinois Insurance Code allows for the use of antistacking clauses in motor vehicle insurance policies (215 ILCS 5/143a-2(5) (West 2008)), and our supreme court has stated that antistacking clauses generally are not contrary to public policy (*Hobbs*, 214 Ill. 2d at 17-18). Thus, unambiguous antistacking clauses will be given effect. *Id.* at 18. This is true even where the plaintiff has paid separate premiums for uninsured motorist coverage for different cars in different policies. *Behrends v. Country Mutual Insurance Co.*, No. 1-09-3608, slip op. at 5 (April 20, 2011).

¶ 15 On appeal, defendants argue that the trial court erred in ruling that the policy unambiguously prohibited stacking. Defendants first argue that the trial court was correct insofar as it found that the "Two or More Cars Insured" provision was inapplicable. That provision provides, "The total limit of **our** liability under all policies issued to **you** by **us** shall not exceed the highest limit of

liability under any one policy." (Emphases in original.) "**You** and **your**" are defined as "the policyholder named in the declarations and spouse, if living in the same household." (Emphases in original.) We agree with defendants and the trial court that the "Two or More Cars Insured" provision is inapplicable here, as "you" is defined as the policyholder named in the declarations and Nick and Thomas insured only one vehicle each, in separate policies.

¶ 16 Defendants next argue that in making its ruling, the trial court rewrote the language in the limits of liability provision stating ,"**We** will pay no more than these maximums no matter how many vehicles are described in the declarations, or **insured persons**, claims, claimants, policies or vehicles are involved." (Emphases in original.). Defendants contend that if this policy language was clear and ambiguous, it would not need to be rewritten. We disagree that the trial court was rewriting the policy language in its ruling. Rather, it was explaining its interpretation of the language, including applying a definition contained within the policy itself. Defendants further argue that the trial court did not consider that coverage limitations must be construed liberally in the policyholder's favor and against the insured. However, as stated, this principle applies only if the language at issue is ambiguous. *Hobbs*, 214 Ill. 2d at 17.

¶ 17 Defendants note that the limitations provision for medical expense coverage differs, in that it states:

> "Regardless of the number of vehicles described in the declarations, **insured persons**, claims or policies, or vehicles involved in the accident, **we** will pay no more than the limit of liability shown for this coverage in the declarations for each person injured in any one accident." (Emphases in original.)

Defendants argue that plaintiff's choice to use different language to purportedly explain the same concept can only place the limiting language in the uninsured motorist section in question. We

disagree, as the provision at issue is worded only slightly differently than the limitation language in the medical payments, and any differences in and of themselves do not render the provision ambiguous.

¶ 18 The language in question, "**We** will pay no more than these maximums no matter how many vehicles are described in the declarations, or **insured persons**, claims, claimants, policies or vehicles are involved" (emphases in original), appears under the heading "**LIMITS OF LIABILITY**" in the portion of the policy relating to uninsured motorist coverage. Construing the provision in light of the policy as a whole, we agree with the trial court that the provision unambiguously precludes stacking under the facts of this case. It clearly states that plaintiff will pay no more than the policy maximum regardless of, as relevant here, the number of "insured persons" (defined as a policy holder and spouse or a relative), claims, claimants, or policies involved. Thus, even though there were two separate policies at issue and two distinct policy holders/claimants, the clause limits recovery to the coverage shown in the declarations, which was $100,000 per person, and which plaintiff already paid William's estate. Indeed, this court has previously held that an almost identical provision unambiguously precluded stacking. *American Family Mutual Insurance Co. v. Martin*, 312 Ill. App. 3d 829, 831-33 (2000).

¶ 19 Defendants further argue that, contrary to the trial court's ruling, the "Other Insurance" provision creates an ambiguity requiring coverage in their favor. As mentioned, in part III of the policy relating to uninsured motorist, it states the following under the heading "**OTHER INSURANCE**":

> "If there is other similar insurance on a loss covered by this Part, **we** will pay **our** share according to this policy's proportion of the total limits of all similar insurance. But,

> any insurance provided under this Part for an **insured person** while **occupying** a vehicle you do not own is excess over any other similar insurance." (Emphases in original.)

Defendants state, and we agree, that the second sentence in this section is inapplicable because William was not occupying a vehicle at the time of the accident.

¶ 20 Defendants argue that the remainder of the provision is applicable because there is "other similar insurance" here, the policy issued to Nick. Defendants maintain that, under the reasoning in *Glidden*, this language is ambiguous. In *Glidden*, the plaintiff had three separate insurance policies covering three distinct vehicles. Each policy offered uninsured-motorist coverage up to $10,000 per person and $20,000 per accident. *Glidden*, 57 Ill. 2d at 332. The policies also had an "other insurance" provision stating in relevant part:

> " 'Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.' " *Id.* at 334.

The plaintiff's wife was struck and killed by an uninsured motorist, and the plaintiff sought to recover under all three policies. *Id.* at 332. The supreme court stated that the purpose of "other insurance" clauses was to prorate losses among multiple insurance companies, but the clause had no meaningful purpose when only one insurance company was involved. *Id.* at 336. The court stated that in such a situation, the clause was ambiguous and should be construed in the insured's favor, thereby not prohibiting the stacking of policies. *Id.* Defendants argue that the "other

insurance" language in plaintiff's policy is virtually identical to that in *Glidden*, and, as in *Glidden*, it creates an ambiguity when the policies are issued by the same insurer.

¶ 21 The supreme court subsequently distinguished *Glidden* in *Menke*. There, the plaintiff sought to stack uninsured motorist provisions in two automobile insurance policies issued by the same insurer, which contained a total of three uninsured motorist provisions. *Menke*, 78 Ill. 2d at 422. The "other insurance" provisions stated:

> "With respect to any occurrence, accident, death or loss to which this and any other automobile insurance policy issued to the Named Insured by the Company also applies, the total limit of the Company's liability under all such policies shall not exceed the highest applicable limit of liability or benefit amount under any one such policy." *Id.* at 423.

The court stated that unlike *Glidden*, the language of the clause had a clear meaning in the context of the case, and it unambiguously prohibited multiple coverages provided by one insurer from being stacked. *Id.* at 424.

¶ 22 *Putzbach* is another case distinguishing *Glidden*. In *Putzbach*, the "other insurance" provision stated in relevant part:

> "If more than one policy applies to the accident on a primary basis, the total benefits payable to any one person will not exceed the maximum benefits payable by the policy with the highest limit for uninsured motorists coverage. We will bear our proportionate share with other uninsured motorist benefits. This applies no matter how many autos or auto policies may be involved whether written by Allstate or another company." *Putzbach*, 143 Ill. App. 3d at 1079.

The appellate court stated the first sentence's proration clause, read in context, could only clearly refer to a situation where other insurance was written by another company. However, it reasoned

that the clause was distinguishable from *Glidden* because, unlike *Glidden*, the clause contained express language in the third sentence which applied to policies "written by Allstate or another company." *Id.* at 1081. The appellate court held that reading the entire paragraph in its factual context, it clearly applied to both "multiple coverages provided by one insurance company and of another company," meaning that coverage could not be stacked. *Id.* at 1081-82. Defendants argue that unlike *Putzbach*, there is no sentence is plaintiff's "other insurance" provision referring to other policies written by it or another company, so it remains ambiguous under *Glidden*.

¶ 23 Returning to the relevant "other insurance" language at issue here, the policy provides, "If there is other similar insurance on a loss covered by this Part, **we** will pay **our** share according to this policy's proportion of the total limits of all similar insurance." (Emphases in original.) As in *Glidden*, the purpose of this "other insurance" clause is to prorate losses among multiple insurance companies (see *Glidden*, 57 Ill. 2d at 336) so that any other insurers are prevented "from paying less than their fair share of a jointly covered loss" (*Armstrong v. State Farm Mutual Automobile Insurance Co.*, 229 Ill. App. 3d 971, 976 (1992)). If this was the only relevant language in the policy, it would, as in *Glidden*, be ambiguous in a situation where only one insurance company was involved, because it does not have the type of additional language present in *Menke* and *Putzbach* referring to multiple policies from the issuing company. Importantly, however, *Glidden* did not have another policy provision like the one in this case stating, "**We** will pay no more than these maximums no matter how many vehicles are described in the declarations, or **insured persons**, claims, claimants, policies or vehicles are involved." (Emphases in original.) As discussed, this provision is clearly an antistacking clause. Antistacking and proration provisions "serve separate and important functions" (*Armstrong*, 229 Ill. App. 3d at 976), and distinct proration clauses will not introduce ambiguity into the clear language of an antistacking provision (see *id.*). In other

words, "an 'other insurance' provision does not create an ambiguity where an unambiguous provision otherwise bars coverage." *Farmers Automobile Insurance Ass'n v. Rowland*, 379 Ill. App. 3d 696, 698 (2008). That is precisely the situation here, and defendants' attempt to rely on the "other insurance" provision to create ambiguity in the antistacking clause fails. *Cf. Martin*, 312 Ill. App. 3d at 833 (analyzing policy language almost identical to that at issue here and holding that the "other insurance" provision did not make the antistacking clause ambiguous).

¶ 24 III. CONCLUSION

¶ 25 For the reasons stated, we affirm the judgment of the Lake County circuit court.

¶ 26 Affirmed.