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2011 IL App (3d) 100440–U

Order filed August 12, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

KAREN HARPER,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Peoria County, Illinois
	)	
v.	)	Appeal No. 3–10–0440
	)	Circuit No. 09–MR–401
	)	
COUNTRY PREFERRED INSURANCE CO.,	)	Honorable
	)	Stuart P. Borden,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: In a case involving a setoff provision in an automobile insurance policy, the appellate court held that the policy's language unambiguously provided for the setoff and public policy did not prevent the defendant insurance company from claiming the setoff. Accordingly, the appellate court affirmed the circuit court's grant of summary judgment in favor of the defendant insurance company, which allowed a setoff from a payment made under the plaintiff's medical payments coverage.

¶ 2 The plaintiff, Karen Harper, filed a motion for declaratory judgment regarding the automobile insurance policy she had with the defendant, Country Preferred Insurance Co. The defendant filed a motion for summary judgment, which the circuit court granted. On appeal, the

plaintiff argues that the court erred when it granted the defendant's motion. We affirm.

¶ 3 FACTS

¶ 4 On November 24, 2009, the plaintiff filed a complaint for declaratory judgment. The complaint alleged that the plaintiff was involved in a car accident on February 2, 2009. The plaintiff was a passenger in a car driven by her daughter. Allegedly, a tractor-trailer was illegally parked on the side of the road, which obstructed the view of the plaintiff's daughter. The plaintiff's daughter began executing a turn when a semi tractor-trailer hit the car, causing injuries to the plaintiff. The car was insured by the defendant, and the plaintiff alleged she and her daughter were both insureds under the policy and that three potential claims existed under the terms of the policy: (1) the plaintiff versus her daughter under the policy's bodily injury coverage provision; (2) the plaintiff versus her daughter under the policy's underinsured motorist provision; and (3) a claim for underinsured and/or uninsured motorist coverage under the policy against an unknown person responsible for an illegally parked vehicle that allegedly contributed to the accident. The complaint also alleged that the defendant had paid $100,000 pursuant to the policy's medical payment coverage limit provision, which was being claimed as a setoff against any claims under the policy's $250,000 bodily injury coverage limit provision and $250,000 uninsured/underinsured motorist coverage limit provision. The plaintiff contested that the $100,000 could be claimed as a setoff and sought a declaratory judgment to settle the controversy.

¶ 5 The policy in question contained the following provisions:

"**SECTION 1 - LIABILITY INSURANCE**

Bodily Injury, Coverage A

* * *

Conditions, Section 1

* * *

2. **Limits of Liability.** The limits of liability shown on the declaration page apply as follows:

   a. The bodily injury liability limit for "each person" is the maximum amount **we** will pay for all damages arising out of bodily injury to any one person in any one accident. That maximum amount includes any claim of other persons for damages arising out of that bodily injury. The figure listed is the most **we** will pay for any person in any one accident regardless of the number of **insureds**, claims made, **insured vehicles** or premiums shown on the declarations page;

* * *

The insurance coverage under Section 1 applies separately to each **insured** against whom a claim or lawsuit is filed. However, including more than one **insured** under this coverage will not increase **our** liability limits. Further, any payment to anyone under coverages in Section 1 will reduce any amount that person is entitled to receive under Sections 2 or 3 of this policy.

* * *

SECTION 2

Uninsured-Underinsured Motorists,

Coverage U

* * *

Definitions, Section 2

* * *

3. **Uninsured or underinsured motor vehicle** does not include any **motor vehicle**:

   a. owned by or furnished or available for the regular use of **you** or any resident of the same household as **you**;

* * *

Conditions, Section 2

* * *

2. **Limits of Liability.** The Uninsured - Underinsured Motorists limits of liability shown on the declarations page apply as follows:

   a. The limit of liability for "each person" is the maximum amount **we** will pay for all damages arising out of bodily injury to any one person in any one accident. That maximum amount includes any claims of other persons for damages arising out of that bodily injury.

      The figure listed is the most **we** will pay for any one person in any one accident regardless of the number of

insureds, claims made, **insured vehicles**, premiums shown on the declarations page, or **uninsured or underinsured motor vehicles** involved in the accident;

* * *

d. Amounts payable for damages under Uninsured Motorists coverage will be reduced by all sums paid under Medical Payments, Personal Injury Protection or Underinsured Motorists coverage of any personal vehicle policy issued by **us**. Any payment under coverages in Section 2 of this policy either to or for an **insured** will reduce any amount that person is entitled to receive under Section 1, Liability; Medical Payments; Personal Injury Protection; or Underinsured Motorists coverage of this policy.

e. Amounts payable for damages under Underinsured Motorists coverage will be reduced by all sums paid under Medical Payments, Personal Injury Protection or Uninsured Motorists coverage of any personal vehicle policy issued by **us**. Any payment under coverages in Section 2 of this policy either to or for an **insured** will reduce any amount that person is entitled to receive under Section 1, Liability; Medical Payments; Personal Injury Protection; or Uninsured Motorists coverage of this policy.

* * *

SECTION 3

Medical Payments, Coverage C

* * *

Conditions, Section 3

* * *

1. **Limits of Liability.** *** Expenses payable under Medical Payments, Coverage C, will be reduced, or if applicable will reduce, any amounts owed or paid under Bodily Injury or Uninsured - Underinsured Motorists coverages of this policy. No payment will be made under Medical Payments, Coverage C, unless the injured person or that person's legal representative agrees in writing that any payment will be applied in reduction of any amounts payable under Bodily Injury or Uninsured - Underinsured Motorists coverages of this policy." (Emphases in original).

¶ 6 On March 31, 2010, the defendant filed a motion for summary judgment. In its motion, the defendant alleged that the policy's terms unambiguously included setoffs for both the bodily injury and the medical payments provisions, and that the plaintiff's claim was therefore without merit.

¶ 7 The parties submitted written arguments on the issue and made oral arguments at a hearing held on May 10, 2010. On May 17, 2010, the circuit court issued a written order in

which it found that the policy's terms clearly provided for the setoff and allowing the setoff was not contrary to public policy. The court found that, "it is understandable that the insurer would include policy language to avoid stacking of coverage. Furthermore, the plaintiff would have received a benefit for her premium under other factual scenarios, but not in this particular instance." The court also found that a provision requiring the defendant to issue a release document with the $100,000 payment was meant to protect the defendant and its failure to issue the document did not constitute a waiver of the its right to claim the setoff. Accordingly, the court granted the defendant's motion for summary judgment. The plaintiff appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, the plaintiff argues that the circuit court erred when it granted the defendant's motion for summary judgment. In part, the plaintiff argues that the court erred when it found the policy's language to be unambiguous; specifically, the plaintiff claims that ambiguity is created by the fact that she paid a separate premium for medical payment coverage and that the defendant did not execute a written waiver before paying the $100,000 medical payment coverage.

¶ 10 A party is entitled to a grant of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2–1005(c) (West 2010). On appeal, we construe the evidence in the light most favorable to the nonmoving party. *Clark Investments, Inc. v. Airstream Inc.*, 399 Ill. App. 3d 209, 212-13 (2010). We review a grant of summary judgment involving the interpretation of a contract's terms under the *de novo* standard. *First Midwest Bank v. Thunder Road, Inc.*, 359 Ill. App. 3d 921, 923 (2005).

¶ 11 When construing an insurance policy, our task is to give effect to the parties' intentions as they appear in the agreement. *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 400 (2010). "If insurance policy terms are clear and unambiguous, they must be enforced as written unless doing so would violate public policy." *Schultz*, 237 Ill. 2d at 400.

¶ 12 In this case, the language in the medical payments section of the policy clearly states that any payments made under that section "will be reduced, or if applicable will reduce, any amounts owed or paid under Bodily Injury or Uninsured - Underinsured Motorists coverage of this policy." The policy employs substantially similar language in the Bodily Injury and Uninsured - Underinsured Motorists provisions. Because the policy clearly provides for setoffs from medical payments, the policy's language is unambiguous.

¶ 13 Further, the factors asserted by the plaintiff do not create ambiguity in the policy's language. First, the fact that the plaintiff was paying a premium for medical payments coverage is irrelevant in this case. The so-called "premium rule" referenced by the plaintiff only applies when policy language is ambiguous and therefore is of no avail to the plaintiff. *Pahn v. State Farm Mutual Automobile Insurance Co.*, 291 Ill. App. 3d 343, 346 (1997) (citing *Grzeszczak v. Illinois Farmers Insurance Co.*, 168 Ill. 2d 216, 228 (1995)).

¶ 14 Second, the fact that the defendant did not execute a written waiver before paying the $100,000 medical payment coverage is also irrelevant in this case. The provision cited by the plaintiff states that "[n]o payment will be made under Medical Payments, Coverage C, unless the injured person or that person's legal representative agrees in writing that any payment will be applied in reduction of any amounts payable under Bodily Injury or Uninsured - Underinsured Motorists coverages of this policy." As the circuit court found, this provision is clearly meant to

protect the defendant from liability, and the failure of the defendant to require the written waiver before it paid the $100,000 in medical payments did not evince any intent to waive its right to claim the setoff and does not create any ambiguity in the policy's language.

¶ 15 Given that the policy's language is unambiguous, we must apply it unless it is contrary to public policy. *Schultz*, 237 Ill. 2d at 400. "An agreement will not be invalidated unless it is clearly contrary to what the constitution, the statutes, or the decisions of the courts have declared to be the public policy of Illinois or unless it is 'manifestly injurious to the public welfare.' " *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 55 (2011) (quoting *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 129-30 (2005)).

¶ 16 Next, the plaintiff argues that allowing the setoff violates public policy because it effectively allows the defendant to subrogate against its own insured. The plaintiff cites to *Halverson v. Stamm*, 329 Ill. App. 3d 1206 (2002), in support of her argument.

¶ 17 In *Halverson*, the plaintiff was a passenger in a car driven by another person when an accident occurred, which resulted in injuries to the plaintiff. Both individuals were insureds under an automobile policy issued by Allstate Insurance Company. Allstate paid the plaintiff $5,429.61 for medical bills. The plaintiff sued the driver for negligence. The jury awarded the plaintiff $51,500 in damages. The driver's attorney, who was provided by Allstate, filed a motion for a setoff from the judgment for the $5,429.61 already paid to the plaintiff. The court granted the motion, and the plaintiff raised the issue on appeal. One of Allstate's arguments was that a subrogation clause in the policy should allow the setoff to prevent the insured from obtaining a double recovery.

¶ 18 The *Halverson* court cited the general principle that an insurer cannot subrogate against

its own insured, thereby rejecting Allstate's subrogation argument. *Halverson*, 329 Ill. App. 3d at 1213. Then, the court looked to the policy's language to answer the double recovery question. Because the policy stated that medical payments would be reduced by " 'amounts received from *others* *** who may be legally responsible for the injuries' " (emphasis in original), and because the plain meaning of "others' did not included insureds under the policy, the court held that the provision did not apply on the facts of the case. *Halverson*, 329 Ill. App. 3d at 1213-14.

¶ 19 We are not faced with the same situation as the *Halverson* case. Here, the relevant policy language does not stem from the concept of subrogation and plainly allows the setoff on the facts of this case. Moreover, we see no other reason to disallow the setoff as a matter of public policy. Allowing the setoff in this case would not reduce the policy's bodily injury coverage below the statutorily mandated minimum. 625 ILCS 5/7–601(a), 7–203 (West 2008); see also *Becker v. Country Mutual Insurance Co.*, 158 Ill. App. 3d 63, 70-71 (1987) (allowing bodily injury setoff from medical payment claim). The plaintiff's allegation that allowing the setoff would effectively render the plaintiff's daughter an underinsured motorist is also not persuasive, as the car involved in the accident is clearly excluded from the policy's uninsured and underinsured motorist coverage. The policy's language does not permit a claim that the plaintiff's daughter is an underinsured motorist.

¶ 20 Further, several cases that have addressed setoff issues in different contexts, but pursuant to identical or similar policy language, have held that allowing setoffs would not violate public policy. See *Adolphson v. Country Mutual Insurance Co.*, 187 Ill. App. 3d 718, 720-21 (identical policy language; medical payments setoff allowed in the underinsured motorist context); *Susler v. Country Mutual Insurance Co.*, 147 Ill. 2d 548, 559 (1992) (similar policy language; worker's

compensation setoff allowed in the underinsured motorist context); *Zdeb v. Allstate Insurance Company*, 404 Ill. App. 3d 113, 115, 119 (2010) (similar policy language; medical payments setoff allowed in the underinsured motorist context).

¶ 21 CONCLUSION

¶ 22 Because the policy's language is unambiguous and public policy does not prevent allowing the setoff in this case, we affirm the judgment of the circuit court of Peoria County.

¶ 23 Affirmed.