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2011 IL App (3d) 100833-U

Order filed September 23, 2011

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

WESTFIELD NATIONAL INSURANCE	)	Appeal from the Circuit Court
COMPANY, an Ohio stock insurance company,	)	of the 13th Judicial Circuit,
	)	Grundy County, Illinois
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
STATE FARM FIRE AND CASUALTY	)	
COMPANY,	)	
	)	
Defendant-Appellant,	)	Appeal No. 3-10-0833
	)	Circuit No. 08-MR-28
and	)	
	)	
JAMES W. BLACK, Individually, and as Next	)	
Friend of Shawn Black, SHAWN BLACK,	)	
STATE FARM MUTUAL AUTOMOBILE	)	
INSURANCE COMPANY, an Illinois mutual	)	
insurance company, and STACIE J. ADAIR,	)	
Administrator of the Estate of Randall L.	)	
Adair, Deceased,	)	Honorable
	)	Robert C. Marsaglia,
Defendants.	)	Judge, Presiding.

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PRESIDING JUSTICE CARTER delivered the judgment of the court.  
Justice Holdridge concurred in the judgment.  
Justice McDade dissented.

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**ORDER**

¶ 1 *Held:* Where conflicting evidence was presented in summary judgment proceeding regarding whether vehicle that was involved in traffic accident was furnished or available for regular use for purpose of coverage exclusion under umbrella liability policy, trial court erred in granting summary judgment. The appellate court, therefore, reversed the trial court's ruling and remanded for further proceedings.

¶ 2 Plaintiff, Westfield National Insurance Company (Westfield), brought the instant action seeking a declaration that it did not owe liability coverage, under either its automobile policy or its umbrella policy issued to James and Marifran Black, for a car accident involving the Blacks' son, Shawn. The car that Shawn was driving at the time of the accident belonged to James's employer, Black & Black Lawyers (Black & Black), and was insured by a different insurance company, State Farm Fire and Casualty Company (State Farm). Black & Black had both an automobile insurance policy and an umbrella policy through State Farm. State Farm did not contest Westfield's suit with regard to Westfield's automobile policy, but did contest Westfield's suit with regard to Westfield's umbrella policy. Ruling upon Westfield's motion for summary judgment, the trial court found that the "regular use" exclusion in Westfield's umbrella policy excluded coverage and granted summary judgment for Westfield on that basis. State Farm appeals. We reverse the trial court's ruling and remand this case for further proceedings.

¶ 3 **FACTS**

¶ 4 On August 9, 2007, 17-year-old Shawn Black was driving a GMC Yukon sport utility vehicle westbound on Route 6 in Grundy County, Illinois, when he collided with a motorcycle driven by Randall Adair. Adair was killed in the accident. Adair's widow brought a wrongful death suit against Shawn.

¶ 5 The Yukon that Shawn was driving at the time of the accident was owned by Black & Black Lawyers, a law firm in Morris, Illinois. Shawn's father, James Black, worked at Black & Black as

an office manager. Black & Black was owned by three of James's brothers. The Yukon was James's "company car." Black & Black purchased automobile insurance for the Yukon through State Farm. The automobile insurance policy had a liability limit of \$500,000. Black & Black also purchased an umbrella policy through State Farm, which had a liability limit of \$5 million. Thus, the total combined liability limit of the two State Farm policies was \$5.5 million. The Yukon was listed as a covered vehicle in the automobile insurance policy issued by State Farm, and the automobile insurance policy was referenced in the umbrella policy.

¶ 6 At the time of the accident, Shawn lived with his parents, James and Marifran Black. James and Marifran owned two vehicles, a 1995 Pontiac Bonneville (the Pontiac) and a 2002 Buick LeSabre (the Buick). James and Marifran purchased automobile insurance through Westfield, which included coverage for Shawn. The only two vehicles listed as covered vehicles in the automobile insurance policy issued to James and Marifran by Westfield were the Pontiac and the Buick. James and Marifran also purchased an umbrella policy through Westfield, which had a liability limit of \$1 million. The Westfield umbrella policy referenced the Westfield automobile insurance policy. The Yukon was not listed as a covered vehicle in either of the Westfield policies.

¶ 7 State Farm defended Shawn in the wrongful death suit. While that suit was progressing, Westfield filed the instant declaratory judgment action seeking a declaration that it did not owe Shawn coverage for the accident under either the automobile policy or the umbrella policy issued to Shawn's parents. State Farm did not dispute that its own automobile policy provided primary coverage for Shawn for this particular accident and agreed that Westfield's automobile policy did not provide primary coverage for Shawn. State Farm also did not dispute that its umbrella policy provided coverage for Shawn for this particular accident but contested whether Westfield's umbrella

policy provided coverage for Shawn as well. State Farm eventually settled the underlying wrongful death suit for \$3 million, which was paid entirely by State Farm.

¶ 8 In the trial court, the declaratory judgment case between Westfield and State Farm proceeded largely by way of summary judgment. Initially, both sides sought a partial summary judgment on the issue of whether Westfield's umbrella policy provided coverage that was only to be applied if the limits of the State Farm umbrella policy had been exceeded. The trial court found that Westfield's umbrella policy was not in excess of State Farm's umbrella policy (that the two umbrella policies shared coverage equally) and granted partial summary judgment for State Farm on that basis.

¶ 9 Next, Westfield filed a motion for summary judgment on the issue of coverage. Westfield argued that the regular use exclusion contained in its umbrella policy excluded coverage for Shawn for this particular accident. Westfield's regular use exclusion excluded coverage for any non-owned automobile "furnished or available for the regular use of any relative" of the named insured. In this case, that relative was Shawn. State Farm opposed the motion.

¶ 10 A hearing was held on Westfield's motion for summary judgment. At the time of the hearing, the trial court had before it the pleadings, the insurance policies in question, various depositions, and certain other documents. Of primary relevance were the deposition testimonies of Donald Black, James Black, Shawn Black, and Marifran Black. Those testimonies can be summarized as follows.

¶ 11 Donald Black testified that he was one of the owners of Black & Black and was James's brother. At the time of the accident, Black & Black owned the Yukon in question. James was the office manager at Black and Black, and the Yukon was assigned to James as a business vehicle.

There was no written agreement that governed James's use of the Yukon. Although the Yukon was basically a business vehicle according to Donald, there were no limitations or restrictions whatsoever placed on what James could do with the Yukon after business hours. At the end of the day and on weekends, the Yukon was kept at James's residence. Donald did not recall James's son, Shawn, ever working for Black & Black or at certain apartment buildings owned by members of the Black family and had no personal knowledge of Shawn ever driving the Yukon.

¶ 12 James Black testified that he was employed by Black & Black as the office manager. In connection with his employment at Black & Black, James was given the Yukon to use as a "company car." From approximately 2002 or 2003 through 2007, James drove the Yukon five times a week on average to and from work and was authorized to do so by Black & Black. After work hours and on weekends, the Yukon was kept at James's home. James did not recall if there were any restrictions placed on his own use of the Yukon by Black & Black. James testified that he did not use the Yukon for his own personal use, and that the Yukon was a business vehicle. James did not remember if he ever used the Yukon for running errands, such as shopping or visiting friends, but stated that if he did use the Yukon for those purposes, it was infrequently. According to James, no one else in his household used the Yukon because it was his business vehicle for work and his family had two other cars of their own. James testified that Shawn drove the Yukon to basketball practice on one occasion when there was a lot of snow because the Yukon had four wheel drive. Shawn asked permission to use the Yukon on that occasion. According to James, Shawn was told that he needed James's permission to use the Yukon, although James did not remember when that conversation took place. Aside from driving to basketball practice one time, Shawn never asked permission to use the Yukon, and James was not aware of any time that Shawn ever used the Yukon

without permission, other than on the date of the accident. James stated that Shawn worked a few times for Black & Black, moving files to storage, and would drive the Yukon with James's permission for that purpose. Shawn also did some work at some of the apartment buildings that James managed, that were owned by members of the Black family, and would drive the Yukon for that purpose as well. James did not recall how often Shawn worked at the apartment buildings.

¶ 13 Marifran Black testified that her husband, James, was the business manager of Black & Black and also managed some apartment buildings. Marifran was Shawn's mother. Marifran was aware that Shawn helped James at work at times but did not know how often that occurred. At the time of the accident, there were three vehicles at their household: the Pontiac, which all three of them (James, Marifran, and Shawn) drove; the Buick, which all three of them had access to drive; and the Yukon, which was James's work vehicle and which only James drove. The keys to all three vehicles were kept in a basket in the family home. According to Marifran, after Shawn obtained his driver's license, he had free use of the Pontiac to drive to and from school and to and from basketball practice. When asked if there was some understanding around the house as to how the vehicles were to be used, Marifran testified that James was the only one who drove the Yukon, that she drove the Buick, and that Shawn drove the Pontiac. Marifran testified further that to her knowledge, Shawn never drove the Yukon, other than pulling it out of the driveway to move it for other cars (except for the day of the accident). Marifran stated that what James and Shawn worked out with regard to the use of the Yukon was between them and that she did not have any knowledge of it. Marifran commented that James's word was "law" in the household.

¶ 14 Shawn Black testified that he got his driver's license in July of 2006. From that time until he graduated from high school, Shawn did not own a car, did not have a car furnished to him, and

did not have a car that he normally drove. Shawn drove the Pontiac to and from school, which was about a mile from his home. Shawn did not use the Yukon for activities with his friends and was generally picked up by other people to go out for social engagements. There were three cars in his family's household: the Pontiac, the Buick, and the Yukon. Shawn's mom used the Buick, and his dad used the Yukon. When asked if he ever drove the Yukon, Shawn testified that he remembered taking it to basketball practice in the winter during high school when it was snowing out because the Yukon had four wheel drive. Shawn did not recall how often he drove the Yukon to basketball practice. When Shawn used the Yukon, he asked his father's permission. Shawn also used the Yukon at times when he worked for Black & Black taking files to storage. Shawn did not remember how often he worked for Black & Black but testified that it was not a regular job. Shawn also did some work at the apartment buildings that his dad managed and did, on occasion, use the Yukon for that work but did not remember how many times that occurred.

¶ 15 On the day of the accident, Shawn's dad was not at home and Shawn took the Yukon without permission. Shawn did so because he was going fishing and he wanted to use the Yukon to haul fishing gear. Shawn testified that he did not remember if there was any other occasion when he used the Yukon to go fishing but commented that he did not go fishing regularly. On other occasions when Shawn had gone fishing, someone else had driven.

¶ 16 The keys to the Pontiac, the Buick, and the Yukon were all kept in a basket in his parents' house, where everyone had access to them. Shawn testified that if no one else was using the Yukon, he was authorized to use it. But when asked if his father placed any restrictions on his use of the Yukon, Shawn stated that he had to ask his father's permission. When asked further if he would take the Yukon and use it if his father was not there, Shawn responded that he usually never drove the

Yukon. Shawn did not remember if his father ever told him that he had to ask permission before he used the Yukon. Shawn also did not remember if there was any time when his father told him that he was not to drive the Yukon.

¶ 17 At the hearing on Westfield's motion for summary judgment, the trial court listened to the arguments of the attorneys and then took the motion under advisement. The trial court subsequently issued a written ruling. The trial court found that there were no genuine issues of material fact in dispute, that the Yukon had been furnished or made available to Shawn for his regular use, and that the regular use exclusion in the Westfield umbrella policy applied and excluded coverage for Shawn for this particular accident. The trial court, therefore, granted Westfield's motion for summary judgment on that issue. State Farm filed the instant appeal to challenge the trial court's ruling. Westfield did not file a cross-appeal.

¶ 18 ANALYSIS

¶ 19 State Farm argues that the trial court erred in finding that the Yukon was provided for Shawn's regular use and in granting summary judgment for Westfield on that basis. State Farm asserts that a genuine issue of material fact exists as to regular use and that summary judgment, therefore, should not have been granted. Westfield argues that the trial court's ruling was proper and should be affirmed.

¶ 20 The purpose of summary judgment is not to try a question of fact, but rather, to determine if one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted 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 as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law.

735 ILCS 5/2-1005(c) (West 2008); *Adams*, 211 Ill. 2d at 43. Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable persons might draw different inferences from the undisputed facts. *Adams*, 211 Ill. 2d at 43. Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Adams*, 211 Ill. 2d at 43. In appeals from summary judgment rulings, the standard of review is *de novo*. *Adams*, 211 Ill. 2d at 43.

¶ 21 The purpose of a “regular use” exclusion in an automobile or other type of insurance policy is to prevent an insurance company from being subjected to an additional risk of coverage for a vehicle that the insurance company did not receive a premium for or intend to insure. *Auto Owners Insurance Co. v. Miller*, 138 Ill. 2d 124, 129-30 (1990). Thus, while a “non-owned vehicle” provision or a “drive other cars” provision in an individual or family automobile insurance policy will provide coverage for an isolated, casual, and unauthorized use of a non-owned or temporary vehicle, coverage will generally be excluded under a “regular use” exclusion if the vehicle in question was used frequently, habitually, or principally by the insured. *Miller*, 138 Ill. 2d at 129-30. An individual or family automobile policy is not designed to provide coverage for an employer's vehicle, which is regularly used by the insured for work-related purposes or for an employer's vehicle, which is regularly used by the insured for personal reasons. *Miller*, 138 Ill. 2d at 130.

¶ 22 There is no set definition for what constitutes “regular use.” See *Miller*, 138 Ill. 2d at 129. Rather, the meaning of the words, “regular use,” is dependent upon the unique facts and circumstances of each individual case. *Miller*, 138 Ill. 2d at 129. Whether a vehicle is furnished or available for a person's regular use is generally a factual issue to be determined by the trier of fact.

*Miller*, 138 Ill. 2d at 129. That determination is usually given deference and will not be reversed on appeal unless it is against the manifest weight of the evidence. *Miller*, 138 Ill. 2d at 129. However, in this case, because the trial court’s ruling was made on a motion for summary judgment, the standard of review, as noted above, is *de novo*. See *Adams*, 211 Ill. 2d at 43.

¶ 23 In the present case, as the parties agree and the trial court noted, there is no factual dispute that the Yukon was “furnished or available” for James’s regular use. However, the evidence before the trial court regarding whether the Yukon was “furnished or available” for Shawn’s regular use was not clear and free from doubt. Rather, the trial court had before it conflicting, and oftentimes, vague information as to how often Shawn used the Yukon and the purposes of that use. The testimonies of James and Marifran seem to indicate that the availability of the Yukon to Shawn was highly restricted and that Shawn’s use of the Yukon was greatly limited. In his own testimony, however, Shawn provided somewhat conflicting responses, stating that the Yukon was available, but that he had to ask permission to use it, and that he almost never used it. In addition, there was little to no information before the court as to the number of times James granted Shawn permission to use the vehicle and the number of times, if any, that James denied Shawn permission to use the vehicle. Although we agree with the trial court and the parties that the addition of the word “available” makes the regular use exclusion somewhat broader in this case, we do not believe that *Westfield* established as a matter of law that the Yukon was “furnished or available” for Shawn’s regular use.

¶ 24 In reaching that conclusion, we note that the parties place too much reliance upon the decisions of *Auto Owners Insurance Co. v. Miller*, cited above, and *Ryan v. State Farm Mutual Automobile Insurance Co.*, 397 Ill. App. 3d 48 (2009). The decision in *Miller* turned primarily upon

the standard of review in that case, and the supreme court found that the trial court's ruling on regular use was not against the manifest weight of the evidence. See *Miller*, 138 Ill. 2d at 128-30. That standard of review is not applicable here. See *Adams*, 211 Ill. 2d at 43. As for the decision in *Ryan*, although the ruling in that case was made on a motion for summary judgment, the facts of that case are clearly distinguishable. *Ryan* involved a police officer who was using a police vehicle for work purposes, which had been assigned to him for that particular day out of a pool of vehicles. See *Ryan*, 397 Ill. App. 3d at 49. That factual situation is in no way comparable to the factual situation in the present case. See *Ryan*, 397 Ill. App. 3d at 49. Nor were the underlying facts in *Ryan* conflicting, as they are here. See *Ryan*, 397 Ill. App. 3d at 49.

¶ 25 Our ruling on this issue in no way precludes the trial court from making a factual determination at trial that the Yukon was “furnished or available” for Shawn’s regular use. We merely conclude here that based upon the conflicting nature of the underlying facts, the trial court will have to assess the credibility of the statements and determine what weight, if any, to give to the various statements, in determining whether the Yukon was “furnished or available” for Shawn’s regular use. Such a factual determination may not be made at summary judgment when the underlying material facts, or the inferences to be drawn from those facts, are in dispute. See *Adams*, 211 Ill. 2d at 43.

¶ 26 As a final matter on appeal, we must briefly address Westfield’s alternative argument that summary judgment may properly be granted in its favor because its umbrella policy only applied if the limits of the State Farm umbrella policy were exceeded, which did not occur in the present case. While it is true that a reviewing court may affirm a trial court’s grant of summary judgment on any basis supported by the record (*Illinois State Bar Ass'n Mutual Insurance Co. v. Coregis Insurance*

*Co.*, 355 Ill. App. 3d 156, 163 (2004)), the alternative basis that Westfield seeks to assert here is not before this court because Westfield did not file a cross-appeal in the present case to challenge the trial court’s prior grant of partial summary judgment on that issue. See *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1024 (2009) (the reviewing court is confined to the issues presented by the appellant when the appellee does not file a cross-appeal). Thus, we may not consider Westfield’s alternative argument as a basis for affirming the trial court’s grant of summary judgment in its favor.

¶ 27 For the foregoing reasons, we reverse the judgment of the circuit court of Grundy County and remand this case for further proceedings consistent with this order.

¶ 28 Reversed and remanded.

¶ 29 JUSTICE McDADE, dissenting:

¶ 30 The majority has reversed the decision of the Grundy County Circuit Court granting summary judgment in favor of plaintiff, Westfield National Insurance Company (“Westfield”) and against defendant, State Farm Fire and Casualty Company (“State Farm”). The trial court found that the GMC Yukon – owned by the law firm of Black & Black, assigned by the firm to office manager James Black for his use, and being driven at the time of the accident by James’s son, Shawn Black – was excluded from coverage under the personal umbrella policy Westfield had issued to James and Marifran Black. The exclusion on which Westfield relied was one that precluded coverage for any non-owned automobile “furnished or available for the regular use of any relative” of the named insured.

¶ 31 The Yukon in this case was owned by the law firm and covered under an insurance policy

purchased by the firm from State Farm. State Farm admits to primary coverage and concedes that the Westfield automobile policy does not provide coverage in this case. State Farm did, however, assert that an obligation had been created by Westfield under the personal umbrella policy issued to the Blacks. State Farm claims that Shawn was indemnified pursuant to the coverage Westfield extended to a related driver of a non-owned vehicle that was not furnished or available for his/her regular use.

¶ 32 For purposes of this dissent, I agree that the applicable law is that set out in the majority's order. In this court, as was the case in the circuit court, the arguments have centered on the phrase "furnished or available for the regular use of any relative" of the named insured. In this analysis, I will use the following meanings for the critical terms. "Regular use" is use that is not "isolated, casual, and unauthorized." For this I rely on the supreme court's observation in *Auto Owners Insurance Co. v. Miller*, 138 Ill. 2d 124 (1990), that:

"[t]he purpose of the 'drive other cars' provision of an insurance policy is to provide coverage during isolated, casual, and unauthorized use of vehicles, but to exclude coverage of frequent, habitual, or principal use. This is to prevent the insurance company from being subjected to additional risk without receiving an appropriate premium. [Citations.]" *Miller*, 138 Ill. 2d at 129.

¶ 33 For the meaning of "'available' for regular use," I would adopt the following holding from *Ryan v. State Farm Mutual Automobile Insurance Co.*, 397 Ill. App. 3d 48 (2009):

"[a]pplying the plain and ordinary meaning of the regular use exclusion, it is clear that its purpose is to cover the insured's infrequent or merely casual use

of an automobile other than the one described in his policy without the payment of an additional premium; however, it does not cover the insured for his use of other automobiles that are furnished for his regular use *or that he has the opportunity to use on a regular basis.*” (Emphasis added.) *Ryan*, 397 Ill. App. 3d at 51.

¶ 34 The undisputed testimony in this case established:

- The Yukon was assigned by Black & Black to James Black for his unrestricted, unfettered use.

- “A few times,” James made the Yukon available for Shawn to use, with his permission, when Shawn was moving files for Black & Black and was working at the apartment buildings that were owned by members of the Black family and managed by James. James had also given Shawn permission to drive the Yukon to basketball practice because its four wheel drive would be better in the heavy snow. That was the only time James remembered Shawn asking permission to use the Yukon.

- Shawn confirmed that he had sought and been given permission to drive the Yukon to basketball practice on an occasion when it was snowing. He did not remember how many times he drove the Yukon to practice. He also confirmed using the Yukon when he took files to storage for Black & Black and on those occasions when he did some work at family-owned apartment buildings. He did not remember how many times he had used the vehicle for these purposes. On the date of the accident, he took the Yukon, without permission, to haul gear for a fishing outing.

- Although James testified that he had expressly required Shawn to ask for permission to use the Yukon and Shawn stated he understood he had to get his father's permission, Shawn also testified that he could not recall (1) having been *told* he needed permission or (2) ever being told he was not to drive the Yukon.

- The keys to the Yukon were kept in the same basket with the keys to the family's Pontiac and Buick. Shawn testified that if no one else was using the Yukon, he was authorized to use it.

- No person testified that James ever refused Shawn permission to use the Yukon at any time or for any purpose.

¶ 35 The import of this testimony is that Shawn had been given permission by James to drive the Yukon an uncertain number times for law firm and family real estate activities and for his personal pursuits. In addition, there was no evidence that either the law firm (as shown by the testimony of Donald Black) or James or Shawn felt there was any impropriety in Shawn's use of the Yukon. Indeed, no person testified that James ever refused Shawn permission to use the Yukon at any time or for any purpose, nor was there any indication that James felt constrained to do so under any circumstances. When the Yukon was present at the Black's home, the keys were kept in a common location and were freely-accessible to all family members.

¶ 36 It bears repeating that the supreme court has stated that the purpose of the "drive other cars" provision is to provide coverage only during isolated, casual, and unauthorized use of vehicles in order to prevent the insurance company from being subjected to additional risk without receiving an appropriate premium. *Miller*, 138 Ill. 2d at 129. Moreover, the court noted that it had held that "the meaning of 'frequent or regular use' is dependent upon the facts and circumstances of the

individual case.” *Miller*, 138 Ill. 2d at 129.

¶ 37 In this individual case, the character of Shawn’s use and the means by which the Yukon was available for Shawn to use establishes that Westfield was subjected to additional risk from the regular availability of the Yukon for Shawn to use for either business or personal purposes. The evidence establishes that the availability for Shawn to use the Yukon for business or personal use was clearly not isolated, arguably not infrequent, and, except for the occasion of the accident itself, never unauthorized. Shawn could actually use the Yukon, or, at minimum, the Yukon was available for Shawn to use, for either purpose, simply by asking permission.

¶ 38 State Farm has argued that the need for Shawn to ask for permission to use the vehicle somehow militates against a finding that it was available for his regular use. Shawn was 17 years old at the time of the accident and he lived at home. Parents frequently require their children to have specific permission to actually use items in the home that are indisputably available for their regular use. No one would seriously argue that the family television or stove or riding mower is not available for the regular use of all family members simply because a minor living in the home is required to ask for permission to turn it on at a given time.

¶ 39 I would hold that the evidence on file leaves no question of material fact that the Yukon’s availability to Shawn for business or personal use was not isolated or unauthorized. The Yukon’s availability to Shawn was not isolated because he could ask (and presumably receive) permission to use it at anytime. Nor was the "availability" for Shawn’s personal use of the Yukon unauthorized. The fact that Shawn’s personal use of the Yukon when the accident in question occurred, because he failed to ask permission, may have been "unauthorized" is, therefore, irrelevant. The policy exclusion applies to vehicles "available for the regular use of any relative." The Yukon was

"available" for the regular, personal use of Shawn.

¶ 40 I believe this court should hold, under the legal principles set out in *Ryan* and *Miller*, that the policy exclusion for any vehicle furnished or available for the regular use of the insured applies to Shawn's use of the Yukon. Accordingly, the judgment of the circuit court of Grundy County granting summary judgment in favor of Westfield on its declaratory judgment action seeking a declaration that it does not owe liability coverage should be affirmed.

¶ 41 Having found that the exclusion in the Westfield policy applies and that coverage is thereby unavailable to Shawn, I would also find that the policy does not require Westfield to share excess coverage with State Farm in this case and would reverse the circuit court's contrary judgment.