

¶ 3 On appeal, the plaintiffs argue that the antistacking clause in the insurance policies clearly allowed stacking of the underinsured motorist coverages, or, in the alternative, was ambiguous and when construed against the insurer, allowed stacking of the underinsured motorist coverages. We reverse and remand.

¶ 4 BACKGROUND

¶ 5 On December 23, 2006, Susan was injured in a two-vehicle traffic accident in Carbondale, when a car driven by Ramona Halliday, the at-fault driver, struck the 2003 Chevy Astro Van that Susan was driving. Susan suffered serious personal injuries, causing her to incur substantial medical bills. At the time of the collision, the plaintiffs were paying premiums on four separate automobile insurance policies covering their family and their family vehicles.

¶ 6 On the declarations page of three of the policies, the "company name" was identified as follows:

"ILLINOIS FARMERS INSURANCE COMPANY, AURORA, ILLINOIS A
STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY"

"Illinois Farmers Insurance Company, Aurora, Illinois" issued the plaintiffs a policy for Todd and Susan Boatright, listing the 2003 Chevrolet Astro Van, a second for Todd and Susan Boatright, listing a 1996 Chevrolet PU K10/K1500 4WD, and a third for Todd Boatright, listing a 1999 Chevrolet PU K10/K1500 Ext/Crew Cab. All three of these listed underinsured motorist coverage limits at \$100,000 for each person/\$300,000 for each occurrence. On the declarations page of the fourth policy, the company name was identified as follows:

"MID-CENTURY INSURANCE COMPANY, LOS ANGELES, CALIFORNIA A
STOCK INSURANCE COMPANY, HEREIN CALLED THE COMPANY."

The policy issued by "Mid-Century Insurance Company, Los Angeles, California" named

Todd and Josh Boatright, listed coverage for a 1995 Chevrolet Crew Cab, and provided underinsured motorist coverage limits of \$100,000 per person/\$300,000 per occurrence as well.

¶ 7 Each of the policies identified the insurer as "the Company named in the Declarations providing this insurance." Each of the policies had its own declarations page, listing the relevant vehicle, premium amount, and underinsured motorist coverage amount. All four policies utilized the same format, and the language of key clauses was common among the policies.

¶ 8 The declarations page of each policy stated that the policy included an "s2279" endorsement, providing "UNDERinsured Motorist Coverage." Endorsement "s2279" provided as follows:

"Coverage C-1 - UNDERinsured Motorist Coverage

For an additional premium it is agreed that UNDERinsured Motorist Coverage C-1 is added to Part II of your policy. All of the terms and conditions of Part II-Uninsured Motorist Coverage C - apply to UNDERinsured Motorist Coverage C-1 in addition to the provisions of this endorsement.

We will pay all sums which an insured person is legally entitled to recover as damages from the owner or operator of an UNDERinsured motor vehicle because of bodily injury sustained by the insured person.

* * *

*** UNDERinsured Motor Vehicle means a motor vehicle for which the owner or operator is insured or bonded for bodily injury liability at the time of the accident in amounts equal to or greater than the amounts specified by the Financial Responsibility Laws of Illinois, but less than the limits of liability shown on the Declarations of this

policy for Uninsured Motorist coverage."

¶9 All four policies have an identical limits-of-coverage provision found in Part II, which the ss2279 endorsement encompassed and which provided, in pertinent part:

"Limits of Coverage

The amounts shown in the Declarations are the limits of liability for Uninsured Motorist which apply subject to the following:

* * *

4. We will pay no more than the limits shown in the Declarations of this policy regardless of the number of vehicles insured, insured persons, claims, claimants, policies or vehicles involved in the occurrence. The limits provided by this policy may not be stacked or combined with the limits provided by any other policy issued to you or a family member by any member company of the Farmers Insurance Group of Companies.
5. If you or a family member has another policy on another vehicle issued by any member company of the Farmers Insurance Group of Companies,
 - a) the limits of this policy do not apply to any occurrence arising out of the ownership, maintenance, or use of such other insured vehicle."

¶10 On the signature page, the policy stated as follows:

"The Company named on the Declarations has caused this policy to be signed by the officer shown below:

ILLINOIS FARMERS INSURANCE COMPANY

MID-CENTURY INSURANCE COMPANY

[Signatures of Secretary and Vice President]"

¶11 The defendants attached a page to each policy entitled "Notice of Information Practices," which stated, in pertinent part:

"This notice is sent on behalf of the Farmers Insurance Group of Companies, whose members include, but are not limited to:

Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange, Mid-Century Insurance Company, Farmers New Century Insurance, Farmers Insurance Company, Inc. (A Kansas Corp.), Farmers Insurance Company of Arizona, Farmers Insurance Company of Idaho, Farmers Insurance Company of Oregon, Farmers Insurance Company of Washington, Farmers Insurance of Columbus, Inc., Farmers Texas County Mutual Insurance Company, Illinois Farmers Insurance Company, Mid-Century Insurance Company of Texas, Texas Farmers Insurance Company, Civic Property and Casualty Company, Exact Property and Casualty Company, and Neighborhood Spirit Property and Casualty Company."

¶ 12 Once the plaintiffs received the tortfeasor's bodily injury policy limits of \$100,000, they turned to the defendants to pursue an underinsured motorist claim, requesting to aggregate the policies' coverage amounts. The defendants asserted that they were not entitled to make an underinsured motorist claim because the limits of the Illinois Farmers Insurance Company policy which listed the vehicle she was driving at the time of the collision were \$100,000 per person, the same limits as the at-fault driver's bodily injury liability limits, and therefore, the defendants contended, the at-fault driver's vehicle by definition was not an underinsured vehicle.

¶ 13 On February 2, 2012, the plaintiffs filed this declaratory judgment action, seeking to establish their right to underinsured motorist coverage under their four automobile insurance policies. The plaintiffs asserted that their underinsured motorist coverage under the multiple policies stacked and the at-fault driver's vehicle should therefore be classified as an underinsured vehicle, because its \$100,000 per person liability limits were less than the stacked coverages of the plaintiffs' four policies, which, if stacked, provided underinsured

motorist coverage limits of \$400,000.

¶ 14 On March 26, 2012, the defendants filed a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)). The defendants argued that the insurance policies' unambiguous antistacking language prohibited stacking of the underinsured motorist coverages, and because these underinsured motorist coverages did not stack, the only underinsured motorist coverage applicable was the \$100,000 limit of the Illinois Farmers Insurance Company policy listing the Chevrolet Astro Van, the vehicle which Susan was driving at the time of the collision. The defendants argued that because the \$100,000 amount of underinsured motorist coverage afforded by the nonstacked policies equaled the amount of bodily injury liability coverage available on the at-fault driver's vehicle, then the at-fault vehicle was not an underinsured vehicle. The defendants further submitted the affidavit of Charles A. Fedewa, claims counsel for Farmers Insurance Company. Fedewa attested that Mid-Century Insurance Company, Los Angeles, California, is a member company of the Farmers Insurance Group of Companies.

¶ 15 On June 8, 2012, the circuit court entered its order granting the defendants' motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)). The circuit court found that the antistacking language of the insurance policies was clear and unambiguous and did not allow stacking of any of the involved policies, including the three issued by "Illinois Farmers Insurance Company, Aurora, Illinois" and the one issued by "Mid-Century Insurance Company, Los Angeles, California." The circuit court found no just cause for delaying the enforcement of the judgment or appeal therefrom. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). On July 3, 2012, the plaintiffs filed a notice of appeal.

¶ 16

ANALYSIS

¶ 17 The four automobile policies purchased by the plaintiffs each contain antistacking clauses, providing that an insured cannot stack the coverages of policies which have been

issued by "any member company of the Farmers Insurance Group of Companies." The plaintiffs argue that the limits of each of their four insurance policies may be stacked, or combined, because the policies do not indicate that the named insurers, "Illinois Farmers Insurance Company, Aurora, Illinois" and "Mid-Century Insurance Company, Los Angeles, California," are "member compan[ies] of the Farmers Insurance Group of Companies." The plaintiffs argue, therefore, that the antistacking provision in the policy clearly allowed them to aggregate the \$400,000 of underinsured motorist coverage available under the four policies or, in the alternative, was ambiguous and when construed against the insurer, allowed stacking of the underinsured motorist coverages.

¶ 18 The defendants argue that the plaintiffs have waived this issue on appeal for failing to specifically raise it in the circuit court. *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1, 11 (1996) (as a general rule, a party waives an issue for appeal when he fails to raise it in the trial court). However, the plaintiffs clearly alleged in their complaint before the circuit court that the defendants improperly refused to provide underinsured motorist coverage. Moreover, because the waiver rule "is a limitation on the parties and not the jurisdiction of the courts," we choose to address the issue on its merits. *Id.*; *John Crane, Inc. v. Admiral Insurance Co.*, 2013 IL App (1st) 093240-B, ¶ 30.

¶ 19 The defendants therefore counter on appeal that the language contained in its policies is unambiguous and precludes stacking and restricts its underinsured motorist coverage limits to \$100,000, the same limits as the tortfeasor's \$100,000 bodily injury liability limits, and therefore, no underinsured motorist benefits are available to the plaintiffs. Citing *Martin v. Illinois Farmers Insurance*, 318 Ill. App. 3d 751 (2000), and *Maka v. Illinois Farmers Insurance*, 332 Ill. App. 3d 447 (2002), the defendants argue that similar antistacking language has been enforced and deemed unambiguous. However, neither of these cases address the alleged ambiguity we address here—the failure to define or clarify whether the

named insurers were "member compan[ies] of the Farmers Insurance Group of Companies."

¶ 20 We review a dismissal pursuant to section 2-619 of the Code *de novo*. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). Dismissal pursuant to section 2-619 of the Code is appropriate when an affirmative matter exists that defeats the plaintiff's claim. An "affirmative matter" is a "defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Id.* at 220.

¶ 21 "The construction of the provisions of an insurance policy is also a question of law, subject to *de novo* review." *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292 (2001). We thus review *de novo* whether these policies, properly construed, prohibit or permit stacking of underinsured motorist coverage. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005).

¶ 22 "An insurance policy is a contract, and the general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies." *Id.* "Accordingly, our primary objective is to ascertain and give effect to the intention of the parties, as expressed in the policy language." *Id.* "In order to ascertain the meaning of the policy's language and the parties' intent, the court must construe the policy as a whole and 'take into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract.'" *Travelers Insurance Co.*, 197 Ill. 2d at 292 (quoting *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479 (1997)). An insurance policy's exclusions are to be read narrowly and applied only where the terms are clear, definite, and specific. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 393 (2005).

¶ 23 "If the policy language is unambiguous, the policy will be applied as written, unless it contravenes public policy." *Hobbs*, 214 Ill. 2d at 17. Conversely, if the language of the

policy is susceptible to more than one meaning, it is considered ambiguous and will be construed strictly against the insurer who drafted the policy and liberally in favor of coverage for the insured. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 417 (2006); *Travelers Insurance Co.*, 197 Ill. 2d at 293. "This is because the words used in the policy were chosen by the insurer." *Maka*, 332 Ill. App. 3d at 451. Likewise, "[p]rovisions that limit or exclude coverage are to be interpreted liberally in favor of the insured and against the insurer." *Koloms*, 177 Ill. 2d at 479.

¶ 24 "A contract term is ambiguous if it can reasonably be interpreted in more than one way due to the indefiniteness of the language or due to it having a double or multiple meaning." *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005). "A contract is not ambiguous *** if a court can ascertain its meaning from the general contract language." *Id.* "Whether a contract is ambiguous is a question of law for the trial court." *Id.* "However, the mere fact that the parties disagree as to the meaning of a term does not make that term ambiguous." *Id.* "[A] court must construe the words of a contract within the context of the contract as a whole." *Id.* at 335.

¶ 25 Our supreme court "has determined that antistacking clauses in general do not contravene public policy." *Hobbs*, 214 Ill. 2d at 17-18. "Moreover, the Illinois Insurance Code expressly authorizes the use of antistacking provisions in motor vehicle insurance policies." *Hobbs*, 214 Ill. 2d at 18; 215 ILCS 5/143a-2(5) (West 2012). "Thus, if the antistacking clauses at issue in these cases are unambiguous, they will be given effect." *Hobbs*, 214 Ill. 2d at 18. Nevertheless, "[a]ntistacking provisions in insurance policies are unenforceable when the language employed is unclear or ambiguous." *Martin v. Illinois Farmers Insurance*, 318 Ill. App. 3d 751, 760 (2000).

¶ 26 In this case, by virtue of being Todd's wife, and therefore a "family member," Susan was an "insured" under the language of all four policies which were effective on the date of

the collision and which provided \$100,000 per person in underinsured motorist coverage. The policies each included the following antistacking language:

"The limits provided by this policy may not be stacked or combined with the limits provided by any other policy issued to you or a family member by any member company of the Farmers Insurance Group of Companies."

"[A]ny member company of the Farmers Insurance Group of Companies" was not defined in the policies. Despite the ease of which to do so, neither "Illinois Farmers Insurance Company, Aurora, Illinois" nor "Mid-Century Insurance Company Los Angeles California" was identified in the policy as a "member company of the Farmers Insurance Group of Companies." Nor do these names appear verbatim in the text listing the member companies of Farmers Insurance Group of Companies. Although "Illinois Farmers Insurance Company" and "Mid-Century Insurance Company" are named as members of the Farmers Insurance Group of Companies, nowhere in the list is "Illinois Farmers Insurance Company, Aurora, Illinois" or "Mid-Century Insurance Company, Los Angeles, California." Accordingly, because this exclusionary language of the policy is susceptible to more than one meaning, it is ambiguous, and as such, the language should be liberally construed in favor of coverage for the plaintiffs. See *Nicor, Inc.*, 223 Ill. 2d at 417; *Travelers Insurance Co.*, 197 Ill. 2d at 293.

¶ 27 To argue that the antistacking provision unambiguously includes the defendants as "member compan[ies] of the Farmers Insurance Group of Companies," the defendants cite the signature page of the policy, which states as follows:

"The Company named on the Declarations has caused this policy to be signed by the officers shown below:

ILLINOIS FARMERS INSURANCE COMPANY

MID-CENTURY INSURANCE COMPANY

[Signatures of Secretary of Vice President]"

¶ 28 The policies' signature page, tying Illinois Farmers Insurance Company and Mid-Century Insurance Company, companies named in the policy as "member compan[ies] of the Farmers Insurance Group of Companies," to the companies named on the declaration page, support the defendants' position that the named insurers in the policy may be members of the Farmers Insurance Group of Companies. However, the plaintiffs assert an alternative, but reasonable, interpretation of the language, namely that the named insurers, "Illinois Farmers Insurance Company, Aurora, Illinois" and "Mid-Century Insurance Company, Los Angeles, California," having not been so identified in the policy, are not "member compan[ies] of the Farmer Insurance Group of Companies."

¶ 29 The defendants suggest that we consult its submitted affidavit or the Internet to determine which companies are "member compan[ies] of the Farmers Insurance Group of Companies." However, courts may not summarily look to extrinsic evidence to transform language which is ambiguous on its face into unambiguous language by reference to extrinsic evidence. *William Blair & Co., LLC*, 358 Ill. App. 3d at 339 (citing 11 R. Lord, *Williston on Contracts* §§ 30:4, 30:5, 30:6 (4th ed 1999)). "Such reference to extrinsic evidence would concede the ambiguity of the term and the need to ascertain the intent of the parties." *Id.* "If there is an ambiguity in an insurance policy, we will construe it in favor of the insured." See *State Farm Mutual Automobile Insurance Co. v. Rodriguez*, 2013 IL App (1st) 121388, ¶ 28.

¶ 30 The defendants also argue that the circuit court properly dismissed the complaint because no underinsured motorist coverage was available under the automobile policies insuring vehicles other than the Astro Van. The defendants cite the following language:

"5. If you or a family member has another policy on another vehicle issued by any member company of the Farmers Insurance Group of Companies,

a) the limits of this policy do not apply to any occurrence arising out of the

ownership, maintenance, or use of such other insured vehicle."

¶ 31 Yet, this policy clause also includes the "member company of the Farmers Insurance Group of Companies" language, which we have determined to be ambiguous, in that neither "Illinois Farmers Insurance Company, Aurora, Illinois" nor "Mid-Century Insurance Company, Los Angeles, California" was identified in the policies as a "member company of the Farmers Insurance Group of Companies." We therefore find no support for the circuit court's dismissal on this basis.

¶ 32 The antistacking clause's application is tied by its own language to the insurance being issued by a member company of a specific insurance group, but the named insurer on the declarations page cannot be determined by policy language to be a member of that group. Because of the unclear language employed in the contracts of insurance, there is doubt or uncertainty as to its meaning, and it is fairly susceptible of two interpretations. Accordingly, the language is ambiguous, and the exclusionary "limits of coverage" antistacking language in the policies does not apply to deny the plaintiffs' coverage. Therefore, the plaintiffs may aggregate the \$400,000 of underinsured coverage available under the four policies in effect at the time of the collision.

¶ 33 **CONCLUSION**

¶ 34 For the foregoing reasons, we hereby reverse the order of the circuit court of Williamson County, and we remand for further proceedings consistent with this decision.

¶ 35 Reversed and remanded.