

2014 IL App (2d) 140549-U
No. 2-14-0549
Order filed December 26, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ADDIE M. O'NEAL-VIDALES,)	Appeal from the Circuit Court
)	of Winnebago County.
)	
Plaintiff and Counterdefendant-)	
Appellant,)	
)	
v.)	No. 11-L-0176
)	
RICHARD L. CLARK, AFFIRMATIVE)	
INSURANCE COMPANY., and FOUNDERS)	
INSURANCE COMPANY.,)	
)	
Defendants and Counterplaintiffs)	
)	Honorable
(Founders Insurance Company, Defendant and)	J. Edward Prochaska
Counterplaintiff-Appellee).)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The insurance policy's exclusion provision unambiguously excluded uninsured motorist coverage for vehicles furnished to plaintiff for her regular use. Because plaintiff testified in a deposition that she used the same truck while working for the USPS, the truck was furnished to her for her regular use and the trial court properly granted summary judgment in Founders Insurance's favor. We affirmed.

¶ 2 In September 2009, plaintiff, Addie M. O’Neal-Vidales, while employed for the United States Postal Service (USPS) and driving one of its trucks, was in an accident with defendant, Richard L. Clark. Plaintiff suffered injuries and filed a claim with Clark’s liability insurer, defendant Affirmative Insurance Company. Affirmative Insurance denied plaintiff’s claim and she filed a claim for uninsured motorist coverage with her insurance carrier, defendant Founders Insurance Company, which also denied coverage.

¶ 3 Thereafter, plaintiff brought the current matter, seeking a declaratory judgment against Affirmative Insurance and Founders Insurance. The parties filed cross-motions for summary judgment regarding coverage. The trial court denied plaintiff’s and Affirmative Insurance’s motions, but granted summary judgment in Founders Insurance’s favor. Pursuant to Rule 304(a) (eff. Feb. 26, 2010), plaintiff appeals the trial court’s determination to grant summary judgment in favor of Founders Insurance while denying her cross-motion for summary judgment against that defendant (Clark and Affirmative Insurance are not parties to this appeal). We affirm.

¶ 4 I. BACKGROUND

¶ 5 The pleadings, depositions, and affidavits on file reflect that plaintiff was employed by USPS as a collector, picking up mail from various blue boxes. Plaintiff would drive the same truck every day while at work and her shift during the relevant time period was from 10 a.m. until 6:30 p.m. As she approached the intersection of 7th Street and 18th Avenue in Rockford, Clark’s vehicle struck plaintiff and plaintiff suffered injuries to her neck, right arm, left shoulder, and fractured her left hand, left knee, and left leg. Following the accident, plaintiff filed a workers compensation claim, which USPS honored.

¶ 6 After Affirmative Insurance, Clark’s liability insurance carrier, denied plaintiff’s claim for coverage, plaintiff filed a claim with Founders Insurance, her insurer, for uninsured motorist

coverage. Founders Insurance denied plaintiff's claim pursuant to the exclusion provision of her policy. That provision provides:

“PART [4] - UNINSURED MOTORIST COVERAGE

Exclusions. The policy does not apply under Part [4]:

(m) to bodily injury of an insured while occupying a motor vehicle owned by, or furnished for the regular use of the name insured, a resident spouse or a relative if that motor vehicle is not described in the declarations of this policy or is not a newly acquired or replacement motor vehicle within the meaning of subsection (c) of the definition of ‘owned automobile’ in this policy;”

¶ 7 On May 24, 2011, plaintiff filed her complaint. As amended, the complaint sought a declaratory judgment against Founders Insurance. Plaintiff alleged that she suffered injuries during an automobile accident, made a claim for uninsured motorist coverage with Founders Insurance, and Founders Insurance denied the claim. Plaintiff sought a declaratory judgment that the USPS vehicle was covered under her insurance policy and that Founders Insurance was obligated to provide benefits for uninsured motorist coverage.

¶ 8 On July 22, 2013, Founders Insurance filed a motion for summary judgment. Relying on section 4(m), Founders Insurance argued that the USPS vehicle was not described in the policy, that the vehicle was furnished to plaintiff for her regular use, and plaintiff used the truck on a daily basis in connection with her work. Founders Insurance argued that “[r]egular use exceptions, like the one [here], have been found by Illinois courts to be unambiguous and not against public policy.”

¶ 9 On March 18, 2014, plaintiff filed her motion for summary judgment against Founders Insurance. Plaintiff emphasized that the purpose of mandatory liability insurance is to protect

the public from injuries sustained in motor vehicle accidents. According to plaintiff, “the legislature has required uninsured-motorist coverage to place the policyholder in substantially the same position he would occupy *** if the wrongful driver had had the minimum liability insurance required by [law].” Plaintiff argued that Affirmative Insurance denied her claim for coverage and, therefore, she was entitled to coverage under her policy with Founders Insurance. Plaintiff argued that the exclusion Founders Insurance claimed was both inapplicable and against public policy, and maintained that the purpose of the policy exclusion was to “prevent individual policy holders from owning two or more vehicles, but only paying the premium and insuring one vehicle.” Plaintiff further argued that denying her coverage deprived her of the benefits “for which she has in fact paid premiums.”

¶ 10 On May 16, 2014, the trial court entered an order denying plaintiff’s summary judgment motion and granting Founders Insurance’s summary judgment motion. Plaintiff timely appealed pursuant to Rule 304(a).

¶ 11

II. ANALYSIS

¶ 12 Plaintiff’s only contention on appeal is that the trial court erred in granting summary judgment in Founders Insurance’s favor while denying her motion for summary judgment. In support of this contention, plaintiff argues that the coverage exclusion provided in paragraph 4(m) does not apply because the postal truck was not available to her unless she was working within the scope of her employment. Further, plaintiff reiterates the argument she made before the trial court that “the purpose of the exclusion cited *** was to prevent individual policy holders from owning two or more vehicles, but only paying the premium and insuring one vehicle.”

¶ 13 The construction of an insurance policy and a determination of the rights and obligations arising under the policy are questions of law for the court, and summary judgment is an appropriate proceeding for resolving these questions. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993). “When, as in this case, parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law.” *Steadfast Insurance Co. v. Caremark Rx, Inc.*, 359 Ill. App. 3d 749, 755 (2005). A trial court will enter summary judgment if the pleadings, depositions, admissions, and affidavits show that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291 (2000). We review *de novo* an order granting or denying summary judgment. See *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

¶ 14 Section 143(a) of the Illinois Insurance Code (the Insurance Code) provides that every liability insurance policy issued for a motor vehicle registered in Illinois must provide coverage for bodily injury or death caused by an uninsured or a hit-and-run vehicle. 215 ILCS 5/143a (West 2008)). The legislative purpose behind underinsured motorist coverage is to “ ‘place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance.’ ” *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 57 (2011) (quoting *Sulser v. Country Mutual Insurance Co.*, 147 Ill. 2d 548, 555-58 (1992)).

¶ 15 At issue in this appeal is the policy’s exclusion provision provided in 4(m). A court’s primary objective in construing the language of an insurance policy is to ascertain and give effect to the intentions of the parties as expressed in their agreement. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). If the policy terms are clear and unambiguous, they must be given their

plain and ordinary meaning; but if the terms are susceptible to more than one meaning, they are considered ambiguous and will be construed strictly against the insurer who drafted the policy. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455-56 (2010). Provisions that limit or exclude coverage will be interpreted liberally in favor of the insured and against the insurer. *Id.* at 456. A 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. *Id.*

¶ 16 In *Ryan v. State Farm Mutual Automobile Insurance Co.*, 397 Ill. App. 3d 48 (2009), an uninsured motorist injured the plaintiff, a Chicago police officer, while the plaintiff was operating a police vehicle owned by his employer. *Id.* at 49. The plaintiff had never driven that specific vehicle, which was randomly assigned to him at the beginning of his shift from a pool of 20 to 25 vehicles. *Id.* The plaintiff filed a claim for uninsured motorist coverage with the defendant pursuant to a policy covering a vehicle that he owned. *Id.* The plaintiff's insurance policy provided the following exclusion:

“There is no coverage *** for bodily injury to an insured while occupying a motor vehicle owned by, leased to, or furnished or available for the regular use of you, your spouse[,] or any relative if it is not insured for this coverage under this policy.” (Emphasis omitted.) *Id.* at 50.

The defendant denied the plaintiff's coverage claim and the plaintiff brought a declaratory judgment action seeking judicial determination of the parties' rights under the policy's terms. *Id.* at 49. The trial court concluded that the plaintiff was not entitled to uninsured motorist coverage because the police vehicle he operated was “furnished or available for his regular use” within the meaning of the policy's exclusion. *Id.* at 50.

¶ 17 The Appellate Court, First District, affirmed. In doing so, the court in *Ryan* concluded that the “regular use” exclusion language was “clear and unambiguous” and did not contravene public policy. *Id.* at 51. The court emphasized that the exclusion denies coverage for vehicles that were “*furnished or available*” for the plaintiff’s regular use and did not depend on “actual use, but on availability.” (Emphasis in original.) *Id.* The court noted that the police vehicle was one of a pool of patrol cars that the plaintiff’s employer made available to him. Therefore, “[t]hat plaintiff never previously drove the vehicle at issue is immaterial” because “[i]t was part of a pool of vehicles furnished or available to him for his regular use while on duty as a patrol officer.” *Id.*

¶ 18 The court in *Ryan* further noted that, pursuant to the regular use exception’s plain and ordinary meaning, “it is clear” that the exclusion’s purpose was to cover the plaintiff’s “infrequent or merely casual” use of an automobile other than the one described in the policy, without the insured having to pay an additional premium. *Id.* However, the policy did not cover the plaintiff’s use of other vehicles that were furnished for his regular use or that he had an opportunity to use on a regular basis. *Id.* The court in *Ryan* continued:

“The daily or frequent use of a police patrol car, often in risky driving situations, substantially increases the risk of an accident. Therefore, it is unreasonable to conclude that [the] plaintiff’s [insurance policy], which covered his private automobile for a certain premium, contemplated extending coverage to him for any patrol car he drove while on duty without any additional premium for such coverage and despite [the defendant’s] greatly increased risk. Such an interpretation violates the purpose of the exclusion by significantly increasing the risk to [the defendant] without any corresponding increase in premiums.” *Id.* at 51-52.

The court noted that other jurisdictions have held that, pursuant to similar policy terms, a vehicle is available for the insured's regular use if it is one of a pool of vehicles and the insured regularly uses vehicles from that pool. *Id.* at 52. The court concluded by opining that the regular use exclusion was not against public policy because the language conformed to the statutory language provided in section 143a(1) of the Insurance Code and because "it is not contrary to public policy to exempt insurers from covering substantial risks for which they have not collected a premium." *Id.* at 53.

¶ 19 We find *Ryan* instructive to this case. The exclusion provision here is similar to the exclusion in *Ryan*, with both provisions expressly excluding coverage for the insured while occupying a motor vehicle that was furnished for the insured's regular use and was not specifically listed in the policy. Like the court in *Ryan*, we find the language in the exclusion provision here to be clear and unambiguous, and that the policy was not intended to cover vehicles that were furnished for plaintiff's regular use. See *id.* at 51. Here, plaintiff testified during a deposition that she used the same vehicle everyday while she was at work and that her shift lasted from 10 a.m. until 6:30 p.m. Therefore, there is no genuine dispute of material fact that the vehicle was furnished to plaintiff for her to regularly use and thus comes within the exclusion's plain language.

¶ 20 Plaintiff attempts to distinguish *Ryan* by arguing that the court there "was concerned about shifting an insurance burden to personal liability insurers for individuals engaged in regularly hazardous duties," and that throughout the court's opinion, it referenced "protecting the insurers from substantial risks for which they have not collected a premium." We disagree with plaintiff's reading of that opinion. As we read *Ryan*, while the court noted that the plaintiff used a police patrol vehicle, which often involved risky situations, the court emphasized that the

purpose of the policy's uninsured motorist coverage was to cover the plaintiff's *infrequent or merely casual use* of an automobile not described in the policy. (Emphasis added.) *Id.* at 51. As in *Ryan*, it would be unreasonable to expect Founders Insurance, which covered plaintiff's private vehicle for a specific premium, to extend coverage to a vehicle that she drove for over eight hours per day while at work without any corresponding increase in premiums. See *id.* at 51-52.

¶ 21 Plaintiff's also argues that, because the vehicle was not available for her personal use and that she used the vehicle solely during the course of her employment with USPS, the exclusion does not apply because it was intended to prevent an individual from owning two vehicles while only paying a premium on one vehicle. Plaintiff misreads the exclusion, which is silent with respect to personal use. Instead, the policy focuses on vehicles that are owned or furnished for plaintiff's *regular* use, without differentiating between personal uses or other uses. Here, as in *Ryan*, the policy's exclusion provision is clear and unambiguous, and intended to cover plaintiff's infrequent use of a vehicle, not a vehicle she used every day while at work. Thus, Founders Insurance is entitled to summary judgment as a matter of law.

¶ 22

III. CONCLUSION

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 24 Affirmed.