SIXTH DIVISION
September 30, 2015

No. 1-15-0714

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LIZETTE LIZETTE LOZADA-REYES and ANDRE REYES,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	No. 12 CH 917
	)	
STATE FARM AUTOMOBILE INSURANCE COMPANY	)	
and VITO CALI,	)	Honorable
	)	Peter A. Flynn,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm summary judgment granted in favor of defendants in this declaratory judgment suit involving a question of insurance coverage, where there were no material factual issues precluding the entry of summary judgment, the clear and unambiguous language of insurance policy precluded uninsured motorist coverage for an automobile collision that occurred while plaintiff was operating a police car regularly provided for plaintiff's use, and the public policy of this State does not mandate a contrary result.

¶ 2 Plaintiffs-appellants, Lizette Lozanda-Reyes and Andre Reyes, filed the instant action for declaratory judgment against defendants-appellees, State Farm Mutual Automobile Insurance Company (State Farm) and Vito Cali, seeking a declaration that a policy of automobile insurance issued by State Farm to Lizette provided uninsured motorist coverage for an automobile collision that occurred while Lizette was operating a police car in the course of her duties as a Chicago

police officer. The circuit court granted summary judgment in favor of State Farm, and plaintiffs have now appealed. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that Lizette was a long-time customer of State Farm, having procured automobile insurance for her personal vehicles from State Farm, *via* insurance agent and defendant-appellee, Vito Cali, from 1995 to 2012. Lizette's policy provided her with uninsured motorist coverage. However, in connection with one of a number of successive policy renewals over the years, Lizette's insurance policy was amended in 2001 to exclude uninsured motorist coverage for any bodily injury incurred while—*inter alia*—an insured was occupying a motor vehicle that was not insured under the policy but was nevertheless "furnished or available for the regular use" of the insured (regular-use exclusion).

¶ 5 In November 2009, State Farm sent a notice to Lizette indicating that the regular-use exclusion was being omitted from all new and existing insurance policies, effective March 1, 2010. Thus, the removal of the regular-use exclusion from Lizette's policy was to take effect roughly in the middle of a policy term that would begin on December 14, 2009, and end on June 14, 2010. That policy identified Lizette as the named insured, and identified her husband, plaintiff-appellant Andre Reyes, as one of the regular drivers of Lizette's vehicle. Lizette was charged a premium of $19.81 for uninsured motorist coverage for this policy period. When the policy was again renewed for a six-month term running from June 14, 2010, to December 14, 2010, now with the regular-use exclusion removed from the policy completely, Lizette was again charged a premium of $19.81 for uninsured motorist coverage for the policy period.[1]

[1] Another policy renewal notice for a policy period running from June 14, 2009, to December 14, 2009, is also included in the record. The premium for uninsured motorist coverage for that policy period was also $19.81.

¶ 6 The record further reflects that Lizette was a long-time police officer with the Chicago police department. In connection with her duties as a Chicago police officer, Lizette was regularly provided the use of a squad car from a pool of available vehicles at the beginning of her work shifts. Lizette was on-duty and occupying just such a squad car on January 31, 2010, when she was involved in an automobile collision. Lizette suffered injuries as a result of the collision, with the at-fault driver of the other vehicle proving to be uninsured.

¶ 7 Therefore, on February 23, 2011, Lizette filed a claim with State Farm for uninsured motorist coverage under her policy. State Farm denied Lizette's claim on the grounds that the regular-use exclusion eliminated uninsured motorist coverage for any injuries Lizette incurred while she occupied a squad car that that was regularly provided for her use. Lizette, thereafter, filed the instant declaratory judgment action on January 12, 2012, and her operative amended complaint was filed on October 9, 2012. Therein, Lizette sought—*inter alia*—a declaration that her State Farm policy did in fact provide her with uninsured motorist coverage for the collision.

¶ 8 In response to Lizette's suit, State Farm filed a motion for summary judgment. Therein, State Farm argued—*inter alia*—that this matter was controlled by this court's decision in *Ryan v. State Farm Mutual Automobile Insurance Co.*, 397 Ill. App. 3d 48 (2009), where we concluded that State Farm's regular-use exclusion precluded any uninsured motorist coverage for a collision occurring while an insured Chicago police officer was driving a police squad car provided for his regular use. *Id*. at 51-52. The circuit court agreed it was bound by the *Ryan* decision and, therefore, granted State Farm's motion for summary judgment. Plaintiffs timely appealed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, plaintiffs contend that the circuit court improperly granted State Farm's motion for summary judgment. We disagree.

¶ 11 Summary judgment is appropriate only where the pleadings, depositions, admissions and affidavits, viewed in the light most favorable to the nonmovant, 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 2014). "The construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the court which are appropriate subjects for disposition by way of summary judgment." *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993). Similarly, questions of statutory construction are also questions of law properly decided on a motion for summary judgment. *Pajic v. Old Republic Insurance Co.*, 394 Ill. App. 3d 1040, 1043 (2009). We review *de novo* both the circuit court's statutory interpretations, and its entry of summary judgment. *Illinois Insurance Guaranty Fund v. Virginia Surety Co*., 2012 IL App (1st) 113758, ¶ 15.

¶ 12 Furthermore, an insurance policy "is a contract and, as such, is subject to the same rules of interpretation that govern the interpretation of contracts. [Citation.] Accordingly, when construing the language of an insurance policy, the court's primary objective is to determine and effectuate the parties' intentions as expressed in their written agreement. [Citation.] If the terms in the policy are 'clear and unambiguous,' they must be given their plain and ordinary meaning. [Citation.]" *Erie Insurance Exchange v. Triana*, 398 Ill. App. 3d 365, 368 (2010).

¶ 13 Here, Lizette's State Farm automobile insurance policies, including all of the renewals, consistently provided her with uninsured motorist coverage that was referred to as coverage "U" and "U1." However, from 2001 until March 1, 2010, her insurance policies were also subject to the following "regular use" exclusion:

> "THERE IS NO COVERAGE UNDER COVERAGES U AND U1 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 in original.)

As both State Farm and plaintiffs agree on appeal, both the provision of uninsured motorist coverage and the regular-use exclusion to that coverage arise out of and fully comport with the statutory requirements of section 143a(1) of the Illinois Insurance Code, which provides in relevant part:

> "No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle that is designed for use on public highways and that is either required to be registered in this State or is principally garaged in this State shall be renewed, delivered, or issued for delivery in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in Section 7–203 of the Illinois Vehicle Code for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of *uninsured motor vehicles* and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. *Uninsured motor vehicle coverage does not apply to bodily injury, sickness, disease, or death resulting therefrom, of an insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described in the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of the policy*." (Emphasis added.) 215 ILCS 5/143a(1) (West 2010).

¶ 14 Moreover, both State Farm and plaintiffs agree on appeal that State Farm's policy language, including the regular-use exclusion, does not generally violate public policy in that it tracks the statutory language of section 5/143(a)(1). Finally, the parties agree that, to the extent that our prior decision involving the very same policy language under very similar factual circumstances in *Ryan* applies to this matter, it would control and entitle State Farm to summary judgment. Where the parties do disagree is with respect to whether there is an issue of material fact in this matter, the proper application of State Farm's policy language, the statutory language of section 5/143(a)(1), our decision in *Ryan* to the particular facts of this case, and the ultimate propriety of the circuit court's grant of summary judgment in favor of State Farm. We discuss each of these points below, in turn, including an analysis of our holding in *Ryan*.

¶ 15 Thus, plaintiffs first contend that there is an issue of material fact with respect to whether or not Lizette had paid for uninsured motorist coverage covering her while operating a squad car at the time of the collision, such that the entry of summary judgment in favor of State Farm was improper. Specifically, plaintiffs note that Lizette paid the same premium for uninsured motorist coverage—$19.81—for both the six-month policy term running from December 2009 to June 2010, where the regular-use exclusion was applicable for only half of that period, and for the six-month policy term running from June 2010 to December 2010, by which time the regular-use exclusion had been removed from the policy completely and was, therefore, inapplicable for that entire policy period. Plaintiffs contend that $19.81, therefore, represented the proper premium amount for a *full* six months of uninsured motorist coverage *without* the limitations imposed by the regular-use exclusion. Plaintiffs then argue that the fact that this amount was paid for uninsured motorist coverage for the six-month policy term running from December 2009 to June 2010, a period where the regular-use exclusion was ostensibly effective for half of the policy

term, "creates a question of fact as to whether [Lizette] had uninsured motorist coverage" covering her while she occupied the squad car at the time of the collision. Plaintiffs further contend that "[i]f the premium for six months was $19.81[,] then for the December [2009] to June [2010] period her premium should have been ½ of the premium or $9.90."

¶ 16 We reject this argument. " 'The mere suggestion that a genuine issue of material fact exists without supporting documentation does not create an issue of material fact precluding summary judgment.' " *Bank of America, N.A. v. Land*, 2013 IL App (5th) 120283, ¶ 17 (quoting *In re Marriage of Palacios*, 275 Ill. App. 3d 561, 568 (1995)). Here, there is simply *nothing* in the record to support plaintiffs' arguments regarding exactly how State Farm arrived at the premium for uninsured motorist coverage, that the premium for that coverage should necessarily be halved if the regular-use exception was only applicable for half of a six-month policy term, or that Lizette therefore paid $19.81 in December 2009 for a *full* six months of uninsured motorist coverage *without* the limitations imposed by the regular-use exclusion.

¶ 17 Indeed, the record actually indicates otherwise. Three policy renewal notices are contained in the record: (1) a policy renewal notice for a policy period running from June 14, 2009, to December 14, 2009; (2) a policy renewal notice for a policy period running from December 14, 2009, to June 14, 2010; and (3) a policy renewal notice for a policy period running from June 14, 2010, to December 14, 2010. Those notices indicate that Lizette was charged a premium of $19.81 for uninsured motorist coverage for *each* of these six-month periods, even though the regular-use exception was fully applicable for the entirety of the first period, only applicable for roughly half of second period, and fully removed from the policy for the third period. Thus, the record actually refutes plaintiffs' contention that the premium for uninsured motorist coverage would necessarily rise or fall based *solely* upon the applicability or

inapplicability of the regular-use exception to a particular policy period. It certainly does not support plaintiffs' assertion that the uninsured motorist insurance premium for the policy period running from December 14, 2009, to June 14, 2010, should have been exactly halved if the regular-use exception was applicable at the time of Lizette's collision. Ultimately, there is simply no material factual issue, with respect to this issue, that precluded the entry of summary judgment in favor of State Farm.

¶ 18 In a related argument, plaintiffs next assert that, even if there are no disputed issues of fact, the facts of this case are sufficiently dissimilar from those in *Ryan* such that the circuit court was wrong to conclude it was bound by that decision in awarding summary judgment in favor of State Farm. We, again, disagree with plaintiffs' argument.

¶ 19 As noted above, and as plaintiffs concede on appeal, *Ryan*, presented this court with a very similar factual situation. There, a Chicago police officer was injured in a collision with an uninsured motorist while operating a squad car owned by the City of Chicago. *Ryan*, 397 Ill. App. 3d at 49. While the officer had never driven this particular squad car before, it was one of a pool of 20 to 25 vehicles randomly assigned to the officer at the beginning of his shift. *Id.* The officer made a claim under the uninsured motor vehicle coverage of his State Farm policy on a personal vehicle he owned (*id.*), and State Farm denied his claim on the basis of the very same regular-use exception at issue here. *Id.* A declaratory judgment action was filed, and the trial court ruled that the officer was not entitled to uninsured motorist coverage. *Id.* The trial court reasoned that the vehicle the officer was operating on the day of the collision was "furnished or available for his regular use," within the meaning of the regular-use exclusion of his State Farm policy. *Id.* at 50. The trial court, therefore, granted summary judgment for State Farm, and the officer appealed. *Id.*

¶ 20 On appeal, this court affirmed. We first concluded that State Farm's regular-use exclusion was "clear and unambiguous and does not contravene public policy." *Id*. at 51. We then concluded that the exclusion applied in that case because the vehicle the officer was driving "was part of the pool of vehicles furnished or available to [the officer] for his regular use while on duty as a patrol officer." *Id*. We further reasoned that:

> "Applying 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. [Citation.] 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 plaintiff's State Farm 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 insurer's greatly increased risk. Such an interpretation violates the purpose of the exclusion by significantly increasing the risk to State Farm without any corresponding increase in premiums." *Id*. at 51-52.

¶ 21 Plaintiffs contend that this reasoning is inapplicable here, where: (1) the record reveals that the cost for six months of uninsured motorist coverage *without* the regular-use exclusion was $19.81; (2) Lizette paid $19.81 for uninsured motorist coverage for the policy period running from December 14, 2009, to June 14, 2010; and (3) State Farm, therefore, *was compensated* for its increased risk during that policy period.

¶ 22 As we discussed above, there is simply no support in the record for plaintiffs' assertions regarding how they arrived at the "correct" premium amount, or that State Farm was, therefore, fully compensated for its risk. The record actually reflects that Lizette was charged a premium of $19.81 for uninsured motorist coverage in each of three six-month policy periods during which the applicability of the regular-use exclusion varied greatly.

¶ 23 More importantly, State Farm is correct to note in its brief that our supreme court has recognized that "[m]any factors affect the premiums charged by insurers." *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 2013 IL 113873, ¶ 40. The record reveals that, while Lizette paid the same amount for uninsured motorist coverage between June 14, 2009, and December 14, 2010, both she and her personal vehicle were reported as being a year older over that time, the drivers reported as regularly driving Lizette's vehicle were changed, and the amount of various discounts applied to Lizette's account were modified. Plaintiffs' simplistic view that State Farm was necessarily compensated for the increased risk of covering Lizette while she operated her squad car, merely because she paid the same premium, is belied by the presence of all of these other relevant and changing factors.

¶ 24 In light of the above discussion, we conclude that there are no relevant factual dissimilarities between this case and *Ryan* that preclude it from controlling the outcome of this matter. Just as we did in *Ryan*, we find that State Farm's regular-use exclusion is clear and unambiguous and it establishes that there is no uninsured motorist coverage for the collision.

¶ 25 Finally, we reject plaintiffs' contention that this conclusion violates the public policy underlying the Illinois Insurance Code. See *State Farm Mutual Automobile Insurance Co. v. George*, 326 Ill. App. 3d 1065, 1068 (2002) ("The public policy underlying the Act is to place insured parties injured by an uninsured driver in substantially the same position they would have

been in if the driver had been insured."). It is well-recognized that "[t]he public policy of the state is found in its constitution, its statutes, and its judicial decisions. [Citations.] In relation to the judicial branch, the General Assembly, which speaks through the passage of legislation, occupies a superior position in determining public policy." *Reed v. Farmers Insurance Group*, 188 Ill. 2d 168, 175 (1999).

¶ 26 As discussed above, the very same section of the Illinois Insurance Code that mandates that uninsured motorist coverage be included in all automobile insurance policies also provides that such coverage does not apply if an insured is injured while occupying a motor vehicle "furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described in the policy under which a claim is made or is not a newly acquired or replacement motor vehicle covered under the terms of the policy." 215 ILCS 5/143a(1) (West 2010). And, as we concluded in rejecting a similar argument in *Ryan*, 397 Ill. App. 3d at 53, "State Farm's regular-use exclusion is not contrary to public policy where it conforms to the language of the statutory regular-use exclusion enacted by our General Assembly." Moreover, the fact that State Farm may have chosen to remove the regular-use exclusion from its policy, effective after Lizette's collision, does not mandate a different conclusion. Section 143a of the Illinois Insurance Code also provides that "[n]othing in this Section may be construed to prevent any insurer from extending coverage under terms and conditions more favorable to its insureds than is required by this Section." 215 ILCS 5/143a(3) (West 2010).

¶ 27 III. CONCLUSION

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 29 Affirmed.