

NOTICE
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2015 IL App (5th) 140269-U

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).

NO. 5-14-0269

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CHRISTOPHER WILLIAMS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Franklin County.
)	
v.)	No. 12-MR-7
)	
ALLSTATE PROPERTY AND CASUALTY)	
INSURANCE COMPANY,)	Honorable
)	David K. Overstreet,
Defendant-Appellee.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Goldenhersh and Stewart concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court entered summary judgment in Allstate's favor because the plaintiff had been fully compensated for his damages.
- ¶ 2 The plaintiff, Christopher Williams, filed an action in the circuit court of Franklin County to confirm an underinsured motorist arbitration award, for declaratory judgment, and for judgment as a result of alleged unreasonable delay by the defendant, Allstate Property and Casualty Insurance Company (Allstate). After partial settlement and on cross-motions for summary judgment, the circuit court entered judgment in Allstate's favor.

¶ 3 On appeal, the plaintiff argues that the antistacking clause in the parties' insurance contract was ambiguous and when construed against Allstate, allowed stacking of the underinsured motorist coverages and provided \$300,000 of underinsured motorist liability coverage. Because of this alleged additional coverage, the plaintiff requests additional payment by Allstate for \$40,000 against his damage award of \$85,000, despite previous payments of over \$100,000 from Allstate and the at-fault insurer. Thus, the plaintiff requests a total payment of \$140,000 for damages determined to be \$85,000. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 On May 17, 2008, the plaintiff was involved in a motor vehicle collision in Williamson County. A vehicle driven by Mindy Oxford collided with the rear of a vehicle driven by Jeffrey Jones, causing Jones's vehicle to collide with the rear of the plaintiff's vehicle. The plaintiff was injured as a result of the collision. Oxford, as the at-fault driver, had an insurance policy with a limit of \$50,000, which the plaintiff accepted. At the time of the accident, the plaintiff was insured by Allstate and was paying premiums on three vehicles. Allstate paid the plaintiff \$5,000 in applicable medical payments coverage.

¶ 6 On June 29, 2011, the plaintiff submitted to arbitration his claim with Allstate for underinsured motorist coverage. The arbitration panel determined the value of the plaintiff's damages was \$85,000, plus costs of \$1,454.89, subject to setoff and credits of \$55,000 (\$50,000 paid by the at-fault insurer and \$5,000 paid by Allstate). The arbitration panel declined to address the issue of whether the per-accident limits of the

underinsured motorist coverage stacked on grounds that the issue of stacking presented a question of law.

¶ 7 On January 25, 2012, the plaintiff filed a complaint in the circuit court of Franklin County asking the circuit court to confirm the arbitration panel's award and award prejudgment interest, to enter declaratory judgment, and to find that the policy's underinsured motorist coverage limits equaled \$300,000. The plaintiff filed a first amended complaint on April 27, 2012. In count I, the plaintiff again sought confirmation of the arbitration award of \$85,000 plus costs of \$1,454.89, with prejudgment interest at 9% on the sum of \$46,454.89 from July 5, 2011, to November 25, 2011, acknowledging that Allstate had made an unconditional tender of \$46,454.89 on November 25, 2011. In count II, the plaintiff sought declaratory judgment finding that the insurance policy limits stacked to provide \$300,000 of underinsured motorist coverage, as opposed to the \$100,000 limit asserted by Allstate. In count III, the plaintiff sought damages resulting from Allstate's unreasonable and vexatious delay in resolving the dispute (215 ILCS 5/155 (West 2008)).

¶ 8 On June 6, 2014, the circuit court filed its order dismissing with prejudice counts I and III of the plaintiff's first amended complaint, based on a settlement reached by the parties. The circuit court granted Allstate's motion for summary judgment on count II, adopting Allstate's proposed findings of fact. Within those findings, the circuit court determined that the total damages sustained by the plaintiff in the underinsured motorist accident were adjudged at arbitration to be \$85,000 plus costs. The circuit court further found that the plaintiff had been paid a total of \$100,000 plus costs and interest arising

out of the accident and had therefore been fully compensated for his damages. The circuit court concluded that the plaintiff had been paid more than the adjudicated value of his damages and that the arbitration award fell within the available limits. The court found that whether any limits under the Allstate policy could be stacked was moot. The circuit court thereby denied the plaintiff's request for summary judgment in his favor. Accordingly, the plaintiff filed a timely notice of appeal.

¶ 9

ANALYSIS

¶ 10 On appeal, Allstate contends that the plaintiff recovered a total of over \$100,000 from the at-fault motorist's carrier and Allstate—over \$15,000 more than the \$85,000 in damages that the arbitration panel had awarded. Allstate argues that the plaintiff's arbitration award was therefore fully satisfied without reference to whether the \$100,000 per-accident underinsured motorist coverage limit for each of the three autos stacked. We agree.

¶ 11 "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).

¶ 12 "[T]he legislative considerations behind the underinsured-motorist statute" "ensure that an injured policyholder will be compensated for her damages up to the limits of coverage she has paid for, regardless of the coverage carried by the at-fault driver." *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 66 (2011). "[T]he fundamental purpose of requiring insurance is 'to protect the public by securing payment of their damages.' "

Id. at 68 (quoting *Progressive Universal Insurance Co. v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 129 (2005)).

¶ 13 Underinsured motorist coverage serves "to place the insured in the same position he would have occupied if the tortfeasor had carried adequate insurance" equal to the insured's coverage. (Internal quotation marks omitted.) *Id.* at 69. "The purpose is not *** to ensure compensation above the statutory minimum; it is to ensure compensation of the insured's damages to the extent bargained for under his insurance policy." *Id.* "[I]f an insured's damages are less than the statutory minimum, the insured has no right to compensation from the underinsured-motorist policy, because [the] damages will have been fully covered by the tortfeasor's liability insurance." *Id.* at 69-70. "While the insurance company may benefit from the arbitrator's decision, the fact that [an] insurance company does not have to pay out under [a] policy does not change the amount of compensation to which the insured is entitled." *Id.* at 70.

¶ 14 In part 5 of the parties' insurance policy, entitled "Uninsured Motorists Insurance Coverage SS," Allstate agreed to pay "damages an insured person is legally entitled to recover from the owner or operator of an uninsured auto because of *** bodily injury *** and **** property damage." As defined in the policy, an "uninsured auto" includes "an underinsured motor vehicle which has liability protection in effect and applicable at the time of the accident in an amount equal to or greater than the amounts required for bodily injury or property damage liability in the Illinois Safety Responsibility Law, but less than the applicable limit of liability for Coverage SS shown."

¶ 15 The "Limits of Liability" section of part 5 of the policy further provides as follows:

"Damages payable will be reduced by:

1. all amounts paid by or on behalf of the owner or operator of the uninsured auto or anyone else responsible. This includes all sums paid under the bodily injury or property damage liability coverage of this or any other auto insurance policy.
2. all amounts payable under any workers' compensation law, disability benefits law, or similar law, Automobile Medical Payments, or any similar automobile medical payments coverage.
3. all amounts paid under Part 6 of this policy providing coverage for property damage."

¶ 16 In the policy, Allstate agreed to pay bodily injury and property damages the plaintiff was entitled to recover where the at-fault driver was underinsured. See *Allstate Insurance Co. v. Gonzalez-Loya*, 226 Ill. App. 3d 446, 451 (1992) (plain reading of the policy discloses that "uninsured" always includes "underinsured"). Pursuant to the policy, when Allstate and the plaintiff could not agree on damages, the disagreement was settled by arbitration, which determined the plaintiff's damages to be \$85,000. Pursuant to the policy, the \$85,000 amount of "damages payable" was reduced by the \$50,000 paid by the underinsured, at-fault driver and \$5,000 paid by Allstate for medical payments. See *McKinney v. American Standard Insurance Co. of Wisconsin*, 296 Ill. App. 3d 97, 100-01 (1998) ("reasonable person in the position of the insured could expect 'amounts

payable' to be the equivalent of the total damages incurred"). Allstate subsequently tendered an additional \$46,454.89 in satisfaction of the award before suit. Thus, the plaintiff received tender of payments totaling over \$100,000 (\$101,454.89) for damages determined to be \$85,000. The plaintiff settled his claims for prejudgment interest and for section 155 damages. As argued by Allstate, regardless of whether the underinsured motorist limits stacked or not, the plaintiff has been fully compensated.

¶ 17 The plaintiff cites the following language in the policy to argue that he is entitled to an amount greater than his total damages incurred:

"If the accident involves the use of an underinsured motor vehicle, the limits for this coverage will be reduced by all amounts paid by or on behalf of the owner or operator of the underinsured motor vehicle, including partial payments made by an insolvent insurer."

¶ 18 Assuming, *arguendo*, that the underinsured motorist coverage stacked to provide limits of \$300,000, the plaintiff argues that the language of the policy provides \$300,000 of coverage reduced by the \$50,000 paid by the at-fault insurer and \$5,000 of medical payments by Allstate. Thus, the plaintiff argues, there would be \$245,000 of available underinsured motorist coverage, of which Allstate paid \$45,000. Therefore, the plaintiff argues, Allstate still owes him \$40,000 of the \$85,000 damage award.

¶ 19 A contract should be construed as a whole, and such construction should be a natural and reasonable one. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 330 (2008). In addition, contracts are interpreted objectively and must be construed in accordance with the ordinary expectations of reasonable people. *Carey v. Richards*

Building Supply Co., 367 Ill. App. 3d 724, 728 (2006). Courts will construe a contract reasonably to avoid absurd results. *Health Professionals, Ltd. v. Johnson*, 339 Ill. App. 3d 1021, 1036 (2003).

¶ 20 The language relied on by the plaintiff does not override the remaining policy language and obligate Allstate to pay an amount in excess of the plaintiff's damages. This language provides that where, for example, the damages payable exceed the limits of liability, the limits for coverage, and the resulting amount due, will be reduced by all amounts paid as listed. Here, the plaintiff's damages did not reach the limits of liability, whether those limits were \$100,000, as Allstate asserts, or \$300,000, as the plaintiff asserts. Thus, the defendant's argument fails.

¶ 21 The plaintiff's damages were determined to be \$85,000, and he was paid in excess of that amount, plus costs. Regardless of whether the limit of underinsured motorist coverage was \$100,000 or \$300,000, the plaintiff has been fully compensated. See *Costello v. Illinois Farmers Insurance Co.*, 263 Ill. App. 3d 1052, 1057 (1993) (where damages did not exceed uninsured motorist coverage, purpose of uninsured motorist coverage is not frustrated by preventing plaintiff from collecting expenses she recovered completely in arbitration award). The circuit court properly entered summary judgment in Allstate's favor.

¶ 22

CONCLUSION

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

¶ 24 Affirmed.