

NOTICE  
Decision filed 11/15/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160246-U

NO. 5-16-0246

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

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SCOTT SPENNER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	
	)	
JOHN KLINGENBERG, Special Representative,	)	
for BRIAN SPENCER, Deceased, and	)	
STATE FARM FIRE & CASUALTY COMPANY,	)	
	)	
Defendants,	)	
	)	
and	)	No. 15-L-9
	)	
STATE FARM FIRE & CASUALTY COMPANY,	)	
	)	
Defendant and Counterplaintiff-Appellant,	)	
	)	
v.	)	
	)	
SCOTT SPENNER, JOHN KLINGENBERG,	)	
Special Representative for BRIAN SPENNER, and	)	
CAROLYN SPENNER,	)	Honorable
	)	Stanley Brandmeyer,
Counterdefendants-Appellees.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Presiding Justice Moore and Justice Overstreet concurred in the judgment.

## ORDER

¶ 1 *Held:* The circuit court erred in entering a judgment on the pleadings in favor of the plaintiff, declaring that State Farm had a duty to defend and indemnify the Special Representative for Brian Spenner, deceased, for claims arising from a single-vehicle accident on January 5, 2015, under an umbrella policy issued to decedent's grandmother, where the defendant was not an "insured" under the umbrella policy.

¶ 2 Defendant and counterplaintiff, State Farm Fire & Casualty Company (State Farm), appeals from a judgment of the circuit court, granting a judgment on the pleadings in favor of the plaintiff, Scott Spenner, and denying State Farm's cross-motion for a declaratory judgment in an insurance coverage dispute. The sole issue is whether the circuit court erred in finding that State Farm had duties to defend and indemnify the Special Representative for Brian Spenner, deceased, for claims arising from an auto accident on January 5, 2015, under an umbrella policy issued to the decedent's grandmother, Carolyn Spenner, where the decedent was not an "insured" under the umbrella policy. For reasons that follow, we reverse the circuit court's judgment, and remand the cause to the circuit court with instructions to enter a judgment in favor of State Farm as to the plaintiff's claim for declaratory relief, and State Farm's counterclaim for declaratory judgment.

¶ 3 On January 5, 2015, the plaintiff, Scott Spenner, was a passenger in a vehicle that was being driven by his brother, Brian Spenner (the decedent). The decedent was proceeding south on Illinois Route 127, when his vehicle left the roadway, struck a culvert embankment, and overturned. The decedent suffered fatal injuries in the accident. The plaintiff survived, but suffered serious injuries.

¶ 4 At the time of this tragic incident, the plaintiff resided with his grandmother, Carolyn Spenner, at her home in Hoyleton, Illinois. The decedent did not reside with Carolyn Spenner. He was an active-duty member of the United States Army. He was stationed in Fort Riley, Kansas, and maintained a residence in Clinton County, Illinois.

¶ 5 The decedent was driving a 2006 Ford Mustang at the time of the accident. The decedent and Carolyn Spenner were listed as owners on the title to the Mustang. The Mustang was covered under an auto insurance policy that the decedent purchased from State Farm Mutual Automobile Insurance Company. The auto policy had liability coverage limits of \$20,000 per person/\$40,000 per occurrence. The decedent was the sole named insured on the policy.

¶ 6 At the time of the accident, Carolyn Spenner had a personal liability umbrella policy (umbrella policy), issued by State Farm. She was the sole named insured on the umbrella policy. The umbrella policy provided personal liability insurance, with a coverage limit of \$2 million. The umbrella policy required the insured to carry minimum underlying automobile liability coverage of \$250,000 per person/\$500,000 per occurrence. Carolyn also owned two personal vehicles, a Chevrolet Cavalier and a Buick Lucerne. Carolyn purchased auto insurance for both vehicles from State Farm Mutual Automobile Insurance Company, and she was the only named insured on these policies. Each policy provided liability and uninsured/underinsured coverage limits of \$250,000 per person/\$500,000 per occurrence, in accordance with the requirements of the umbrella policy. The Mustang was not a listed vehicle on either policy.

¶ 7 State Farm’s umbrella policy contains a section of definitions for certain terms used in the policy. The term, “**insured,**” is defined, in pertinent part, as:

6 a. **you,** and **your relatives** whose primary residence is **your** household;

b. any other human being under the age of 21 whose primary residence is **your** household and who is in the care of a person described in 6.a.;

\* \* \*

¶ 8 The policy also defines the words, “**you**” and “**your,**” as:

“**You**” and “**your**” mean the person or persons shown as “Named Insured” on the declarations page. If a named insured shown on the declarations page is a human being then **you** and **your** includes the spouse of the first person listed as a named insured if the spouse resides primarily with that named insured.

¶ 9 The umbrella policy provides Coverages for its insured, as set forth below:

#### **Personal Liability Coverage–Coverage L**

If a claim is made or suit is brought against an **insured** for damages because of a **loss** for which the **insured** is legally liable and to which this policy applies, **we** will pay on behalf of the **insured**, the damages that exceed the **retained limit**. The most **we** will pay for such **loss** is the Coverage L Limit of Liability, as shown on the declarations page, regardless of the number of **insureds** who may be liable, claims made, or persons injured.

#### **Defense**

If a suit is brought against any **insured** for damages because of a **loss** to which this policy applies, **we** will provide a defense to the **insured** at **our** expense by counsel of **our** choice when the basis for the suit is a **loss** that is not covered by any other insurance policy but is covered by this policy. **We** have no duty to defend any claim or suit after **we** tender, deposit in court, or pay the amount due under this policy.

¶ 10 The policy contains sections for “Exclusions” and “Amendatory Endorsements.”

Exclusion 13 is at issue here. It was revised under an amendatory endorsement that was

in effect on the date of the occurrence. The revised version of Exclusion 13 (“amendatory endorsement 13”) provides that there is no coverage under the umbrella policy for any:

**13. bodily injury or personal injury to any insured as defined in part a. or b. of the definition of insured, including any claim made or suit brought against any insured to share damages with or repay someone else who may be obligated to pay damages because of such bodily injury or personal injury;**

However, this exclusion does not apply with respect to the ownership, maintenance or use of any vehicle when:

- (1) a third party has a right of contribution against a member of the injured person’s family; or
- (2) any person not in the household of the named insured was driving the vehicle of the named insured involved in the accident which is the subject of the claim or lawsuit.

¶ 11 On March 19, 2015, the plaintiff filed a two-count complaint in the circuit court of Clinton County, seeking compensatory damages for injuries he sustained as a result of the incident on January 5, 2015. Count I was brought against John Klingenberg, Special Representative for Brian Spenner, deceased, and alleged that the decedent’s negligent operation of a motor vehicle on January 5, 2015, was a proximate cause of the plaintiff’s injuries. Count I is not at issue in this appeal. Count II was brought against State Farm and sought a judgment declaring that Carolyn Spenner’s umbrella policy provided liability coverage to the decedent for the claims alleged in count I of the complaint. A copy of the umbrella policy was attached to the complaint.

¶ 12 State Farm filed an answer to count II of the plaintiff’s complaint, and a counterclaim for declaratory relief. In its answer, State Farm admitted that the decedent owned the Ford Mustang that was involved in the January 5, 2015, accident, and that

Carolyn Spenner was listed as a co-owner on the title to the Mustang. State Farm also admitted that it had issued an umbrella policy to Carolyn Spenner, but denied that the umbrella policy provided liability coverage to the decedent for claims arising from the January 5, 2015, accident. In its counterclaim, State Farm asserted that the decedent was not an insured as defined in Carolyn Spenner's umbrella policy, and that State Farm had no duty under that policy to defend or indemnify the decedent for the plaintiff's claims arising from the January 5, 2015, accident. A copy of the umbrella policy was attached to the answer and counterclaim.

¶ 13 The plaintiff filed a motion for judgment on the pleadings as to count II of his complaint and State Farm's counterclaim. In his motion, the plaintiff sought a judgment declaring that State Farm had a duty, under the umbrella policy, to defend and indemnify the decedent for the plaintiff's claims arising from the January 5, 2015, accident. The plaintiff argued that he was injured while the named insured's vehicle was being driven by a person who was not a member of the named insured's household, and that amendatory endorsement 13 afforded liability coverage for the loss. The plaintiff further argued that section 143.01(b) of the Illinois Insurance Code (Code) (215 ILCS 5/143.01(b) (West 2014)) prevented insurance companies from denying coverage to family members of its insureds when the insured's vehicle was operated by a permissive driver who was not a member of the insured's household. The plaintiff concluded that he, an insured, sustained injuries while the decedent, a nonresident of the household, was operating a vehicle of the named insured, and that under the plain language in

amendatory endorsement 13, and section 143.01(b) of the Code, the umbrella policy provided coverage to the decedent for the January 5, 2015, accident.

¶ 14 State Farm filed a cross-motion for judgment on the pleadings as to its counterclaim and count II of the plaintiff's complaint. State Farm argued that the decedent was neither a named insured nor a resident of Carolyn Spenner's household at the time of the accident, and thus was not "an insured" as defined in the policy. State Farm pointed out that the decedent owned the vehicle involved in the accident, that he carried his own liability insurance on the vehicle, that Carolyn Spenner was a co-owner on the title, and that Carolyn Spenner's underlying auto policies did not provide coverage for the decedent's vehicle. State Farm also argued that exclusions in an insurance policy are only applicable when there is coverage in the first instance. State Farm concluded that because the decedent did not qualify as an insured under the umbrella policy, neither amendatory endorsement 13, nor section 143.01(b) of the Code, were applicable under the facts in the case.

¶ 15 After considering the oral and written arguments of the parties, the circuit court issued an order, granting a judgment on the pleadings in favor of the plaintiff, and denying State Farm's cross-motion for judgment on the pleadings. The court determined the plain language in the umbrella policy and section 143.01(b) of the Code required that coverage be afforded to a nonresident person driving the named insured's vehicle, and that State Farm had a duty to defend and indemnify the decedent for any claim or cause of action arising from the January 5, 2015, accident. Following the ruling, State Farm filed a motion pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), seeking

a written finding that there was no just reason to delay enforcement or appeal of the judgment entered February 25, 2016. The court granted State Farm's motion, and this appeal followed.

¶ 16 On appeal, State Farm contends that the circuit court erred in entering a judgment on the pleadings, declaring that Carolyn Spenner's personal liability umbrella policy provided coverage to the decedent for claims arising from the January 5, 2015, accident, where the decedent did not qualify as an "insured" under the policy.

¶ 17 A motion for judgment on the pleadings is properly granted when the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-615 (West 2016); *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385, 830 N.E.2d 575, 577 (2005). In considering a motion for judgment on the pleadings, a court will accept as true all well-pleaded facts set forth in the pleadings of the nonmoving party, and all reasonable inferences drawn from those facts. *Gillen*, 215 Ill. 2d at 385, 830 N.E.2d at 577. In a case where a motion for declaratory judgment involves an insurer's duty to defend, ordinarily, a court will first look to the allegations in the underlying complaint, and compare them to the relevant provisions in the insurance policy to determine whether the allegations fall within, or potentially fall within, the policy's coverage. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 930 N.E.2d 1011 (2010). Our review of a judgment on the pleadings is *de novo*. *Wilson*, 237 Ill. 2d at 455, 930 N.E.2d at 1016.

¶ 18 This case involves the interpretation of provisions in an insurance policy. An insurance policy is a contract, subject to the general rules of contract construction. *Hobbs*



*v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 561, 564 (2005). When construing an insurance policy, a court's primary objective is to ascertain and give effect to the intention of the parties as expressed in the policy language. *Hobbs*, 214 Ill. 2d at 17, 823 N.E.2d at 564. The court must construe the policy as a whole, and consider the type of insurance purchased, the nature of the risks involved, and the overall purpose of the insurance contract. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479, 687 N.E.2d 72, 75 (1997). In interpreting the policy, the court may consider the plain language of the policy, and the applicable provisions of the Illinois Insurance Code (215 ILCS 5/1 *et seq.* (West 2016)). *Cincinnati Insurance Co. v. Miller*, 190 Ill. App. 3d 240, 244, 546 N.E.2d 700, 703 (1989). If the terms of the policy are clear and unambiguous, the policy will be applied as written, unless it contravenes public policy. *Hobbs*, 214 Ill. 2d at 17, 823 N.E.2d at 564. If, however, the terms of a policy are susceptible to more than one reasonable interpretation, the terms are considered ambiguous and will be strictly construed against the insurer who drafted the policy. *Koloms*, 177 Ill. 2d at 479, 687 N.E.2d at 75. A court will consider only reasonable interpretations of the policy and will not strain to find ambiguity where none exists. *Hobbs*, 214 Ill. 2d at 17, 823 N.E.2d at 564. Additionally, policy provisions that limit or exclude coverage are to be construed liberally in favor of coverage, but this rule of construction applies only if the policy is ambiguous. *Hobbs*, 214 Ill. 2d at 17, 823 N.E.2d at 565. The construction of an insurance policy presents a question of law that is reviewed *de novo*. *Wilson*, 237 Ill. 2d at 455, 930 N.E.2d at 1016.

¶ 19 The insurance policy at issue is a personal liability umbrella policy. The type of insurance coverage provided in an umbrella policy differs from that provided in an auto liability policy. *Hartbarger v. Country Mutual Insurance Co.*, 107 Ill. App. 3d 391, 396, 437 N.E.2d 691, 694 (1982). Auto liability insurance protects the policy holder from financial losses due to claims brought by third parties that are legally recoverable against the insured. *Huizenga v. Auto-Owners Insurance*, 2014 IL App (3d) 120937, ¶ 21; *Miller*, 190 Ill. App. 3d at 245, 546 N.E.2d at 703-04. An umbrella policy provides coverage in excess of the amount provided by the underlying liability policy in order to protect the insured against excess judgments, and so the risks and premiums are calculated accordingly. *Huizenga*, 2014 IL App (3d) 120937, ¶ 21; *Hartbarger*, 107 Ill. App. 3d at 396, 437 N.E.2d at 694.

¶ 20 With these principles in mind, we review the allegations of the underlying complaint and the umbrella policy at issue. According to the umbrella policy, State Farm's duty to defend arises "if a suit is brought against any insured for damages because of a loss to which this policy applies." Thus, two requirements must be satisfied before State Farm's duty to defend arises: (1) the action must be brought against an insured, and (2) the allegations of the complaint must disclose the potential of policy coverage. *Federal Insurance Co. v. Economy Fire & Casualty Co.*, 189 Ill. App. 3d 732, 735, 545 N.E.2d 541, 544 (1989). In this case, no person insured under the umbrella policy was named as a defendant in count I of the plaintiff's complaint. Count I was brought only against the decedent. The decedent was not a named insured on the umbrella policy, and he did not reside in the named insured's household as of January 5, 2015. It is clear the

decedent was not an insured as defined in the policy. Further, no allegations of negligence were brought against the named insured, Carolyn Spenner. Count I does not allege, for example, that Carolyn Spenner negligently entrusted the Mustang to the decedent, or that she negligently maintained the Mustang. Count I alleges only that the decedent was negligent in the operation of the vehicle. Thus, the foregoing prerequisites, that the action be brought against an insured, and that the allegations disclose the potential of policy coverage, were not satisfied.

¶ 21 The plaintiff contends that the umbrella policy provides liability coverage to the decedent under an exception in amendatory endorsement 13, and section 143.01(b) of the Code. We do not agree.

¶ 22 Initially, we note exclusions are relevant in construing an insurance contract when the policy provides coverage in the first instance. *Huizenga*, 2014 IL App (3d) 120937, ¶ 21; *Hartbarger*, 107 Ill. App. 3d at 394, 437 N.E.2d at 693. Here, the umbrella policy did not afford coverage to the decedent because he was not an insured as defined in the policy. Additionally, after reviewing the allegations of the complaint, we do not find that amendatory endorsement 13 provides liability coverage for the decedent under the specific facts and circumstances presented here.

¶ 23 Section 143.01(b) provides that “[a] provision in a policy of vehicle insurance excluding coverage for bodily injury to members of the family of the insured shall not be applicable when any person not in the household of the insured was driving the vehicle of the insured involved in the accident which is the subject of the claim or lawsuit.” 215 ILCS 5/143.01 (West 2016). In section 143.01(b) of the Code, the General Assembly

invalidated an exclusion commonly referred to as the “family exclusion” or “household member exclusion” under certain, limited, circumstances. See *State Farm Mutual Automobile Insurance Co. v. Villicana*, 181 Ill. 2d 436, 454, 692 N.E.2d 1196, 1205 (1998). Under section 143.01(b), an exclusion that operates to deny coverage for bodily injury to members of the insured’s family, when a permissive driver, who was not in the household of the insured, was driving the insured vehicle at the time of the accident, will be invalidated. 215 ILCS 5/143.01(b) (West 2016); *Villicana*, 181 Ill. 2d at 454, 692 N.E.2d at 1205.

¶ 24 In this case, the language in amendatory endorsement 13 to the umbrella policy provides, in pertinent part, that the “family member” exclusion does not apply when “(2) any person not in the household of the named insured was driving the vehicle of the named insured involved in the accident which is the subject of the claim or lawsuit.” Thus, the exception in the amendatory endorsement contains language that seems to comport with the intentions of the General Assembly to invalidate the family member exclusion when a permissive driver is operating the insured vehicle at the time of the accident. *Villicana*, 181 Ill. 2d at 454, 692 N.E.2d at 1205.

¶ 25 In this case, the plaintiff alleged in count II of his complaint, that the named insured, Carolyn Spenner, was listed as a co-owner on the Mustang’s title. But the plaintiff did not allege that Carolyn Spenner had granted the decedent, a co-owner, permission to drive the Mustang at the time of the accident, or that the decedent was operating the Mustang with the permission of Carolyn Spenner at the time of the accident. The record simply discloses that the decedent and Carolyn Spenner were listed

as owners on the title to the Mustang, nothing more. The record further discloses that the decedent purchased primary auto insurance for the Mustang, that the limits of liability on that policy were well below the minimum underlying limits required by Carolyn Spenner's umbrella policy, and that the Mustang was not listed on either of Carolyn Spenner's primary auto insurance policies. Thus, the pleadings and supporting documents do not create a reasonable inference that the decedent was driving a vehicle of the named insured with the permission of the named insured at the time of the accident. The plaintiff's pleadings do not allege sufficient facts to show that amendatory endorsement 13 provides coverage to the decedent in this case. Based on this record, the trial court erred in finding that State Farm had a duty, under the umbrella policy, to defend or indemnify the decedent for the plaintiff's claims arising from the accident on January 5, 2015.

¶ 26 Accordingly, we find that the trial court erred in granting a judgment on the pleadings in favor of the plaintiff, and denying State Farm's motion for a judgment on the pleadings. The judgment on the pleadings in favor of the plaintiff is hereby reversed, and the cause is remanded to the circuit court with instructions to grant a judgment on the pleadings in favor of State Farm as to count II of the plaintiff's complaint and State Farm's counterclaim.

¶ 27 Reversed; cause remanded with directions.