2017 IL App (1st) 160108-U

FIFTH DIVISION
April 28, 2017

No. 1-16-0108

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

KATHRYN MCGREGOR, Special Administrator for Donald McGregor, Deceased,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant,	)	
v.	)	No. 13 CH 8143
ROADRUNNER TRANSPORTATION SERVICES, INC. (a Wisconsin corporation), M. BRUENGER & CO. (a Kansas corporation), and PROTECTIVE INSURANCE COMPANY (an Indiana corporation),	)	Honorable Mary L. Mikva, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County granting summary judgment in favor of defendants where the named insured had limited the underinsured motorist coverage for its subsidiary to the minimum required under Kansas law.

¶ 2 While working as an independent contractor for a Kansas corporation, M. Bruenger & Co. (Bruenger), long-haul trucker Donald McGregor (McGregor) was involved in a fatal collision with an underinsured motorist in Illinois. His wife, Kathryn McGregor, as his special administrator, filed a complaint in the circuit court of Cook County against (i) Bruenger,

(ii) Bruenger's parent company, Roadrunner Transportation Services, Inc. (Roadrunner), and (iii) Bruenger's and Roadrunner's insurer, Protective Insurance Company (Protective). In cross-motions for summary judgment, the parties adopted conflicting positions regarding the requirements of section 40-284(c) of the Kansas Statutes (Kan. Stat. Ann. § 40-284(c)). Section 40-284(c) permits a named insured to reject uninsured motorist (UM) and underinsured motorist (UIM) coverage in excess of the minimum amount – $25,000 – required under Kansas law. Absent such rejection, Kansas law mandates UM/UIM coverage equal to the limits of liability coverage for bodily injury or death stated in the insurance policy which in the instant case was $2 million. Plaintiff argued in the circuit court that Bruenger did not reject the UIM coverage in writing prior to McGregor's death and thus $2 million in coverage was available. Defendants asserted that Roadrunner's earlier rejection was binding on Bruenger as a "related insured" which was subsequently added to the policy. The circuit court denied plaintiff's motion and granted summary judgment in favor of defendants. For the reasons discussed below, we conclude that Roadrunner rejected the higher UIM coverage for its related insureds, including Bruenger, prior to McGregor's collision. We thus affirm the judgment of the circuit court in its entirety.

¶ 3 BACKGROUND

¶ 4 Protective issued an excess liability policy (excess policy) and an uninsured motorists, underinsured motorists and no-fault policy (UM/UIM policy) to Roadrunner as named insured on August 1, 2011. Each policy ran from August 1, 2011 to August 1, 2012. The policies provided for a $2,000,000 combined single limit per occurrence, subject to a self-insured retention of $500,000 per occurrence, but only if the UM/UIM coverage had not been waived or rejected. Endorsements to the excess policy and the UM/UIM policy dated August 1, 2011, listed fifteen

"Related Insured(s)," but did not include Bruenger, which had been acquired by Roadrunner on or about June 1, 2011. As early cancellation of its insurance (through another insurer) would have resulted in penalties, a decision was made to delay the addition of Bruenger to the excess policy and the UM/UIM policy until its existing coverage expired.

¶ 5 In both state-specific and generic rejection forms, Roadrunner rejected the higher UM/UIM coverage. The Illinois UM/UIM rejection resulted in coverage of $20,000 per person and $40,000 per accident, and the Kansas UM/UIM rejection limited coverage to $25,000 per person and $50,000 per accident. Peter Armbruster (Armbruster), the chief financial officer of Roadrunner and Bruenger, represented that Roadrunner had always rejected UM/UIM coverage or selected the lowest level of limits for UM/UIM coverage allowed for the states that prohibit an outright rejection.[1]

¶ 6 Bruenger was subsequently added to the excess policy and the UM/UIM policy as a related insured pursuant to endorsements dated March 1, 2012. Armbruster received a packet of rejection materials in connection with the addition of Bruenger as a related insured. On April 25, 2012, an employee of Roadrunner's insurance broker emailed Armbruster, urging him to return the UM/UIM forms and other documents to Protective as soon as possible. Although certain documents – *e.g.*, the Kansas rejection form – included a pre-printed effective date of March 1, 2012, Armbruster was uncertain of the exact date on which he signed each document. He acknowledged, however, that he had signed the Illinois UIM rejection form on June 1, 2012. The parties stipulated that the signed rejections were received by Protective on June 6, 2012.

¶ 7 On May 8, 2012, McGregor was involved in a fatal collision with an underinsured Illinois motorist, Lakesha Williams (Williams), while driving on an interstate highway through central

[1] Although technically Roadrunner selected lower limits of liability, and did not reject coverage, in certain states, we refer generally to "rejection" in this order.

Illinois. Williams' insurer – State Farm – settled with plaintiff for her $50,000 policy limit.

¶ 8 After rejecting Bruenger's settlement offer of $25,000, plaintiff filed a complaint for declaratory and injunctive relief pursuant to the Illinois Wrongful Death Act (740 ILCS 180/1 *et seq*. (West 2012)) against defendants and a claims adjusting company.[2] Plaintiff asserted that her husband was an intended beneficiary of the UIM coverage provisions. She further alleged that section 143a-2 of the Illinois Insurance Code (215 ILCS 5/143a-2 (West 2012)) required that, unless specifically rejected by the insured, the available UIM coverage provided by a liability insurance policy in Illinois must equal its bodily injury liability limits under the policy, *i.e.*, $2 million. Plaintiff contended that the requirements of section 143a-2 were not satisfied, and she sought reformation of the UM/UIM policy to reflect a coverage amount of $2 million.

¶ 9 In their motion to dismiss the complaint, defendants asserted that plaintiff could not state a claim under the Wrongful Death Act. Defendants also argued that plaintiff failed to state a cause of action for reformation because she had not alleged any mutual mistake among the parties to the policy. The circuit court permitted plaintiff to file a first amended complaint, and defendants again moved for dismissal. Defendants also filed a counterclaim for declaratory judgment, contending that Roadrunner's rejections of higher UIM coverage applied equally to all insureds, including subsequently-added insureds such as Bruenger.

¶ 10 Plaintiff filed a motion for summary judgment, asserting that Bruenger had not yet made a specific request for the lower UIM coverage under the Illinois statute as of the date of McGregor's collision and death. The depositions of Armbruster and Jerry Craig (Craig), an excess claims supervisor at Protective, were appended to the motion. Craig testified, in part, that he had sent an email on March 15, 2013, stating that the "Bruenger exec did not sign and return

[2] The claims adjusting company, Allmark Services, Inc., was subsequently dismissed.

UM rejection on a timely basis, creating potential exposure." In response, defendants raised various arguments regarding the scope and requirements of the Illinois UIM statute. The circuit court denied plaintiff's motion for summary judgment, finding that Bruenger was not required under Illinois law to reject the higher UIM limits when it became a related insured.

¶ 11 Plaintiff subsequently sought leave to file a second amended complaint. She asserted that the original and first amended complaints were based on the operation of the Illinois UIM statute (215 ILCS 5/143a-2 (West 2012)), which applies to vehicles registered in Illinois. As her husband was driving a tractor trailer owned by Bruenger and registered in Kansas at the time of his death, plaintiff claimed that the Kansas UIM statute (Kan. Stat. Ann. § 40-284) applied. Although the two statutes are similar, she contended that the Kansas statute is "substantively distinguishable" from its Illinois counterpart. Over defendants' opposition, the circuit court allowed plaintiff to file the second amended complaint based on the Kansas UIM statute. Defendants filed an answer and asserted affirmative defenses, including laches.

¶ 12 Following additional discovery, the parties filed competing motions for summary judgment on the second amended complaint. Plaintiff argued that Bruenger failed to timely reject the higher UM/UIM coverage. Defendants argued that the Kansas and Illinois UIM statutes were identical in all material respects and thus the circuit court's earlier determinations were applicable. They also contended that Roadrunner's prior Kansas rejection covered Bruenger as a related insured which was subsequently added on the UM/UIM policy. In addition, defendants raised the alternative argument that, if Roadrunner was required to make a separate UIM rejection on behalf of Bruenger when it was added as a related insured, Roadrunner properly made such rejection pursuant to the Kansas UIM statute. The attachments to the respective motions included various depositions, including the depositions of John

Newhouse (Newhouse) and Tracie Bishop (Bishop), employees of Roadrunner's broker, and Terri Lynne Burke (Burke), who worked for Protective's underwriter. Newhouse testified that "[i]n all circumstances Roadrunner was not purchasing policy limits for uninsured/underinsured" and the insurance pricing was based on Roadrunner's rejection of any coverage above the state minimums. Bishop testified that she understood that the UM/UIM forms needed to be signed and returned in a timely manner because "they kind of affect the coverage in the policy." Burke testified regarding the delay in receiving the signed UM/UIM forms from Roadrunner's broker.

¶ 13 During the hearing on the cross-motions for summary judgment, the circuit court found that Kansas law and Illinois law are "identical on this issue." According to the circuit court, under the Kansas UM/UIM statute, a rejection by a named insured, *i.e.*, Roadrunner and not Bruenger, is a rejection on behalf of all parties insured by the policy. The circuit court opined that the completion of "unnecessary" rejection forms "doesn't, in any way, change what's legally required." The circuit court also rejected plaintiff's contention that the addition of Bruenger created or constituted a "supplemental or a renewal policy." In an order entered on December 16, 2015, the court denied plaintiff's motion for summary judgment and granted defendants' motion for summary judgment. Plaintiff filed this timely appeal.

¶ 14 ANALYSIS

¶ 15 Plaintiff contends that the circuit court erred in denying her summary judgment motion and granting summary judgment in favor of defendants. Summary judgment is properly granted when the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34; *Phillips v. St. Paul Fire & Marine Insurance Co.*, 289 Kan. 521, 525

(2009). Rulings on summary judgment are reviewed *de novo*. *Bartonville*, 2017 IL 120643, ¶ 34. See also *Phillips*, 289 Kan. at 525 (noting that review is "unlimited" where there was no factual dispute). In addition, statutory interpretation is a question of law that we review *de novo*. *Moon v. Rhode*, 2016 IL 119572, ¶ 22. See also *Phillips*, 289 Kan. at 525 (providing that "statutory interpretation raises a question of law on which this court has unlimited review").

¶ 16 As a threshold matter, plaintiff contends that Kansas law applies to this case. Defendants do not challenge this contention on appeal, and we shall proceed accordingly. Under Kansas law, where UIM coverage exceeds the limits of bodily injury coverage carried by the owner or operator of the other vehicle, UIM coverage exists. *Stemple v. Zurich American Insurance Co.*, 584 F. Supp. 2d 1304, 1308 (D. Kan. 2008). Where UIM coverage equals or does not exceed such limits, no UIM coverage exists. *Id*. Based on the foregoing, if the UIM coverage provided by Protective exceeds that of Williams' State Farm policy – $50,000 – plaintiff would be able to recover damages under the Protective policy. If the UIM coverage provided by Protective does not exceed the $50,000 coverage provided by the State Farm policy, no additional coverage would be available under the Protective policy. See *Tilley v. Allied Property & Casualty Insurance Co.*, 33 Kan. App. 2d 923, 930 (2005) (noting that under Kan. Stat. Ann. § 40-284(b), UIM benefits exist only when the UIM limits are greater than those of the tortfeasor's policy). The critical inquiry herein is whether the higher UIM coverage was rejected.

¶ 17 Section 40-284 of the Kansas Statutes governs UM/UIM coverage. Kan. Stat. Ann. § 40-284. *Stemple*, 584 F. Supp. 2d at 1307. Section 40-284(a) requires all insurance liability policies issued with respect to motor vehicles registered or principally garaged in Kansas to include UM coverage. *Id*. Section 40-284(a) mandates UM coverage equal to the limits of liability coverage for bodily injury or death stated in the policy. *Mitchell v. Liberty Mutual Insurance Co.*, 271

Kan. 684, 687 (2001); *Bishop v. Empire Fire & Marine Insurance Co.*, 47 F. Supp. 2d 1300, 1305 (D. Kan. 1999) (interpreting Kansas law). Section 40-284(b) mandates UM coverage to include an UIM provision with coverage equal to the limits of liability coverage for bodily injury or death stated in the policy. *Mitchell*, 271 Kan. at 687; *Stemple*, 584 F. Supp. 2d at 1308.

¶ 18 Section 40-284(c), however, allows the insured named in the policy to reject, in writing, the UM and UIM coverage required by sections 40-284(a) and (b) which is in excess of the limits for bodily injury and death set forth in section 40-3107 of the Kansas Statutes. Kan. Stat. Ann. § 40-3107; *Mitchell*, 271 Kan. at 688; *Stemple*, 584 F. Supp. 2d at 1308. Section 40-284(c) provides:

> "(c) The insured named in the policy shall have the right to reject, in writing, the uninsured motorist coverage required by subsections (a) and (b) which is in excess of the limits for bodily injury or death set forth in K.S.A. 40-3107, and amendments thereto. A rejection by an insured named in the policy of the uninsured motorist coverage shall be a rejection on behalf of all parties insured by the policy. Unless the insured named in the policy requests such coverage in writing, such coverage need not be provided in any subsequent policy issued by the same insurer for motor vehicles owned by the named insured, including, but not limited to, supplemental, renewal, reinstated, transferred or substitute policies where the named insured had rejected the coverage in connection with a policy previously issued to the insured by the same insurer." Kan. Stat. Ann. § 40-284(c).

Section 40-3107 provides for a limit of not less than $25,000 for bodily injury to, or death of, one person and for a limit of not less than $50,000 for bodily injury to, or death of, two or more

persons in any one accident. Kan. Stat. Ann. § 40-3107(e).

¶ 19 Plaintiff advances a number of arguments based on the language of section 40-284(c). She initially notes that the statute provides, in part, that "rejection by an insured named in the policy of the uninsured motorist coverage shall be a rejection on behalf of all parties insured by the policy." Plaintiff contends that "[s]ince Bruenger was not 'insured by the Protective policy' when [Roadrunner] rejected UIM coverage on its own behalf and on behalf of its other related insureds, [Roadrunner's] earlier rejection of UIM coverage did not and could not apply to Bruenger because it was not a party that was 'insured by the policy' at that time." (Deleting emphasis in original.)

¶ 20 We reject plaintiff's strained interpretation of the statutory language. Bruenger is a related insured by virtue of March 2012 endorsements to the policies. Section 40-284, on its face, does not limit the applicability of a UIM rejection to only those insureds listed on the policy at the time of the rejection. When a statute is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. *Winnebago Tribe of Nebraska v. Kline*, 283 Kan. 64, 77 (2007); *Mitchell*, 271 Kan. at 694-95. We decline to read any exception or limitation regarding subsequently-added insureds that does not exist in the statute. See, *e.g.*, *Graham v. Dokter Trucking Group*, 284 Kan. 547, 554 (2007) (stating that the court will not read a "plain and unambiguous" statute "to add something not readily found in it"); *Moon*, 2016 IL 119572, ¶ 22 (providing that the plain language of a clear and unambiguous statute "must be given effect without reading into it exceptions, limitations, or conditions that the legislature did not express").

¶ 21 Plaintiff also contends that the circuit court "ignored an important requirement limiting future application of a named insured's § 40-284 subsection (c) selection/rejection of UIM

coverage to: 'motor vehicles that are owned by the named insured.' " (Emphasis in original.) We observe, however, that the foregoing quoted language is inapplicable in the instant case. Section 40-284(c) provides, in part, that "[u]nless the insured named in the policy requests such coverage in writing, such coverage need not be provided in any subsequent policy issued by the same insurer for motor vehicles owned by the named insured[.]" Kan. Stat. Ann. § 40-284(c). The addition of Bruenger as a related insured via endorsement did not result in a "subsequent policy."

¶ 22 An endorsement and a policy must be read together. *Thornburg v. Schweitzer*, 44 Kan. App. 2d 611, 620 (2010). The policy remains in full force and effect, except as altered by the words of the endorsement. *Id*. Conversely, the endorsement modifies, to the extent of the endorsement, the terms and conditions of the *original* insurance contract. *Id*. See also *Layne Christensen Co. v. Zurich Canada*, 30 Kan. App 2d 128, 145 (2002) (noting that "endorsements merely alter part of the general terms of an insurance policy"). In the instant case, the endorsements altered the already-existing UM/UIM policy to include Bruenger as a related insured. We also reject plaintiff's contentions that an indemnity agreement entered into by defendants, dated March 1, 2012, and other documentation "are the insurance policy."

¶ 23 Plaintiff further argues that "Bruenger did not comply promptly when Protective requested the execution and return of the documents that completed this new UIM portion of its auto liability policy agreement with Bruenger." As a preliminary matter, we view Roadrunner – as opposed to Bruenger – as the proper party to execute any UIM coverage rejection under Kansas law. Although plaintiff suggests that Bruenger was an "additional named insured," both the excess policy and the UM/UIM policy designate Roadrunner as the named insured. As the "insured named in the policy" (Kan. Stat. Ann. § 40-284(c)), Roadrunner had the right to reject

the UM/UIM coverage in excess of the statutory minimums. See, *e.g.*, *Larson v. Bath*, 15 Kan. App. 2d 42, 46 (1990) (reversing grant of insurer's motion for summary judgment where the "*named insured* did not reject *in writing* the higher [underinsured motorist] limits" (emphasis in original)). In any event, the fact that rejection forms were transmitted to Armbruster does not mean that such forms were required. See, *e.g.*, *Mitchell*, 271 Kan. at 697-98 (finding that question of whether the insurer's established practice was to send rejection forms to its insured each year was "not material"); *Phillips v. St. Paul Fire & Marine Insurance Co.*, 39 Kan. App. 2d 758, 763 (2008) (concluding that the insurer's employee's request that a new rejection form be completed based on the employee's "incorrect interpretation of the law" does not "change the provisions of the law").

¶ 24 Plaintiff also asserts that when Bruenger's liability coverage with Protective commenced on March 1, 2012, it filed a surety bond – with Protective as the surety company – with the U.S. Secretary of Transportation. According to plaintiff, such filing is relevant because it demonstrates that Protective "did, in fact, issue and deliver a policy of auto liability insurance" to Bruenger on March 1, 2012. See Kan. Stat. Ann. § 40-284(a) (stating that no automobile liability insurance policy shall be "delivered or issued for delivery in this state" unless the policy has coverage limits equal to the bodily injury or death limits). The filing was made in accordance with sections 29 and 30 of the Motor Carrier Act of 1980 (49 U.S.C. § 13906). See also 49 C.F.R. § 387.313 (providing that the surety bond must be filed with the Federal Motor Carrier Safety Administration). Simply put, we do not view Bruenger's apparent compliance with federal transportation law as dispositive of an issue of Kansas insurance law.

¶ 25 Plaintiff finally contends that Kansas law and public policy favors UIM coverage. As an initial matter, we note that where the statutory language is clear and unambiguous – as is the case

herein – we must give it effect without resorting to other tools of interpretation. See, *e.g.*, *Beggs v. Board of Education of Murphysboro Community Unit School District No. 186*, 2016 IL 120236, ¶ 52; see also *O'Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 331 (2012) (noting that "[o]nly if the statute's language or text is unclear or ambiguous does the court employ canons of construction, legislative history, or other background considerations to divine the legislature's intent and construe the statute accordingly"). Even if we were to look beyond the statutory language, our result is the same.

¶ 26 The purpose of UM/UIM coverage is to compensate an innocent victim who is injured by an uninsured or underinsured motorist. *Larson*, 15 Kan. App. 2d at 43. Because rejection provisions detract from the public policy goal of protecting innocent victims, such provisions are narrowly and strictly construed. *Larson*, 15 Kan. App. 2d at 45 (court stating it felt "compelled to apply the philosophy of an intent to provide protection to injured victims and to liberally construe the protections of the UM statute by narrowly construing its exceptions"); see also *Ochs v. Federated Mutual Insurance Co.*, 43 Kan. App. 2d 127, 133 (2010). Nevertheless, the strict construction should not be invoked to circumvent a clear election under section 40-284(c), as was made herein. See *id*. at 134. Although not necessary for our analysis, we further note that the premiums set forth in the UM/UIM policy were apparently predicated on Roadrunner's rejection of higher UM/UIM coverage on behalf of itself and *all* related insureds, including Bruenger.

¶ 27 Based on our interpretation of section 40-284 of the Kansas Statutes, and for the other reasons discussed herein, we conclude that named insured Roadrunner's earlier rejection of the higher UM/UIM coverage applied to Bruenger as a related insured. As provided in the statute, "rejection by an insured named in the policy of the uninsured motorist coverage shall be a

rejection on behalf of all parties insured by the policy." Kan. Stat. Ann. § 40-284(c). In light of our conclusion, we need not consider defendants' alternative argument that the subsequent rejection in 2012 was timely and otherwise adequate.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 30 Affirmed.