2014 IL App (3d) 120753-U

Order filed February 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

The Estate of CATHERINE LOVGREN, CHARLES LOVGREN, Individually and on Behalf of The Estate of CATHERINE LOVGREN, ROBERT MARTIN and CYNTHIA MARTIN, Individually and as Parents and Next Kin for CASSANDRA MARTIN, a Minor and LEANNA MARTIN, a Minor, BRAD FISHER and AMANDA FISHER, Individually and as Parents and Next Kin for ANTHONY LOVGREN, a Minor,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, Bureau County, Illinois,
	)	Appeal No. 3-12-0753
	)	Circuit No. 11-MR-26
Plaintiffs-Appellees,	)	
v.	)	
COUNTRY PREFERRED INSURANCE COMPANY and COUNTRY MUTUAL INSURANCE COMPANY,	)	
	)	The Honorable Marc P. Bernabei,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: In a declaratory judgment action involving the potential stacking of uninsured motorist coverage between policies issued by the same insurance company, the appellate court held that neither the policies nor public policy prevented stacking.

¶ 2 The plaintiffs; the Estate of Catherine Lovgren; Charles Lovgren, individually and on behalf of Catherine's estate; Robert and Cynthia Martin, individually and as parents and next kin for Cassandra and Leanna Martin; and Brad and Amanda Fisher, individually and as parents and next kin for Anthony Lovgren; filed a complaint for declaratory judgment against the defendants, Country Preferred Insurance Company and Country Mutual Insurance Company, regarding the potential stacking of policy coverage. The parties filed cross-motions for summary judgment, and, after a hearing, the circuit court ruled that stacking was allowed and granted summary judgment in the plaintiffs' favor. On appeal, the defendants argue that the circuit court erred when it granted summary judgment in favor of the plaintiffs because the language of the insurance policies prohibited stacking and because public policy warranted a ruling in favor of the defendants. We affirm.

¶ 3 FACTS

¶ 4 On November 7, 2008, Catherine Lovgren was driving her vehicle in which her three minor grandchildren, Leanna Martin, Cassandra Martin, and Anthony Lovgren, were passengers. Catherine's vehicle was struck by a vehicle driven by John Zimmerly. Catherine died as a result of the collision and the three minors all suffered injuries.

¶ 5 Zimmerly's automobile insurance company denied coverage for the collision. Thereafter, the plaintiffs filed claims under their automobile insurance policies, which had been issued by the defendants. Specifically, uninsured motorist (UM) and medical-payment claims were filed under Catherine's policy (the Lovgren Policy), under a policy issued to plaintiffs Amanda Fisher and Brad Fisher (the Fisher Policy) on behalf of Anthony Lovgren, and under a policy issued to

plaintiffs Cynthia Martin and Robert Martin (the Martin Policy) on behalf of Leanna and Cassandra Martin. All three policies had been issued by defendant Country Preferred Insurance Company and contained identical UM coverage amounts of $250,000 per person and $500,000 per occurrence. The policies also had the following identical relevant provisions.[1]

¶ 6 The definitions sections defined "You, Your, Yourself" as "the person named as Insured on the declarations page of this policy and that person's spouse if a resident of the same household. You, your, yourself also refers to any legal entity named as Insured on the declarations page." "Relative" and "relatives" was defined as "a person related to **you** by blood, marriage or adoption who is a resident of the same household as **you**, including a ward or foster child."

¶ 7 The UM sections contained several relevant provisions. They defined "Persons Insured" as including "**you** or any **relative**" and "anyone **occupying** an **insured vehicle**." They all contained the following provision in paragraph four of the "Conditions" sections:

> "**Other Insurance.** If there is other applicable uninsured – underinsured motorists insurance that covers a loss, **we** will pay **our** proportionate share of that loss. **Our** share is the proportion **our** limits of liability bear to the total of all applicable limits. However, in the case of **motor vehicles you** do not own, this policy will be excess and will apply only in the amount **our** limit of liability exceeds the sum of applicable limits of liability of all other applicable insurance. **We** will pay only after all other applicable liability limits have been paid."

[1] Throughout this order, any use of bold text in quotations from the automobile insurance policies is retained from the original.

¶ 8 The "General Policy Conditions" sections contained the following provision in paragraph eight:

> "**Other Vehicle Insurance with Us**. If this policy and any other vehicle insurance policy issued to **you** or a **relative** by one of **our** companies apply to the same accident, the maximum limit of **our** liability under all the policies will not exceed the highest applicable limit of liability under any one policy."

¶ 9 A dispute arose between the parties regarding the coverage sought by the plaintiffs, which culminated in the plaintiffs filing a complaint for declaratory judgment on November 5, 2010. The complaint sought a ruling that the plaintiffs could stack the UM coverage from the automobile insurance policies with regard to the injuries sustained by the children in the accident.

¶ 10 On August 9, 2012, the circuit court heard arguments on the parties' cross-motions for summary judgment and then issued its ruling. The court noted that the defendants were not relying on paragraph eight of the "General Policy Conditions" sections in their argument that stacking should not be allowed—which the court noted was "a very clear anti-stacking clause"—but the court addressed it anyway, finding that it did not prohibit stacking under the facts of this case. With regard to paragraph four of the "Conditions" sections, the court found that its language was not ambiguous and that it lacked antistacking language. The court stated that had the defendants intended paragraph four to be an antistacking clause, they could have easily made it so by including the same type of language that they included in paragraph eight of the "General Policy Conditions" sections. Further, the court stated that paragraph four was

> "simply providing for full proportional responsibility from each policy, with the total recovery of course for each child not to exceed half a million dollars, with no policy

liable for more than a quarter million dollars per person. And as plaintiffs point out, the policies do refer to other insurance issued to you, and the children do not come within the definition of 'you.' "

Accordingly, the court ruled that each of the three children could recover up to $250,000 under the Lovgren Policy. In addition, the court ruled that Anthony could recover up to an additional $250,000 under the Fisher Policy, and Leanna and Cassandra could recover up to an additional $250,000 each under the Martin Policy. Thus, the court granted summary judgment in favor of the plaintiffs. The defendants appealed.

¶ 11 ANALYSIS

¶ 12 The issue in this case is whether the Lovgren Policy's UM coverage can be stacked with (1) the UM coverage in the Fisher Policy, in the case of Anthony; and (2) the UM coverage in the Martin Policy, in the case of Leanna and Cassandra; thereby providing each minor with a potential coverage limit of $500,000.

¶ 13 A court may grant summary judgment when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). "Construction of the terms of an insurance policy and whether the policy comports with the statutory requirements are questions of law properly decided on a motion for summary judgment." *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399 (2010). We review the circuit court's summary judgment decision under the *de novo* standard. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004).

¶ 14 The defendants argue that the circuit court erred when it granted summary judgment in favor of the plaintiffs because the language of the insurance policies prohibited stacking and

because public policy warranted a ruling in favor of the defendants. The defendants rely solely upon the "other insurance" provisions in paragraph four of the "Conditions" sections to support their argument that the policies prohibited stacking—specifically, the defendants rely on the excess-escape clauses, which stated, "[h]owever, in the case of **motor vehicles you** do not own, this policy will be excess and will apply only in the amount **our** limit of liability exceeds the sum of applicable limits of liability of all other applicable insurance."

¶ 15 Even though the defendants do not rely on the antistacking provision in paragraph eight of their "General Policy Conditions" sections to support their argument, it is still relevant to the disposition of this case. The antistacking provision in paragraph eight referred specifically to other insurance issued by the same company, while the "other insurance" provision contains no such limitation. This distinction cannot be understated. As case law has noted, "[t]he apparent purpose of 'other insurance' clauses is to make certain that one company does not pay a disproportionate amount of a loss which is to be shared with another company. There is no purpose in proration unless the 'other insurance' is written by another company." *United Security Insurance Co. v. Mason*, 59 Ill. App. 3d 982, 985 (1978). It is counterintuitive to read the "other insurance" provision in paragraph four as including insurance issued by the same company because that company's share of the liability would always be 100% (see *American Family Mutual Insurance Co. v. Martin*, 312 Ill. App. 3d 829, 833 (2000)), and because the way in which the defendants drafted the antistacking provision shows that they clearly knew how to qualify an "other insurance" phrase.

¶ 16 Given that the "other insurance" provisions in these three policies cannot be reasonably construed to include other insurance issued by the same company, the defendants' reliance on the aforementioned excess-escape clauses is of no avail. Those excess-escape clauses cannot be read

in a vacuum; they appear in a provision not meant to include insurance issued by the same company and must be read in that context.

¶ 17 "The terms of an insurance policy are to be applied as written unless those terms are in conflict with public policy." *Armando v. State Farm Mutual Automobile Insurance Co.*, 323 Ill. App. 3d 153, 155 (2001). We see no public policy arguments that would preclude stacking in this case. While we acknowledge that the purpose of the uninsured motorist statute in Illinois 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" (*State Farm Mutual Automobile Insurance Co. v. George*, 326 Ill. App. 3d 1065, 1068 (2002)), we also recognize that there is no reason to prohibit stacking in this case when the policies at issue are not written to preclude it under a certain set of facts (see *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 189 (1993)).

¶ 18 CONCLUSION

¶ 19 The judgment of the circuit court of Bureau County is affirmed.

¶ 20 Affirmed.