2016 IL App (3d) 140747-U

Order filed January 7, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

PROGRESSIVE INSURANCE d/b/a UNITED FINANCIAL CASUALTY COMPANY, Plaintiff-Appellant, v. VANESSA DORSEY, parent and next friend of TAKELIA DORSEY, a minor, VANESSA DORSEY, parent and next friend of TYESHA DORSEY, a minor, VANESSA DORSEY, parent and next friend of TYMIA S. MOSS, a minor, VANESSA DORSEY, parent and next friend of LARRY L. DORSEY, a minor, DEITRICK D. BAINES, JEFFREY LANDIS, THE HERTZ CORPORATION, and VANESSA DORSEY, Defendants-Appellees.	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois, Appeal No. 3-14-0747 Circuit No. 04-MR-648 Honorable Kendall O. Wenzelman Judge, Presiding.

THE HERTZ CORPORATION, Defendant/Cross-Appellee and Cross-Appellant, v. VANESSA DORSEY, individually, VANESSA DORSEY, as parent and next friend of TAKELIA DORSEY, a minor, VANESSA DORSEY, as parent	)	Appeal from the Circuit Court of the 21st Judicial Circuit, Kankakee County, Illinois, Appeal No. 3-14-0747 Circuit No. 04-MR-1122

and next friend of TYMIA S. MOSS, a minor, VANESSA DORSEY, as parent and next friend of LARRY L. DORSEY, a minor, VANESSA DORSEY, as parent and next friend of TYESHA S. DORSEY, a minor, DEITRICK D. BAINES, JEFFREY LANDIS, and PROGRESSIVE INSURANCE d/b/a UNITED FINANCIAL CASUALTY COMPANY,	)	
Defendants/Cross-Appellants and Cross-Appellees.	)	Honorable Kendall O. Wenzelman Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred by finding the named insured's Progressive insurance policy created primary coverage for injuries arising out of the use of a Hertz rental vehicle. The financial responsibility statute requires Hertz, a self-insured rental car company, to provide insurance coverage within the statutory minimum limits for the injuries suffered by innocent third parties resulting from the operation of its rental car.

¶ 2 Vanessa Dorsey (Dorsey), as mother and next friend of her children, Tyesha Dorsey, Tymia Moss, and Larry Dorsey (collectively "the Dorsey siblings"), filed an action in negligence against another minor daughter, Takelia Dorsey (Takelia) and Jeffrey Landis (Jeffrey). The negligence complaint alleged the named defendants negligently caused injuries to the Dorsey siblings as a result of a January 23, 2004, crash of a rental vehicle Hertz leased to Jeffrey.

¶ 3 Progressive Insurance d/b/a United Financial Casualty Company (Progressive) and the Hertz Corporation (Hertz) each filed separate declaratory actions regarding insurance coverage arising out of this incident. The trial court consolidated the two separate declaratory actions.

¶ 4 On appeal, Progressive argues the trial court erred, in its order of May 6, 2014, by denying Progressive's request for declaratory relief after finding Progressive was the primary

insurance carrier for claims resulting from the use of a vehicle Hertz leased to Jeffery. Dorsey and Hertz both filed cross-appeals.

¶ 5 In her cross-appeal, Dorsey challenges the court's May 2014 order declaring Hertz was not obligated to provide any liability coverage, secondary or primary, to Progressive's liability coverage. Hertz's cross-appeal questions the court's July 2009 order granting partial summary judgment and finding, as a matter of law, Hertz was statutorily required "to defend and indemnify any claims arising out of the use of the vehicle driven by Takelia on the date of the alleged occurrence," pursuant to section 9-105 of the Vehicle Code. 625 ILCS 5/9-105 (West 2004). Alternatively, Hertz argues its statutory liability, if any, should be secondary to the Progressive policy and capped according to the limitations set forth in section 9-105 of the Vehicle Code. *Id.*

¶ 6 Affirmed in part, reversed in part.

¶ 7 BACKGROUND

¶ 8 Malissa Landis (Malissa) and Jeffrey were married but lived separately in October 2003 and a divorce case was pending. Malissa was the "named insured" on Progressive automobile insurance policy No. 46481689-4, in effect from July 20, 2003, through January 20, 2004, and Jeffrey was included on the policy as a "listed driver." The covered vehicles listed on the declarations page for this policy were a 1999 Volkswagen Jetta (driven by Malissa) and a 1996 Ford Explorer (driven by Jeffrey). Progressive sent out forms in December of 2003 for the renewal of this automobile policy, and issued the renewed policy to Malissa, as the named insured, effective from January 20, 2004, through July 20, 2004. The declarations page for the

renewed policy indicated Malissa was the named insured, Jeffrey was an additional listed driver, and the Ford Explorer was a covered vehicle.[1]

¶ 9 On January 18, 2004, the Ford Explorer was reported as stolen and was "destroyed." At that time, Jeffrey did not inform Malissa or Progressive about the theft or destruction of the Ford Explorer. On January 20, 2004, Malissa appeared in court for entry of a judgment of dissolution of marriage, but Jeffrey failed to appear. In the judgment of dissolution entered on January 20, 2004, the judgment granted the Ford Explorer to Jeffrey and the Volkswagen Jetta to Malissa. The record indicated Malissa had no knowledge that the Ford Explorer was not in Jeffrey's possession at that time.

¶ 10 On January 21, 2004, Jeffrey leased a Toyota Camry rental car from Hertz to be returned by 3:00 p.m. on January 24, 2004. The documents for the Hertz car lease showed that Jeffrey refused insurance coverage through Hertz and informed Hertz he was covered by his own insurance through "Progressive."

¶ 11 According to a discovery deposition of Takelia, Takelia said Jeffrey owed Takelia money for drugs and Jeffrey agreed to rent the Hertz vehicle for Takelia's use. Takelia was 15 years old and unlicensed in January 2004. Takelia said she gave Jeffrey $189 in cash to pay for the cost of the car rental, and Jeffrey used this money to lease a rental car from Hertz on January 21, 2004.[2] Jeffrey signed the lease documents while Takelia waited outside the building. After the Hertz employees re-entered their office building, Takelia said she drove the rental car off the Hertz lot and kept possession of the vehicle until January 23, 2004. Takelia did not live with Jeffrey and

[1]The initial declarations page for the renewed policy, beginning January 20, 2004, inadvertently omitted the Volkswagen Jetta as a covered vehicle, but the declarations page was amended in February 2004.

[2]The lease documents indicated Jeffrey paid cash for the lease of Hertz's Toyota Camry.

was not related to Jeffrey or Malissa. Takelia said Jeffrey never drove the leased Toyota Camry himself.

¶ 12 Takelia testified during her deposition that, on January 23, 2004, Takelia drove the Hertz rental vehicle to her mother's residence and picked up a friend, Deitrick Baines, and Takelia's three younger siblings, Tyesha Dorsey, Larry Dorsey, and Tymia Moss, and took them for a ride. Takelia stated she did not live with her mother and siblings at that time, and had not lived there for several months. While transporting her friend and siblings, Takelia said she drove the Toyota Camry between 70 and 85 miles per hour on a dirt road and lost control of the vehicle. The car flipped over several times resulting in total damage to the Toyota Camry and severe injuries to the passengers of the car. Takelia stated Larry broke his leg and was bleeding heavily at the scene of the accident; Tyesha was unconscious at the scene; Deitrick and Tymia broke both of their legs; and Tymia also damaged her spinal cord, resulting in paralysis.

¶ 13 On June 21, 2004, Progressive filed a complaint for declaratory judgment in Kankakee County, Illinois, asking the court to declare that the Progressive insurance policy issued to Malissa, as the named insured, did not provide liability coverage for Jeffrey, since Jeffrey was listed only as an additional driver on the declarations page and was legally divorced from Malissa three days before the January 23, 2004, accident. Progressive's complaint further alleged the one-car accident at issue involved a Hertz rental vehicle, leased by Jeffrey one day after the divorce, and driven by Takelia, an unlicensed 15-year-old driver, with Jeffrey's permission. Progressive's complaint contended that Jeffrey was not a covered insured person as defined by the policy and the Hertz Toyota Camry was a non-owned vehicle, rented and driven without Malissa's knowledge or consent, and was not a covered vehicle under the policy.

¶ 14 On September 21, 2004, Dorsey, as mother and next friend of the Dorsey siblings, filed a negligence personal injury lawsuit against Takelia and Jeffrey, followed by an amended complaint on March 2, 2005.[3] The negligence complaint alleged Takelia drove the vehicle that was involved in the January 23, 2004, accident with the Dorsey siblings as passengers in the car. The negligence complaint claimed Takelia had a duty to exercise reasonable care in the operation of the motor vehicle and Takelia was negligent because she failed to keep a proper lookout, failed to control her vehicle travelling on the roadway, failed to operate her vehicle at a reasonable speed, failed to keep her vehicle on the roadway, and/or otherwise failed to operate the vehicle in a safe manner.

¶ 15 Dorsey's negligence complaint further alleged Jeffrey leased the vehicle and had a duty to exercise reasonable care in entrusting the possession of the vehicle to another. Further, Jeffrey wrongfully and negligently entrusted the operation of the rental vehicle to Takelia, an unlicensed driver, and permitted her to drive the vehicle. The negligence complaint provided that the three Dorsey siblings were seriously injured in the accident and incurred large medical bills and asked the court to enter judgment against Takelia and Jeffrey in amounts in excess of $50,000 for each of the Dorsey siblings who were passengers in the vehicle.

¶ 16 On December 23, 2004, Hertz filed a complaint for declaratory judgment asking the court to determine that Hertz, who was self-insured, was not liable for the injuries sustained during the January 23, 2004, accident with the leased Toyota Camry. In part, Hertz claimed Jeffrey refused Hertz's separate insurance coverage when he leased the vehicle on January 21, 2004, and Jeffrey informed Hertz he had coverage under the Progressive insurance policy. Additionally, Hertz

[3]Neither Progressive nor Hertz were listed as defendants in this underlying negligence complaint.

claimed it should not be held liable because Takelia was not an authorized driver under the Hertz rental contract.

¶ 17 Hertz filed a motion to consolidate both Hertz's complaint for declaratory judgment, case No. 04-MR-1122, and Progressive's complaint for declaratory judgment, case No. 04-MR-648, since they both addressed coverage for Takelia's January 23, 2004, accident involving the Hertz rental vehicle. On April 4, 2005, the court allowed Hertz's motion to consolidate the two complaints for declaratory judgment over Progressive's objection.

¶ 18 Subsequently, on February 5, 2007, Dorsey, on behalf of the Dorsey siblings, filed a motion for summary judgment against Hertz, only in Hertz's declaratory action, asking the court to enter summary judgment ordering Hertz to provide liability coverage for Takelia's use of the rental vehicle under the financial responsibility law as outlined in section 9-105 of the Vehicle Code. 625 ILCS 5/9-105 (West 2004). Dorsey's motion for summary judgment alleged section 9-105 of the Vehicle Code specifically provided that rental car companies' insurance carriers are liable for acts of the lessee (Jeffrey) and those who operate the motor vehicle with the express or implied consent of the lessee (Takelia), regardless of whether or not such operation was with the consent of the owner (Hertz). This section of the Vehicle Code required Hertz to provide liability coverage at a minimum amount of $50,000 for bodily injury or property damage to one person, and $100,000 for the bodily injury or death of two or more persons in one motor vehicle accident.[4] Dorsey's motion for summary judgment claimed, "There is no evidence that Takelia Dorsey secured the vehicle through theft, consequently, she is covered by the liability insurance provided by the Plaintiff Hertz." The motion then asked the court to declare there was "liability

[4]This section of the Vehicle Code pertains to rental car companies and specifies a minimum amount of insurance coverage required to be obtained by rental car companies. Hertz provided proof that it was self-insured under the financial responsibility laws of the Vehicle Code. 625 ILCS 5/9-101 *et seq.* (West 2004).

insurance coverage and medical payments coverage afforded to TAKELIA DORSEY under the statutes of the State of Illinois and the provisions of the rental agreement between Hertz and Jeffrey Landis" under Hertz's financial responsibility insurance. (Emphasis in original.)[5]

¶ 19 On April 16, 2007, Progressive filed a motion for summary judgment, in its declaratory action case No. 04-MR-648, asking the court to declare it had no liability or obligations under Malissa's policy, as the named insured in the policy, for the damages or injuries sustained in the January 23, 2004, crash that occurred when Takelia drove the Hertz vehicle rented by Jeffrey. In its motion for summary judgment, Progressive submitted that none of the defendants (Jeffrey, Takelia, or the Dorsey siblings) were "named insureds" or "relatives" as defined in the policy, and the subject vehicle in the accident, the Hertz rental car, was not a "covered vehicle" under the policy.

¶ 20 On April 25, 2008, Progressive filed an additional motion for summary judgment, based on further depositions, affidavits, and discovery, prior to the court ruling on Progressive's initial motion for summary judgment.[6] This additional motion again claimed none of the defendants were named insureds or relatives as defined by the policy, Malissa was the only named insured in the policy, and Jeffrey was a "listed driver" on the policy. Further, this motion alleged Malissa was the only individual, as the named insured, who could have insurance coverage for a rental car and Malissa had no knowledge of and was not involved in the rental of the Toyota Camry from Hertz. Malissa had no relationship with Takelia and did not give Takelia permission to drive the Hertz car, which was not a covered vehicle under the policy.

---

[5]Prior to the court deciding Dorsey's first motion for summary judgment, Dorsey filed a second, almost identical, motion for summary judgment on September 3, 2008, with additional attached exhibits.

[6]Since the first motion for summary judgment remained unresolved, the court treated Progressive's two pending motions for summary judgment as one.

Additionally, in Progressive's declaratory action case No. 04-MR-648, the court already entered an order of default against Jeffrey and Takelia on September 9, 2004. As a matter of law, based on the undisputed facts contained in the pleadings and attachments, Progressive asked the court to declare that it owed no obligations to the Dorsey siblings based on the January 23, 2004, vehicle crash.

¶ 21 On May 27, 2008, Hertz filed a motion for summary judgment, in its separate declaratory action case No. 04-MR-1122, asking the court to enter summary judgment in favor of Hertz and find Hertz was not obligated to defend or indemnify any claims arising out of Takelia's use of the rental car based on Hertz's rental contract with Jeffrey. Alternatively, if the court found Jeffrey was covered by the Progressive insurance policy at the time of the crash, Hertz requested the court to find Progressive was the primary insurer and find any coverage owed by Hertz be secondary to the Progressive policy.

¶ 22 On July 31, 2009, the court entered a "Memorandum of Decision" regarding all three motions for summary judgment. Regarding Progressive's motion for summary judgment in its own declaratory action, the court found questions of material fact existed and denied Progressive's motion for summary judgment on that basis.

¶ 23 As to the remaining two cross-motions for summary judgment, filed by Dorsey and Hertz in Hertz's declaratory action, the court allowed Dorsey's motion for summary judgment against Hertz, that requested financial responsibility insurance coverage for Takelia under section 9-105 of the Vehicle Code (625 ILCS 5/9-105 (West 2004)), and found Hertz was obligated to defend and indemnify any claims arising out of the use of the vehicle driven by Takelia on January 23, 2004.

¶ 24 On January 15, 2010, Progressive filed a "Motion for Reconsideration and Supplemental Memorandum in Support of Motion for Summary Judgment" asking the court to reconsider its July 31, 2009, decision to deny Progressive's motion for summary judgment. By agreement of the parties, the court treated this new motion and memorandum as a "second" motion for summary judgment. In this second motion for summary judgment, Progressive submitted a supplemental statement of facts to assist the court in ruling on Progressive's motion. In this second motion, Progressive again contended that none of the defendants were "named insureds" or a relative of the named insured, Malissa, on the date of the January 23, 2004, vehicle crash. Further, the Toyota Camry was not a "covered vehicle" under the Progressive policy. Progressive further asserted the Toyota Camry did not qualify as a replacement vehicle for the Ford Explorer. According to the policy, a replacement vehicle only qualifies as a covered vehicle if it is "owned" by the named insured. This motion also submitted that Progressive had not waived its right to deny coverage for the January 23, 2004, vehicle crash as the court indicated in its July 31, 2009, memorandum of decision.

¶ 25 On July 27, 2010, the Court entered a Memorandum of Decision on Progressive's motion for reconsideration a/k/a the second motion for summary judgment. The court found Malissa and Jeffrey were no longer living together since October 2003, and were divorced on the date of the policy renewal, January 20, 2004. The court then evaluated who had the obligation to verify that the same parties and vehicles needed to be covered by the renewed policy, the named insured or the insurance provider, and found this issue raised a question of potential estoppel and/or waiver as a defense. The court found that the issue of whether waiver or estoppel applied

to these facts was a question of fact and the court denied Progressive's motion for summary judgment on this basis.[7]

¶ 26 On May 11, 2012, Hertz filed a motion to vacate the findings in the court's July 31, 2009, order in conjunction with a new motion for summary judgment. Hertz asked the court to find, based on the additional discovery attachments, that Takelia was not a permissive driver under the rental contract, and that Hertz was not liable for the acts of an unlicensed, impermissible user of the vehicle. Further, Hertz argued Jeffrey committed criminal acts by permitting Takelia to drive the vehicle as payment for illegal drugs and Hertz's contract with Jeffrey did not make Hertz liable for criminal acts by the lessee. Finally, Hertz contended that the parties had agreed to a stipulation of facts and admission of documents. Therefore, there were no longer any disputed factual issues that would preclude the court from ruling on Progressive's motion for summary judgment. The court denied Hertz's motion to vacate the July 2009 order, on September 12, 2012, but reserved ruling on the issue of primary and secondary liability.

¶ 27 The parties filed an "Agreed Statement of Facts" with several agreed documentary exhibits on May 30, 2012. The "Agreed Statement of Facts" included two affidavits prepared by Malissa. The first affidavit, dated October 27, 2004, provided that, as of October of 2003, Malissa and Jeffrey no longer lived together and Malissa's address remained the same as on the Progressive insurance policy: 866 South Myrtle Avenue, Kankakee, Illinois. Jeffrey's address, as of October of 2003, was 5802 Aspen Drive, St. Anne, Illinois. Malissa stated her marriage to Jeffrey was dissolved by way of a "Divorce Decree" on January 20, 2004. Malissa submitted that she had no relationship, by blood or otherwise, with Takelia or any of the parties in the Hertz vehicle at the time of the crash of the Hertz rental vehicle. Further, Malissa provided that she

[7]Throughout these proceedings, no party pled the affirmative defenses of waiver or estoppel.

had no knowledge of Jeffrey's rental of the Hertz vehicle, and no knowledge of the accident until sometime after January 23, 2004. Malissa's affidavit also stated that the Ford Explorer was "totaled" on or around January 18, 2004.

¶ 28 In the second affidavit, Malissa stated she married Jeffrey on February 17, 2001, and, shortly after the marriage, Malissa solely purchased the Progressive automobile insurance for two vehicles owned by Malissa, a 1999 Volkswagen and a 1993 Mazda, and Jeffrey was not named on the policy because he did not have a driver's license. Sometime during the marriage, Jeffrey reinstated his driver's license and Jeffrey was listed as an additional driver. Also, during the marriage, Malissa and Jeffrey purchased the Ford Explorer to replace a Mazda vehicle, which was titled in both Malissa and Jeffrey's names. Malissa's affidavit said, on or about January 18, 2004, a claim was made for the Ford Explorer after it was stolen and destroyed. Malissa's second affidavit provided she contacted Progressive sometime in February 2004 to ask Progressive to remove Jeffrey's name from the policy and have her premiums reduced accordingly. According to Malissa, Progressive sent her a form to be signed by Jeffrey acknowledging his removal from the policy. Progressive employees told her they could not remove Jeffrey from the policy without Jeffrey's permission. Malissa stated she was never able to contact Jeffrey for this purpose and her premiums were not reduced. Malissa said her policy was canceled in July of 2004.

¶ 29 The "Agreed Statement of Facts" also contained the "Auto Insurance Renewal" form that Progressive sent to Malissa on December 24, 2003, which included automatic payment withdrawals from the bank. That form listed "Drivers and household residents" as Malissa, as the named insured, and Jeffrey, as a "listed driver." The renewal form also included the 1999 Volkswagen and the 1996 Ford Explorer as covered vehicles. The actual declarations page of

the Progressive policy, for January 20, 2004, through July 20, 2004, only listed the Ford Explorer as the covered vehicle, and inadvertently omitted Malissa's Volkswagen.

¶ 30 The documents detailing the terms of the Progressive policy were included with the "Agreed Statement of Facts." Specifically, under the definitions section of the policy, the policy provided a definition for "**You**" or "**Your**" as used throughout the policy,[8] which means:

> "a. a person or persons shown as a named insured on the **Declarations Page**; and
>
> b. the spouse of a named insured if residing in the same household."

The policy provided the definition for "**Relative,**" which means:

> "[A] person residing in the same household as **you**, and related to **you** by blood, marriage, or adoption, including a ward, stepchild, or foster child. **Your** unmarried dependent children temporarily away from home will be considered residents if they intend to continue to reside in your household."

In the policy, "**Covered vehicle,**" in relevant parts, means:

> "a. any **vehicle** shown on the **Declarations Page**, unless **you** have asked **us** to delete that **vehicle** from the policy;
>
> ***
>
> c. any replacement **vehicle** on the date **you** become the **owner** if:
>
> (i) **you** acquire the **vehicle** during the policy period shown on the **Declarations Page**;
>
> (ii) the vehicle that **you** acquire replaces one shown on the **Declarations Page**; and
>
> (iii) no other insurance policy provides coverage for that **vehicle**."

[8]If the language from the insurance policy used bold print in its paragraphs, that same language is listed in bold print when quoted in this document.

The policy provided that a "**Non-owned vehicle**" means:

> "[A]ny **vehicle** that is not **owned** by **you**, a **relative**, or the named insured's non-resident spouse."

Finally, the policy provided additional definitions in "Part I - Liability to Others." The policy stated, "**Insured person**" or "**insured persons**" mean:

> "a. **you** or a **relative** with respect to an **accident** arising out of the ownership, maintenance, or use of a **covered vehicle**;
>
> b. any person with respect to an **accident** arising out of that person's use of a **covered vehicle** with the express or implied permission of **you** or a **relative**;
>
> c. a relative with respect to an **accident** arising out of the maintenance or use of a **non-owned vehicle** with the express or implied permission of the **owner** of the **vehicle**;
>
> d. **you** with respect to an **accident** arising out of the maintenance or use of any **vehicle** with the express or implied permission of the **owner** of the **vehicle;**
>
> e. any person or organization with respect only to vicarious liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in a, b, c, or d above.
>
> f. any Additional Interest Insured designated by **you** in **your** application or by a change request agreed to by **us**, with respect to liability for an **accident** arising out of the use of a **covered vehicle** or a **non-owned vehicle** by a person described in a, b, c, or d above."

Under the "General Provisions" of the policy, the terms of the policy provided:

> "The premium for each **vehicle** is based on information **we** have received from **you** or other sources. **You** agree to cooperate with **us** in determining if this information

is correct and complete, and **you** will notify **us** if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period, **we** may adjust **your** premium during the policy period, or take other appropriate action. To properly insure **your vehicle**, **you** must promptly notify **us** when:

1. **you** change **your** address;
2. any **resident** operators are added or deleted; or
3. **you acquire** an additional or replacement **vehicle**."

¶ 31 The parties agreed to proceed on the merits of the underlying consolidated complaints for declaratory judgment, filed by Progressive and Hertz, based on the "Agreed Statement of Facts" and the documents in the file. The court held argument on both consolidated complaints for declaratory judgment on April 11, 2013, and took the matter under advisement. The court allowed the parties to file further written briefs in support of their arguments.

¶ 32 The court filed a memorandum of decision on March 21, 2014, followed by a judgment order, on May 6, 2014. The court entered judgment against Progressive Insurance, and in favor of Dorsey. The court noted Progressive argued that the terms of the policy provided the spouse of a named insured is neither a named insured nor a relative of the named insured when the spouse is not residing in the named insured's household. As of January 20, 2004, the date of the judgment of dissolution and renewal of the existing policy, Progressive contended Jeffrey was no longer a spouse of Malissa and no longer living in the same household. Therefore, Jeffrey did not qualify for coverage regarding the January 23, 2004, crash of the rented Hertz vehicle under the terms of the Progressive policy.

¶ 33 The court found, in part, that Progressive paid the claim for the Ford Explorer that was stolen and destroyed on January 18, 2004, at a time when Jeffrey was no longer living with

Malissa, the named insured, which was a breach of some of the terms of the policy regarding a spouse no longer living with the named insured. The court's decision found, "It would appear that the provisions alleged to be breached [regarding liability for the January 23 crash] would similarly have been a basis for denial of payment on the claim filed for the loss of the Ford Explorer." Since Progressive paid the claim for the Ford Explorer, when Jeffrey and Malissa lived separately, and the Progressive policy "provided for rental reimbursement coverage" for the loss of the Ford Explorer, the court determined Jeffrey's rental of the Toyota Camry from Hertz was a replacement rental, under the policy, for use after the loss of the Ford Explorer.

¶ 34 The court further noted Progressive argued that the court had to apply the plain language of the policy to determine coverage and, since Jeffrey was not a spouse, relative, or residing with Malissa at the time of the Hertz lease or at the time of the accident, Jeffrey was not covered under Malissa's policy. However, the trial court found that the language in the declarations page of the renewed policy, that began on January 20, 2004, still had Jeffrey as a listed driver and still included the Ford Explorer as a covered vehicle. The court found that Progressive did not ask for updated information from Malissa or Jeffrey "during the time leading up to the continuation of coverage which occurred with the issuance of the new policy on January 20, 2004." The court applied the case of *Preferred Risk Mutual Insurance Co. v. Hites*, 125 Ill. App. 2d 144, 152-54 (1970), which held that no obligation existed on the part of the insured to provide information of changed circumstances unless asked by the insurer. Further, when Malissa asked Progressive to make changes to her policy, by fax on February 3, 2004, the court found Progressive responded on February 6, 2004, that it needed Jeffrey's signature to take him off her policy. Therefore, the court found that, even if Malissa attempted to take Jeffrey off of her policy on January 20, 2004, the change would not have been effectuated by January 23, 2004, the date of the accident.

Therefore, the plain language of the policy still listed Jeffrey and the Ford Explorer as covered under the policy.

¶ 35 The court order provided:

> "The Court finds that as a result of the above analysis, Progressive is precluded from denying coverage based upon the facts that at the time of the rental of the Toyota Camry [Jeffrey] was no longer living with [Malissa], and that at the time of the subsequent accident [Jeffrey] was no longer married to [Malissa]. That is, for purposes of interpretation of the policy, [Jeffrey] is to be considered to have the same coverage at the time of the rental of the Toyota Camry and the date of the accident involving such vehicle on January 23, 2004 as he did prior to the time of any separation from [Malissa]. As a result, [Jeffrey] would fall within the definition of 'you' in the policy. (Exhibit 6, page 7, paragraph 14.b.)."

¶ 36 The court noted that nothing in the facts indicated that, on January 20, 2004, the date of the judgment of dissolution, Malissa had knowledge that the Ford Explorer was already destroyed. Further, nothing indicated Malissa ever gave anyone permission to lease or drive the Toyota Camry rented from Hertz.

¶ 37 In conclusion, the court found that Progressive "has the obligation to perform under the provisions of Part I - Liability to Others, Insuring Agreement as set forth in the policy." Specifically, the court found Progressive was still required to provide coverage for Jeffrey on January 23, 2004, along with coverage for Jeffrey's Hertz rental car, and, therefore, Progressive was obligated to provide primary coverage under its policy for the January 23, 2004, occurrence and damages alleged in Dorsey's underlying negligence personal injury case, filed against Takelia and Jeffrey on behalf of the Dorsey siblings.

¶ 38 Next, the court order addressed Dorsey's argument that Hertz should be obligated to provide excess coverage for the injuries sustained by the Dorsey siblings on January 23, 2004, because damages for those injuries exceeded the coverage limits of the Progressive policy and Hertz was negligent in verifying the existence of the insurance coverage claimed by Jeffrey. The court found car rental companies do not have a duty to verify the existence of liability insurance. The court entered judgment in favor of Hertz and against Dorsey in its declaratory relief action, case No. 04-MR-1122, finding "no such liability existed on the part of the Hertz Corporation" for the personal injuries sustained by the Dorsey siblings alleged in the underlying negligence action.

¶ 39 After denying Progressive's motion for rehearing and reconsideration, Progressive filed a timely notice of appeal challenging the court order of May 6, 2014, which found Progressive was primarily liable for claims arising out of Takelia's accident involving the Hertz rental car. Hertz filed a notice of cross-appeal challenging the court's July 31, 2009, memorandum of decision finding in favor of Dorsey's motion for summary judgment that Hertz was liable for all claims arising from Takelia's accident pursuant to section 9-105 of the Vehicle Code. 625 ILCS 5/9-105 (West 2004). Dorsey filed a notice of cross-appeal challenging portions of the court's March 21, 2014, memorandum of decision and subsequent order finding Hertz was not liable for claims arising out of Takelia's vehicle accident.

¶ 40 ANALYSIS

¶ 41 I. Standards of Review

¶ 42 We begin by reviewing the trial court's rulings on the merits of Progressive's and Hertz's complaints for declaratory judgment. The court's rulings were based upon a stipulation of agreed facts submitted by the parties. Since this case was decided on undisputed facts, and our

focus remains on the resolution of legal issues, our review is *de novo. Founders Insurance Co. v. Munoz,* 237 Ill. 2d 424, 432 (2010). Additionally, we note the interpretation of language contained in this insurance policy and the Hertz rental car contract also presents an issue of law subject to *de novo* review. *Gaudina v. State Farm Mutual Automobile Insurance Co.*, 2014 IL App (1st) 131264, ¶ 17 (citing *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993)).

¶ 43 II. Progressive's Complaint for Declaratory Judgment

¶ 44 On appeal, Progressive contends the trial court erred by denying Progressive's complaint for declaratory judgment in the order dated May 6, 2014, which was based on the court's "Memorandum of Decision" dated March 21, 2014. Based on the language of the renewed insurance policy issued to Malissa on January 20, 2004, the trial court found the Progressive insurance policy provided primary liability coverage for the injuries sustained by the Dorsey siblings,[9] who were travelling as passengers in a Hertz rental car leased by Jeffrey. Additionally, Progressive argues the trial court erred by finding Hertz was not obligated by statute to provide liability coverage for the personal injuries sustained by the Dorsey siblings.

¶ 45 Both Hertz and Dorsey assert that the trial court properly decided that the Progressive policy gave rise to primary liability coverage by Progressive. However, for purposes of this appeal, Dorsey argues the court erroneously found the financial responsibility statute did not require Hertz to also provide secondary liability coverage under the circumstances in this case.

¶ 46 In order to resolve these issues, we begin by examining the language of the Progressive policy at issue. It is well established that "the rules applicable to contract interpretation govern

[9]The court found the "limits of the Progressive policy are subject to the claims of the underlying action," which was the negligence lawsuit filed by the Dorsey siblings *against* Takelia and Jeffrey and, thus, does not include coverage for Takelia.

the interpretation of an insurance policy." *Munoz,* 237 Ill. 2d at 433; *Gaudina,* at ¶ 17. Our primary objective in reviewing an insurance policy is to effectuate the intent of the parties, construing the policy as a whole, and accounting for every provision. *Gaudina,* at ¶ 17. When the words of a policy are unambiguous, " 'a court must afford them their *plain, ordinary, and popular meaning.' "* (Emphasis in original.) *Id.* at ¶ 18 (quoting *Outboard Marine Corp. v. Liberty Mutual Insurance Co*., 154 Ill. 2d 90, 108 (1992)). Yet, where words are defined in the policy, the definition in the policy controls. *Gaudina,* at ¶ 22.

¶ 47 According to the renewed policy at issue in this appeal, Progressive will pay claims for bodily injury and property damage for either an accident involving the use of a "covered vehicle" or damages resulting from the conduct of an "insured person" who becomes legally responsible for an accident arising out of "the ownership, maintenance, or use of a vehicle." The policy defines an "insured person" in relevant part, as:

> "a. you or a relative with respect to an accident arising out of the ownership, maintenance, or use of a covered vehicle;
>
> b. any person with respect to an accident arising out of that person's use of a covered vehicle with the express or implied permission of you or a relative;
>
> c. a relative with respect to an accident arising out of the maintenance or use of a non-owned vehicle with the express or implied permission of the owner of the vehicle;
>
> d. you with respect to an accident arising out of the maintenance or use of any vehicle with the express or implied permission of the owner of the vehicle."

¶ 48 Subparagraph (a) lists an "insured person" as "you or a relative with respect to an accident arising out of the ownership, maintenance, or use of a *covered vehicle*." (Emphasis added.) Similarly, subparagraph (b) lists an "insured person" as any person with respect to an

accident arising out of that person's use of a *covered vehicle* with the express or implied permission of you or a relative. The relevant provisions of the policy provides that a "Covered vehicle" means:

> "a. any vehicle shown on the Declarations Page, unless you have asked us to delete that vehicle from the policy;
>
> ***
>
> c. any replacement vehicle on the date you become the owner if:
>
> (i) you acquire the vehicle during the policy period shown on the Declarations Page;
>
> (ii) the vehicle that you acquire replaces one shown on the Declarations Page; and
>
> (iii) no other insurance policy provides coverage for that vehicle."

¶ 49 Ignoring for the moment whether Jeffrey was an insured person, the undisputed facts support one conclusion: that the vehicle owned by Hertz was not a "covered vehicle" for purposes of this policy. Consequently, we conclude Progressive was not required to provide coverage under either subparagraph (a) or (b) set forth above.

¶ 50 Yet, the Progressive policy provides liability coverage for "non-owned" vehicles. The Progressive policy provides that a "[n]on-owned vehicle means any vehicle that is not owned by you, a relative, or the named-insured's non-resident spouse." Based on this definition, we hold the Hertz rental car would fall under the definition of a "non-owned" vehicle. Consequently, we must next examine whether the precise circumstances surrounding the accident of January 23, 2004, warrants coverage for the use of a "non-owned" vehicle.

¶ 51 According to subparagraph (c), liability coverage exists for the use of a non-covered or "non-owned" vehicle by a "relative" of the named insured when the owner also grants the named insured's relative permission to use that particular vehicle. Since Hertz did not expressly grant Takelia permission to drive the Hertz vehicle, whether Jeffery qualifies as a "relative" for purposes of allowing Takelia to drive the rental car is not relevant. However, for the sake of a complete analysis, we will also address the arguments of the parties concerning whether Jeffery fell within the definition of a "relative" for purposes of coverage of a non-owned rental car according to the general definitions in the policy.

¶ 52 The Progressive policy defines "[r]elative" as "a person residing in the same household as *you*, and related to *you* by blood, marriage, or adoption." "You" means: "(a) a person or persons shown as a named insured on the Declarations Page; and (b) the spouse of a named insured if residing in the same household." Here, it is undisputed Malissa is the only named insured on the policy and Jeffrey was no longer her spouse on the date of the accident, January 23, 2004. Further, it is undisputed that Jeffrey and Malissa lived in separate households beginning in October of 2003. Therefore, at the time of the incident at issue, we conclude Jeffery did not qualify as a "relative" as necessary for liability coverage arising out of the use of a non-owned vehicle driven by Takelia with Jeffrey's permission to use the rental car.

¶ 53 Turning to subparagraph (d), this subparagraph similarly provides coverage for "you" when driving a non-owned vehicle with the permission of the owner of that vehicle. Again, the policy describes "you" to mean the named insured on the declarations page or the spouse of the named insured if residing in the same household. As stated above, at the time of the crash, Jeffrey does not qualify as "you" when referred to in the policy. Thus, in light of the arguments advanced by the parties, we reject the contention that Progressive was obligated to provide

coverage for personal injury claims arising in the underlying negligence lawsuit filed by Takelia's mother against Jeffery and Takelia.

¶ 54 In addition, both Hertz and Dorsey claim the Progressive coverage extends to a crash involving the Hertz rental vehicle on the basis that the Hertz paperwork referenced the rental vehicle as a "replacement vehicle."[10] In this case, the Progressive policy provides guidance by describing a "replacement vehicle" in the context of defining a "covered vehicle." The policy states a covered vehicle means:

> "[A]ny replacement vehicle on the date you *become the owner* if:
>
> (i) you acquire the vehicle during the policy period shown on the Declarations Page;
>
> (ii) the vehicle that you acquire replaces one shown on the Declarations Page;
>
> (iii) no other insurance policy provides coverage for that vehicle." (Emphasis added.)

Again, the undisputed facts reveal neither Malissa nor Jeffery became the owner of the Hertz vehicle. Thus, we reject Hertz's and Dorsey's contentions that, since the paperwork prepared as part of Hertz's lease arrangement with Jeffrey uses the term "replacement," Progressive must treat the rental vehicle as a covered vehicle.

¶ 55 Based on the ordinary and popular meaning of the adjective "replacement," Hertz and Dorsey argue that the term "replacement vehicle," as used in Malissa's Progressive policy is ambiguous. Both Dorsey and Hertz argue this ambiguity must be construed in favor of coverage

---

[10]Additionally, agents for both Hertz and Progressive testified in depositions of record that, generally, when an insured is seeking reimbursement for a rental vehicle from his or her insurance company, Hertz obtains a "CDP" number from the insurance company authorizing the rental, which was not obtained when Jeffrey leased the Hertz vehicle.

for the Hertz vehicle as a replacement vehicle. Consequently, both submit that the Hertz rental should be deemed a replacement vehicle under the policy.

¶ 56 An ambiguity will be found where the language in the policy is susceptible to more than one reasonable interpretation, based upon reading the policy as a whole. *Gaudina*, at ¶ 18. This court will not strain to find an ambiguity where none exists. *Id*. We hold the language of this policy is clear: a replacement vehicle, for purposes of this policy, must be *owned* by the named insured with a contractual relationship to Progressive. We conclude the vehicle owned by Hertz does not qualify as a replacement vehicle under the Progressive policy.

¶ 57 Based on our *de novo* review of the undisputed facts and terms of the policy, we conclude the Progressive policy did not provide coverage for any claims arising out of Takelia's crash of the non-owned Hertz rental vehicle on January 23, 2004.

¶ 58 III. Waiver Barring Progressive's Denial of Coverage

¶ 59 Next, we turn to the argument that Progressive should be precluded from denying coverage based on the doctrine of waiver and/or estoppel. Both Dorsey and Hertz urge this court to hold Progressive cannot deny coverage based on Jeffrey's relationship to Malissa since Progressive did not deny the claim for comprehensive coverage due to theft when the Ford Explorer was stolen while it was in Jeffrey's possession.

¶ 60 In the court's memorandum of decision on March 21, 2014, the trial court found:

> "Progressive is precluded from denying coverage based upon the facts that at the time of the rental of the Toyota Camry [Jeffrey] was no longer living with [Malissa], and that at the time of the subsequent accident [Jeffrey] was no longer married to [Malissa]. That is, for purposes of interpretation of the policy, [Jeffrey] is to be considered to have the same coverage at the time of the rental

of the Toyota Camry and the date of the accident involving such vehicle on January 23, 2004 as he did prior to the time of any separation from [Malissa]. As a result, [Jeffrey] would fall within the definition of 'you' in the policy."

¶ 61 The court did not recognize that the status of the Ford Explorer as a covered vehicle under Malissa's Progressive policy warranted comprehensive coverage under the policy. Since the Ford Explorer was listed as a specific covered vehicle on the declarations page of Malissa's policy, we conclude the payment of the claims for theft or destruction of a covered vehicle was not contingent on Jeffery's marital status to Malissa, but rather was triggered solely on the basis that the status of the stolen vehicle was that of a "covered vehicle." Therefore, the court's decision to rely on waiver or estoppel against Progressive for purposes of liability coverage arising out of the status of Jeffery with respect to the policy was improper.

¶ 62 Further, Progressive asserts on appeal that neither Dorsey nor Hertz pled waiver or estoppel as an affirmative defense in the trial court. It is well established that affirmative defenses such as waiver and estoppel must be pled to be enforced and, if they are not pled, the defenses themselves are deemed waived even if there is evidence to support those defenses. *Dragon Construction, Inc. v. Parkway Bank & Trust*, 287 Ill. App. 3d 29, 34 (1997). Since these defenses were not properly pled, we conclude Hertz and Dorsey waived this argument and hold the trial court improperly applied waiver and/or estoppel in this case against Progressive.

¶ 63 IV. Hertz's Complaint for Declaratory Judgment

¶ 64 The court's memorandum of decision, entered on March 21, 2014, followed by the judgment order on May 6, 2014, also addressed the merits of the issues raised in Hertz's separate complaint for declaratory judgment. The court entered judgment in favor of Hertz and against Dorsey and Progressive in Hertz's complaint for declaratory judgment, in case No. 04-MR-1122,

finding "no such liability existed on the part of the Hertz Corporation" for the personal injuries sustained by the Dorsey siblings as alleged in the underlying negligence action.

¶ 65 On appeal, Hertz submits three arguments in support of its request to have the trial court's May 6, 2014, order affirmed. First, Hertz argues the trial court properly determined, in the May 6, 2014, order, that liability coverage existed with respect to the January 23, 2004, accident according to the provisions of Malissa's Progressive policy. Consequently, Hertz asserts the court correctly found that the financial responsibility statute was not applicable to the facts of this case since coverage existed under Malissa's Progressive policy, and Hertz could not be compelled to provide coverage by statute due to the uninsured status of Takelia, the driver of the rental car on January 23, 2004.

¶ 66 Second, Hertz argues that it was not responsible for any secondary coverage because the rental contract had an express exculpatory clause negating coverage when Jeffrey violated the terms of the rental contract by unlawfully allowing an unlicensed minor to operate the vehicle in exchange for illegal drugs. Finally, in the alternative and for purposes of case No. 04-MR-1122, Hertz argues, if this court determines Hertz must provide coverage pursuant to the statutory financial responsibility provisions, then the liability limitations contained in section 9-105 of the Vehicle Code should be applied. 625 ILCS 5/9-105 (West 2004).

¶ 67 In response, Progressive asserts that Hertz is required by law to provide financial responsibility coverage for the rental vehicle under section 9-101 *et seq.* of the Vehicle Code since the person who rented the car was not insured. 625 ILCS 5/9-101 *et seq.* (West 2004). Dorsey argues the court should have found, under these circumstances because Hertz did not verify the Progressive coverage, that Hertz should also be responsible for coverage, even if Hertz's financial responsibility was secondary to Progressive's coverage.

¶ 68 The court's memorandum of decision on March 21, 2014, and subsequent judgment order on May 6, 2014, noted that it is not the normal practice and procedure for car rental companies to verify the existence of purported liability insurance asserted by the person leasing a rental vehicle. Therefore, the trial court entered judgment in favor of Hertz and against Dorsey in case No. 04-MR-1122, finding "no such liability existed on the part of the Hertz Corporation" for the personal injuries sustained by the Dorsey siblings alleged in the underlying negligence action.

¶ 69 Dorsey contends that exculpatory clauses in car rental contracts voiding liability coverage under section 9-105 of the Vehicle Code (625 ILCS 5/9-105 (West 2004)) are invalid as against public policy. See *Hertz Corp. v. Garrott*, 238 Ill. App. 3d 231 (1992). We note that *Garrott* is distinguishable because the case involved whether liability coverage purchased as part of the rental agreement could be rescinded along with the rest of the rental contract based on a breach of the contract and the included exculpatory clauses. *Id*. While distinguishable, the *Garrott* case is instructive in the instant case regarding exculpatory clauses in the rental contract. The *Garrott* court held that "the provision within the rental contract which voided liability protection based upon the prohibited use of the rental vehicle, namely, driving while under the influence of an intoxicant, is found to be invalid as against public policy." *Id.* at 239-40.

¶ 70 Here, it is undisputed that Jeffrey did not purchase separate liability coverage from Hertz when offered the opportunity to do so. Further, as stated above, this court has now determined that the Progressive policy did not provide liability coverage under the unique circumstances of this case. Hence, the financial responsibility statute would be the sole basis for liability coverage in this case. Existing case law has held that the financial responsibility statute (625 ILCS 5/9-101 *et seq.* (West 2004)) "was enacted for the purpose of protecting the public from negligent drivers of rented vehicles." *Fellhauer v. Alhorn*, 361 Ill. App. 3d 792, 797 (2005); *Fogel v.*

Enterprise Leasing Co. of Chicago, 353 Ill. App. 3d 165, 176 (2004). Our supreme court, in *Munoz*, held that an unlicensed driver cannot have a reasonable belief that he or she is authorized to use or operate the rental vehicle. *Munoz*, 237 Ill. 2d at 438. Although *Munoz* involved the car rental company rescinding the additional liability insurance purchased by the lessee through the rental contract, the *Munoz* court held that an unlicensed driver would not be covered under a policy of insurance or "have a reasonable belief of coverage as a matter of public policy." *Id.*

¶ 71 Although the instant case did not involve liability coverage purchased from the car rental company, based on this case law, we conclude the financial responsibility statute (625 ILCS 5/9-101 *et seq.* (West 2004)) applies to the case at bar regarding the injured Dorsey siblings. The Dorsey siblings were members of the public for whom the financial responsibility laws were intended to protect when there was no other insurance coverage available. See *Fellhauer,* 361 Ill. App. 3d at 797. Therefore, we reverse the trial court's order of May 6, 2014, and find that Hertz is liable for the claims arising from injuries sustained by the Dorsey siblings in the January 23, 2004, accident involving the Hertz rental car.

¶ 72 V. Limits to Hertz's Liability

¶ 73 Next, having found against Hertz and for Dorsey in Hertz's complaint for declaratory judgment, holding Hertz is liable under the financial responsibility laws of the Vehicle Code (625 ILCS 5/9-101 *et seq.* (West 2004)), we must determine whether the limits of financial responsibility set forth in section 9-105 of the Vehicle Code (625 ILCS 5/9-105 (West 2004)) are also applicable to rental car companies that have provided certificates of self-insurance pursuant to section 9-102 of the Vehicle Code (625 ILCS 5/9-102 (West 2004)). Here, Hertz provided its proof of self-insurance as required by the statute. *Id.* If Hertz had obtained a separate insurance policy pursuant to section 9-105 of the Vehicle Code, that statute requires the owners of car

rental companies to secure a policy insuring the operator of the rented motor vehicle against liability for bodily injury in the minimum amount of $50,000 per person and $100,000 per occurrence. 625 ILCS 5/9-105 (West 2004). The statute regarding self-insurance does not similarly indicate an amount of financial responsibility for which self-insured car rental companies are required to be responsible. In *Fellhauer*, the court held that the coverage limits of section 9-105 applied to self-insured car rental companies and the minimum financial responsibility limits of that section also applied to self-insurance coverage. *Fellhauer*, 361 Ill. App. 3d at 798-99.

¶ 74 On October 8, 2015, our supreme court recently decided the case of *Nelson v. Artley*, 2015 IL 118058, and upheld the *Fellhauer* appellate decision finding the limits of liability, required by car rental companies that obtain an insurance policy, are also applicable to car rental companies that are self-insured. We agree and are bound by that decision.

¶ 75 Thus, we conclude the limits of $50,000 per person or $100,000 per occurrence apply to Hertz's self-insurance coverage for injuries sustained by the Dorsey siblings who were innocent passengers in the Hertz rental car. Accordingly, the portion of the May 6, 2014, order finding no liability on Hertz's part with regard to the Dorsey siblings has been reversed, but its liability is limited according to the statute.

¶ 76 VI. Hertz's and Dorsey's Cross-Appeals

¶ 77 In its cross-appeal, Hertz challenges the trial court's July 31, 2009 order. The 2009 order resolved cross-motions for summary judgment filed by Hertz and Dorsey in case No. 04-MR-1122, the declaratory action initiated by Hertz.[11]

[11]The July 31, 2009, order also denied Progressive's separate motion for summary judgment filed in its own case for declaratory judgment, case No. 04-MR-648, finding there were

¶ 78 In the Hertz case, Dorsey filed a 2007, and subsequent 2008, motion for summary judgment against Hertz, *on behalf of the Dorsey siblings*, asking the court to enter summary judgment in favor of Dorsey by declaring the financial responsibility provisions of section 9-105 of the Vehicle Code applied because Takelia was operating the rental vehicle with Jeffery's consent. 625 ILCS 5/9-105 (West 2004). On May 27, 2008, Hertz filed its own motion for summary judgment in case No. 04-MR-1122, asking the court to enter summary judgment in favor of Hertz by declaring Hertz was not obligated to defend or indemnify any claims related to Takelia's use of the vehicle based on the defense that Jeffery was prohibited from using the rental car in an unlawful fashion according the rental agreement.

¶ 79 In a July 31, 2009, order, the trial court granted Dorsey's motion for summary judgment, finding that section 9-105 of the Vehicle Code (625 ILCS 5/9-105 (West 2004)) was applicable and that Hertz was obligated to defend and indemnify any claims arising out of the use of the vehicle driven by Takelia, as asserted by her mother, Dorsey, on behalf of the other Dorsey siblings. After the unfavorable ruling, Hertz filed a motion asking the court to vacate that order in May of 2012. The court refused to vacate the July 31, 2009, order in a subsequent order dated September 12, 2012.

¶ 80 For purposes of this cross-appeal by Hertz, Dorsey contends the trial court correctly decided, in July of 2009, that Hertz should provide coverage for all claims arising from the January 23, 2004, accident involving Takelia *and* the other Dorsey siblings as a matter of public policy. We review a grant of summary judgment *de novo*. *Crum*, 156 Ill. 2d at 390.

¶ 81 On appeal, both Progressive and Dorsey argue Hertz is bound by the same financial responsibility laws to provide coverage for Takelia as well as the other Dorsey siblings. We

---

factual questions remaining that prevented the court from ruling on Progressive's motion for summary judgment. That portion of the order is not relevant to this appeal.

disagree that public policy requires Hertz to defend Takelia or provide coverage for her injuries in this case.

¶ 82 As stated above, an unlicensed driver cannot have a reasonable belief that he or she is authorized to use or operate the rental vehicle or "have a reasonable belief of coverage as a matter of public policy." See *Munoz*, 237 Ill. 2d at 438. The case law further provides the purpose of the financial responsibility laws is to protect the public from negligent drivers. See *Nelson*, 2015 IL 118058, at ¶ 15; *Fellhauer*, 361 Ill. App. 3d at 797. Further, the coverage provided by the rental car company or through the financial responsibility laws is intended to benefit the public, and Illinois cases have held that an insurer's policy defenses, although available against an insured, cannot be raised against an innocent third party. *Huff v. Enterprise Rent-A-Car Co., Midwest*, 307 Ill. App. 3d 773, 778-79 (1999).

¶ 83 Based on the facts of this case, we affirm the trial court's 2009 ruling finding Hertz's financial responsibility extends to the injuries sustained by the Dorsey siblings. Based on case law, we conclude the Dorsey siblings were members of the innocent public because they were minors travelling as passengers in the rental car owned by Hertz. However, the trial court's 2009 order imposed statutory financial responsibility on Hertz to provide coverage for all claims, including Takelia's injuries, that occurred while she was operating the rental car without a valid driver's license. We are mindful that claims regarding the injuries to the innocent passengers will likely exceed the statutory limits of financial responsibility for Hertz. Therefore, we reverse the trial court's order of July 31, 2009, wherein the court granted summary judgment in favor of Dorsey as it pertains to Hertz providing coverage for Takelia's injuries.

¶ 84 CONCLUSION

¶ 85 For the foregoing reasons, we reverse the court's order of July 31, 2009, finding Hertz is liable under the financial responsibility sections of the Code to defend and provide liability coverage for *any* claims arising out of Takelia's use of the Hertz vehicle as it relates to Takelia's injuries. We affirm the grant of Dorsey's motion for summary judgment on July 31, 2009, regarding Hertz's financial responsibility to provide liability insurance coverage for the Dorsey siblings. We also reverse the court's order of May 6, 2014, finding Progressive is obligated to provide primary liability coverage in this case under the terms of the renewed insurance policy, thereby relieving Hertz of the obligations set out by the financial responsibility laws of this State as the owner of the Hertz vehicle involved in the crash. We further reverse the portion of the court's May 6, 2014, order that determined Hertz did not have an obligation to provide liability coverage for the injuries suffered by the Dorsey siblings, excluding Takelia, within the financial limits of section 9-105 of the Code. 625 ILCS 5/9-105 (West 2004).

¶ 86 Affirmed in part and reversed in part.