

NOTICE

Decision filed 06/11/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130265-U

NO. 5-13-0265

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

BRANDON NIEMIER, MICHAEL NIEMIER, and)	Appeal from the
BETH NIEMIER,)	Circuit Court of
)	Madison County.
Plaintiffs-Appellees,)	
)	
v.)	No. 12-MR-212
)	
COUNTRY PREFERRED INSURANCE)	
COMPANY,)	Honorable
)	Barbara L. Crowder,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Spomer and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in denying the insurer's motion for summary judgment and granting the insureds' cross-motion for summary judgment where the insureds' claims for medical expenses and loss of society arose from the bodily injuries sustained by their child and constituted a single injury, thus falling within the "per person" limit of underinsured coverage. Reversed and remanded.

¶ 2 The plaintiffs, Brandon Niemier, Michael Niemier, and Beth Niemier, filed a declaratory judgment action and sought underinsured motorist payments under a policy of motor vehicle insurance that they had purchased from the defendant, Country Preferred Insurance Company. The trial court determined that there was underinsured

coverage available to the Niemiers under their Country Preferred policy, and it granted the Niemiers' motion for summary judgment and denied Country Preferred's motion for summary judgment. On appeal, Country Preferred contends that the circuit court erred in finding that underinsured coverage was available under its policy for the following reasons: Brandon was the only person who suffered bodily injuries in the accident and his parents' claims for medical expenses and loss of society arose from Brandon's injuries and thus fell within the "per person" coverage limit in the Country Preferred policy; the "per person" underinsured coverage limit was identical to the tortfeasor's "per person" liability limit; and, the Niemiers were paid the "per person" liability limit under the tortfeasor's policy in settlement of all claims arising from the bodily injury to Brandon. We reverse and remand with instructions.

¶ 3 The pertinent facts are not in dispute. Brandon Niemier is the son of Michael Niemier and Beth Niemier. On August 30, 2011, Brandon was operating a farm tractor when it was hit by another vehicle. Brandon sustained serious physical injuries, and he had \$186,111 in medical expenses. Brandon's parents did not witness the accident and they were not present at the scene. They suffered no bodily injuries as a result of the accident. Jeffrey Alldredge was the driver of the other vehicle involved in the accident. His vehicle was insured by State Farm Mutual Insurance Company, and he carried liability limits of \$250,000 per person and \$500,000 per occurrence.

¶ 4 The Niemiers filed a claim with State Farm and sought compensation for Brandon's injuries and for the medical expenses paid by Brandon's parents. The Niemiers eventually settled their claims with State Farm for the "per person" liability limit of

\$250,000. Under the terms of the settlement, \$110,000 was allocated to Brandon and \$140,000 was allocated to his parents.

¶ 5 After reaching the settlement with State Farm, the Niemiers made a claim for underinsured motorist payments under their Country Preferred auto policy. They had purchased underinsured coverage with limits of \$250,000 per person and \$500,000 per occurrence. Country Preferred determined that the Alldredge vehicle was not an underinsured vehicle as defined in its policy and denied the claim. The Niemiers then filed this declaratory judgment action. Following a period for discovery, each party filed a motion for summary judgment. Country Preferred argued that underinsured coverage was not available for the following reasons: Brandon was the only person who suffered bodily injuries in the accident and his parents' claims for medical expenses and loss of society arose from Brandon's injuries and thus fell within the "per person" coverage limit in the Country Preferred policy; the "per person" underinsured coverage limit was identical to the tortfeasor's "per person" liability limit; and the Niemiers were paid the "per person" liability limit under the tortfeasor's policy in settlement of all claims arising from the bodily injury to Brandon. The circuit court reviewed the language in the Country Preferred policy and concluded that underinsured coverage was available up to \$140,000 for Brandon, and up to \$110,000 for his parents. The court granted the Niemiers' motion for summary judgment and denied Country Preferred's motion for summary judgment. This appeal followed.

¶ 6 Summary judgment is proper where the pleadings, depositions, admissions, and affidavits on file, when viewed in a light most favorable to the nonmoving party, reveal

that there is no genuine issue of 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). The construction of an insurance policy provision is a question of law that can be properly decided on a motion for summary judgment. *McKinney v. Allstate Insurance Co.*, 188 Ill. 2d 493, 497, 722 N.E.2d 1125, 1127 (1999). The trial court's rulings on a motion for summary judgment are reviewed *de novo*. *McKinney*, 188 Ill. 2d at 497, 722 N.E.2d at 1127.

¶ 7 In construing the provisions of an insurance policy, the court must examine the language used to ascertain the intent of the parties. *McKinney*, 188 Ill. 2d at 497, 722 N.E.2d at 1127. An insurance policy should be considered as a whole, with all its provisions read together rather than as isolated parts, in order to determine whether an ambiguity exists. *United States Fire Insurance Co. v. Schnackenberg*, 88 Ill. 2d 1, 429 N.E.2d 1203 (1981). If the terms of an insurance policy are clear and unambiguous, they must be given their plain and ordinary meaning. *McKinney*, 188 Ill. 2d at 497, 722 N.E.2d at 1127.

¶ 8 In this case, the Niemiers purchased motor vehicle insurance with underinsured limits of \$250,000 for each person and \$500,000 for each occurrence from Country Preferred. Underinsured coverage is addressed in section 2 of the Country Preferred policy. Section 2 defines an underinsured motor vehicle as: "any type of motor vehicle or trailer for which the sum of all liability bonds or policies at the time of an accident are less than the limit of this insurance." Section 2 also discusses the limits of underinsured coverage and states in part:

"a. The limit of liability for 'each person' is the maximum amount we will pay for all damages arising out of bodily injury to any one person in any one accident. That maximum amount includes any claims of other persons for damages arising out of that bodily injury.

The figure listed is the most we will pay for any one person in any one accident regardless of the number of insureds, claims made, insured vehicles, premiums shown on the declarations page, or uninsured or underinsured vehicles involved in the accident.

* * *

e. The most we will pay under Underinsured Motorists Coverage, Coverage U, to any one person is the lesser of:

(1) the difference between the 'each person' limit of this coverage as shown on the declarations page for this coverage and the amount paid to the insured by or on behalf of persons or organizations who may be legally responsible for the bodily injury caused by an underinsured motor vehicle;
or

(2) the difference between the amount of the insured's damages and the amount paid to the insured by or on behalf of persons or organizations who may be legally responsible for the bodily injury caused by an underinsured motor vehicle.

f. Subject to item e. (1) and (2) above, the maximum we will pay to all insureds is the difference between the 'each occurrence' limit of this coverage as

shown on the declarations page and the amount paid to the insured by or on behalf of persons or organizations who may be legally responsible for the bodily injury caused by an underinsured motor vehicle."

¶ 9 In this case, Brandon Niemier was the only person who sustained physical injuries in the accident on August 30, 2011. Under the plain language of the Country Preferred policy, Brandon's parents' claims for medical expenses and loss of society arose from bodily injuries to one person, Brandon, and thus fell within the \$250,000 "per person" underinsured limit in the Country Preferred policy. See *Illinois Farmers Insurance Co. v. Marchwiany*, 222 Ill. 2d 472, 856 N.E.2d 439 (2006); *McKinney*, 188 Ill. 2d 493, 722 N.E.2d 1125; *Katz v. State Farm Mutual Automobile Insurance Co.*, 2012 IL App (1st) 110931, 965 N.E.2d 636.

¶ 10 The purpose of underinsured coverage is to fill the gap between the benefits paid by a tortfeasor's insurance carrier and the limit of underinsurance coverage specified in an insured's policy. *Martin v. Illinois Farmers Insurance*, 318 Ill. App. 3d 751, 758, 742 N.E.2d 848, 853 (2000). In this case, the tortfeasor's insurer paid the maximum "per person" liability limit to the Niemiers to resolve all claims, direct and derivative, which resulted from Brandon's injuries. Since the tortfeasor's "per person" limit of liability is the same as the "per person" limit of underinsured coverage in the Country Preferred policy, and since the Niemiers' claims fit within the "per person" underinsured limit, there is no gap in coverage. The trial court erred in finding that the Country Preferred policy afforded underinsured coverage up to \$140,000 for Brandon and up to \$110,000 for his parents.

¶ 11 Accordingly, the circuit court's orders granting the plaintiffs' motion for summary judgment and denying the defendant's motion for summary judgment are reversed, and the cause is remanded with instructions to enter a summary judgment in favor of the defendant.

¶ 12 Reversed and remanded with instructions.