

NO. A06-759

State of Minnesota
In Court of Appeals

ILLINOIS FARMERS INSURANCE COMPANY,
Appellant,

v.

WILLIAM STEWART,
Respondent.

APPELLANT'S BRIEF AND APPENDIX

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LEGAL ISSUES

I. Whether a claimant, after being in an accident while driving a vehicle the claimant owned but did not insure, can recover excess uninsured motorist benefits through an insurance policy covering a different vehicle owned by the claimant.

OR

Whether a policy exclusion barring coverage for damages arising out of an accident involving a vehicle the claimant owned but did not insure is valid.

The Trial Court Held: That the exclusion did not apply, based on Sibbert v. State Farm Mut. Auto. Ins. Co., 371 N.W.2d 201 (Minn. 1985), and Sobania v. Integrity Mut. Ins. Co., 371 N.W.2d 197 (Minn. 1985).

**Hanson v. Am. Family Mut. Ins. Co., 417 N.W.2d 94 (Minn. 1987)
Wintz v. Colonial Ins. Co. of California, 542 N.W.2d 625 (Minn. 1996)
Minn.Stat. §65B.49**

II. Whether an employee identified in his employer's insurance policy qualifies as an insured for purposes of Minn.Stat. §65B.49, to preclude the employee from recovering additional uninsured motorist benefits beyond that provided by the employer-obtained policy?

The Trial Court Held: That the employee did not qualify as an insured for purposes of precluding additional uninsured motorist pursuant to Minn.Stat. §65B.49.

**Becker v. State Farm Mut. Auto. Ins. Co., 611 N.W.2d 7 (Minn. 2000)
Minn.Stat. §65B.43**

STATEMENT OF FACTS

This appeal arises out of an automobile accident that occurred on or around August 2, 2001. (See, A-1). On that date the Respondent, William Stewart, was involved in a collision with an uninsured motorist. (See, A-1). Mr. Stewart owned the vehicle he was driving. (See, A-1). He and his wife also owned another vehicle (not involved in the accident). (See, A-2). The Stewarts selected insurance for the other vehicle they owned through Appellant Illinois Farmers, but did not insure or pay premiums for Mr. Stewart's vehicle, which he was driving when the accident occurred. (See, A-2; A-6). The policy in question contains an exclusion for accidents involving vehicles owned but not insured by the insured: "**Exclusions...**This [UM] coverage does not apply to bodily injury sustained by a person...While occupying any vehicle owned by you or a family member for which insurance is not afforded under this policy." (See, A-20).

At the time of the accident, Mr. Stewart was driving in the scope of his employment. Although he did not insure his vehicle, the vehicle was covered under a policy of insurance obtained by Mr. Stewart's employer, Quicksilver Express. (See, A-1; A-38). The insurance certificate for the Quicksilver policy specifically names Mr. Stewart and identifies his vehicle. (See, A-38). Identified vehicle owners are also additional insureds under the policy. (See, A-51,52).

Following the accident, Mr. Stewart recovered uninsured motorist benefits from the employer's insurance covering the vehicle. (See, A-2). He then sought additional uninsured motorist benefits under the Illinois Farmers policy. Illinois Farmers denied

coverage on the grounds that the policy in question did excluded coverage for vehicles which the insured owned but did not insure.

Mr. Stewart instituted a declarations action to determine coverage in Hennepin County District Court. (See, A-67). Appellant Illinois Farmers moved for summary judgment on the ground that Mr. Stewart was not entitled to benefits under the policy. (See, A-69). Respondent opposed the motion, arguing that the policy provided valid first-party coverage and that the family-owned vehicle exclusion was invalid. (See, A-76).

The District Court ruled in Mr. Stewart's favor. (See, A-96). Appellant asked the court to reconsider. (See, A-104). The District Court denied this motion by Order dated January 17, 2006. (See, A-109). The parties entered into a stipulation for an order for entry of judgment against Illinois Farmers for benefits under the policy, which was signed by the Judge on February 21, 2006. (See, A-1). Judgment was entered on February 27, 2006. (See, A-110).

Appellant then filed the instant appeal. (See, A-111).

ARGUMENT

I. Standard of Review

This matter requires interpretation of portions of the Minnesota No-Fault Act. (Minn.Stat. §§65B.41-71). “Statutory interpretation is a question of law, which this court reviews de novo. Nelson v. American Family Ins. Group, 651 N.W.2d 499, 503 (Minn. 2002), (interpreting Act). This matter also requires interpretation of an insurance contract, which is another question of law reviewed de novo. Dohney v. Allstate Ins. Co., 632 N.W.2d 598, 600 (Minn. 2001).

II. The Family-Owned Vehicle Exclusion Bars Coverage.

Minnesota law requires all vehicle owners to obtain certain minimum coverage for accidents involving uninsured/underinsured motorists, as part of the Minnesota No-Fault Act. Minn.Stat. §§65B.41-.71. “Every owner of a motor vehicle registered or principally garaged in this state shall maintain uninsured and underinsured motorist coverages.” Minn.Stat. §65B.49, Subd. 3a(2). This provision clearly mandates that owners obtain coverage for their vehicles.

Additionally, the legislature has written into law the following provision which permits insurers to exclude UM/UIM coverage for owned but non-insured vehicles:

The uninsured and underinsured motorist coverages required by this subdivision do not apply to bodily injury of the insured while occupying a motor vehicle owned by the insured, unless the occupied vehicle is an insured motor vehicle.

Minn.Stat. §65B.49, subd. 3a(7).

Under the doctrine of “in pari materia,” statutes relating to same subject matter should be construed together. See, Rogers v. Minneapolis Street Railway Co., 16 N.W.2d 516, 518 (Minn. 1944), (also noting different provisions of same act to be “construed together.”). When read together, these two provisions of the No-Fault Act indicate that where an owner fails to obtain or maintain coverage for their own vehicle, insurers are not required to provide UM/UIM coverage for accidents involving those vehicles.

This is the exact understanding of the Supreme Court: “In 1985, the legislature amended Minn.Stat. §65B.49, subd. 3a(7) (supp. 1985) to allow insurance companies to exclude certain vehicles from uninsured motorist coverage if the vehicle was owned by the policyholder, but not insured by the policyholder.” Wintz v. Colonial Ins. Co. of California, 542 N.W.2d 625, 626 (Minn. 1996). This is consistent with the No-Fault Act’s mandate that “every owner of a motor vehicle registered or principally garaged in this state shall maintain uninsured and underinsured motorist coverages,” and that insureds should not be entitled to coverage which they chose not to purchase for their vehicles. Minn.Stat. §65B.49, Subd. 3a(2).

The claimant in Wintz was injured while riding on a motorcycle that had been left by a relative at the claimant’s household. Wintz, 542 N.W.2d 625. Her husband had insurance for other vehicles in the household, but not the motorcycle. Id. The claimant’s insurer denied coverage based on the owned but not-insured (also called the “family-owned vehicle”) exclusion. Id. The claimant argued that the exclusion should be void, and that she should be entitled to benefits under the policy. Id. The Supreme Court disagreed, noting that the exclusion was expressly permitted by the No-Fault Act, and

that “To void an exclusionary clause where the vehicle was ‘owned by or furnished or available for the regular use of’ the first-party beneficiary would allow a policyholder to insure only one vehicle, and gain coverage on any/all other uninsured vehicles.” Wintz, 542 N.W.2d at 627.

In opposing summary judgment, Plaintiff relied on numerous cases which found such exclusions void prior to or without consideration of the Legislature’s 1985 legalization of the exclusion. See, American Motorist Ins. Co. v. Sarvela 327 N.W.2d 77 (Minn. 1982); Myers v. State Farm Mut. Auto. Ins. Co., 336 N.W.2d 288 (Minn. 1983); Linder by Linder v. State Farm Mut. Auto. Ins. Co., 364 N.W.2d 481 (Minn.Ct.App. 1985); Sobania v. Integrity Mut. Ins. Co., 371 N.W.2d 197 (Minn. 1985); Sibbert v. State Farm Mut. Auto. Ins. Co., 371 N.W.2d 201 (Minn. 1985); Petrich by Lee v. Hartford Fire Ins. Co., 427 N.W.2d 244 (Minn. 1988); and American Family Mut. Ins. Co v. Luhman, 438 N.W.2d 453, 456 at n.2 (Minn.Ct.App. 1989), (specifically noting that while “The legislature validated what had previously been invalid ‘family-owned vehicle’ exclusions,” 1985 amendments not applicable to 1983 accident.). The fact is, the legislature adopted into law the exclusion at issue here, the Supreme Court has recognized same, and the exclusion is not void in this situation as it was prior to the 1985 amendment. Wintz, 542 N.W.2d 625.

The Supreme Court has also explained that the excess coverage option exists to allow the insured to pre-select the amount of UM coverage they want available. Schons v. State Farm Mut. Auto. Ins. Co., 621 N.W.2d 743, 747-48 (Minn. 2001). Before an accident occurs, the insured can choose and pay for the level of coverage they want, and

if an accident occurs and the vehicle has less coverage than the insured chose and paid for, the insured can access their own policy. Id. The excess coverage rule essentially provides people with UM coverage to the same extent they would have had if involved in an accident in their own vehicle.

In this case, Mr. Stewart was involved in an accident in his own vehicle. As the owner, Mr. Stewart had the responsibility to insure his vehicle and in doing so he could have pre-selected and paid for a higher level of coverage than that afforded under his employer's policy. Instead of insuring his own vehicle, he chose to rely on his employer's insurance, pre-selecting his employer's level of coverage. Since he was driving his own vehicle, and he pre-selected his employer's level of coverage for same, consistent with the purposes of the Act he should be limited to the level of coverage he pre-selected.

Mr. Stewart may argue that he did obtain and pay for UM coverage, and that he should be entitled to its benefits. In making such an argument, Mr. Stewart ignores the fact that the coverage he (or his spouse) paid for was for a different vehicle than the one involved in the accident. Mr. Stewart may attempt to counter this argument by arguing that UM coverage has traditionally been 1st party coverage following the person rather than the vehicle. This is the argument he made before the district Court in his memorandum opposing summary judgment, and an argument the district court erroneously adopted in denying Illinois Farmers' motion for summary judgment. This is because the Supreme Court already considered and rejected this argument in light of the 1985 amendments, in Hanson v. Am. Family Mut. Ins. Co., 417 N.W.2d 94, 96 (Minn. 1987).

As recently explained by the Supreme Court in regard to the owned but non-insured exclusion at issue (Minn.Stat. § 65B.49, subd. 3a(7)):

We have interpreted that provision as moving UM/UIM coverage away from coverage that follows the individual policyholder and instead ties it to the particular vehicle specified in the insurance policy. Hanson v. Am. Family Mut. Ins. Co., 417 N.W.2d 94, 96 (Minn. 1987). Before the 1985 amendment, we considered UM/UIM insurance to be coverage tied to the individual. Id. at 95. We noted that the legislature passed this amendment "to stem rising insurance costs, which it traced in part to prior law requiring expansive interpretation of vehicle insurance coverage." Id., [citation omitted].

Turner v. Mutual Service Cas. Ins. Co., 675 N.W.2d 622, 624 (Minn. 2004). As explained by the Supreme Court in Turner, in 1985 the legislature made a shift for this particular coverage to focus on the vehicle involved, not the insured, to reign in costs/claims. See also Schons, 621 N.W.2d at 747.

In Hanson, an insured was injured while driving his own motorcycle. Hanson, 417 N.W.2d 94. He also owned a truck which he did insure. Id. He attempted to recover UM benefits through the policy covering his truck, arguing that the coverage was first party coverage following the person, not the vehicle. Id. The Hanson Court rejected this argument, noting that the 1985 amendments "reflect a broad policy decision to tie uninsured motorist and other coverage to the particular vehicle involved in an accident." Id. The court upheld the exclusion, noting that "Allowing a claimant to extend uninsured motorist coverage from an [insured] automobile to an owned but uninsured [vehicle] runs counter to the thrust of the 1985 legislation." Id. It should also be noted that this is NOT a case of converting 1st party coverage to 3rd party coverage, and the Supreme Court upheld the exclusion anyway. Id.

The Hanson court also recognized that with the 1985 amendment the Legislature overturned the blanket rule from Nygaard v. State Farm Mut. Auto. Ins. Co., 221 N.W.2d 151 (Minn. 1974), that UM coverage is first-party coverage and treated as same. Hanson, 417 N.W.2d 94. It should be noted that the cases relied on by Plaintiff and the district court in this regard rely on Nygaard and its progeny. See, Petrich, 427 N.W.2d at 245; Perfetti v. Fidelity & Cas. Co. of New York, 486 N.W.2d 440, 442 (Minn.Ct.App. 1992). Or, they do not involve the owned but non-insured vehicle exclusion. Cf., Lobeck v. State Farm Mut. Ins. Co., 582 N.W.2d 246 (Minn. 1998), (permissive use exclusion); Dohman v. Housely, 478 N.W.2d 221 (Minn.Ct.App. 1991), rev. den'd (Feb. 11 1992) (dispute over "occupancy"); and Wilson v. State Farm Mut. Auto. Ins. Co., 451 N.W.2d 216 (Minn.Ct.App. 1990), (dispute over "maintenance or use" and whether vehicle was "uninsured").

Based on the above law, it is clear that as a matter of law Mr. Stewart is not entitled to excess coverage under the Illinois Farmers policy. Like the claimant in Hanson, he is attempting to transfer coverage from a vehicle he owned and insured to a vehicle he owned but did not insure. He opted not to obtain his own insurance for his own vehicle, but instead relied on his employer's insurance. Holding the exclusion invalid in this case frustrates the purpose of the Act. It does not place the insured in the same position he would have been in if driving his own vehicle, is inconsistent with pre-selection of coverage, permits the insured to get out of the Act's requirement that he insure his own vehicle, does not reign in insurance costs because it requires coverage for a vehicle for which the insurer did not receive a premium, and produces the

impermissible result that “would allow a policyholder to insure only one vehicle, and gain coverage on any/all other uninsured vehicles.” Wintz, 542 N.W.2d at 627. The exclusion is valid, and by operation of same Mr. Stewart is precluded from obtaining additional UM benefits for the accident in question.

III. Mr. Stewart is an “insured” under his employer’s policy for purposes of the No-Fault Act.

Even if this Court were to determine that the exclusion did not apply to bar Mr. Stewart from seeking additional benefits in this case, he would still be barred by virtue of the fact that he is a named insured under his employer’s policy.

As explained by the Court in Becker v. State Farm Mut. Auto Ins. Co., 611 N.W.2d 7, 11 (Minn. 2000), a person involved in an accident seeking UM benefits first looks to the insurer of the vehicle he or she was occupying when the accident occurred, and may recover up to the maximum amount of UM benefits covering that vehicle. Id., citing Minn.Stat. §65B.49, Subd. 3a(5). Only if the injured person is not an “insured” under the policy covering that vehicle, may he or she then seek excess UM coverage through his or her own insurance (provided the first coverage was insufficient to compensate for damages). Becker, 611 N.W.2d at 11; citing Minn.Stat. §65B.49, Subd. 3a(5). Therefore under the law if a person is an insured under the policy covering the vehicle involved in the accident, he or she cannot seek excess benefits from a personal carrier.

Under the No-Fault Act, an “insured” is defined as:

an insured under a plan of reparation security as provided by sections 65B.41 to 65B.71, including the named insured and the following persons

not identified by name as an insured while (a) residing in the same household with the named insured and (b) not identified by name in any other contract for a plan of reparation security complying with sections 65B.41 to 65B.71 as an insured:

- (1) a spouse,
- (2) other relative of a named insured, or
- (3) a minor in the custody of a named insured or of a relative residing in the same household with a named insured.

Minn.Stat. §65B.43, Subd. 5, (emphasis added).

In Becker, the claimant was injured while driving a vehicle both owned and insured by her employer. Becker, 611 N.W.2d at 8. The claimant was not identified by name under her employer's policy. Id., at 11. The claimant sought and obtained UM benefits under the employer's policy, and then sought "excess insurance from her own personal automobile policy." Id.

Her own insurer declined to provide benefits on the ground that she qualified as an insured under her employer's policy and thus was not entitled to excess coverage under the Act. Id. The Becker Court disagreed, and found that the claimant was entitled to seek excess coverage from her own insurance. Id. Looking at the definition of an insured under the No-Fault Act, the Court noted that the claimant was not a named insured or resident relative of the insured under the employer's policy, and so the court concluded that she did not qualify as an insured under the employer's policy. Id. The Court also noted that the claimant had properly obtained and paid for the mandatory UM insurance for her own vehicle, complying with the purposes of the No-Fault Act. Id. The Becker Court further noted that this did not appear to be a situation set forth by statute where a person would not be entitled to UM benefits, such as where the vehicle involved is an

owned but non-insured vehicle of the claimant's. Becker, 611 N.W.2d at 13, citing Minn.Stat. §65B.49, Subd. 3a(7)-(8). The claimant did not qualify as an insured under her employer's policy, and there was no other reason to disallow her from recovering under her own policy, so she was entitled to seek additional benefits. Id.

In contrast, unlike the facts in Becker in the instant case the employer's policy does specifically name Mr. Stewart. The certificate of liability insurance clearly identifies Mr. Stewart and his vehicle. Cf., Jensen v. United Fire & Cas. Co., 524 N.W.2d 536, 539 (Minn.Ct.App. 1994), rev. den'd (Feb. 3, 1995), (driver of non-scheduled vehicle not an insured under policy). An endorsement to the policy also indicates that Mr. Stewart is an "additional insured" under the policy. Where the insured qualifies as an insured under the policy covering the vehicle in question, there is no coverage. See, LaFave v. State Farm Mut. Auto. Ins. Co., 510 N.W.2d 16, 18-9 (Minn.Ct.App. 1993). Since Mr. Stewart is identified in his employer's policy and is an additional insured thereunder, pursuant to Minn.Stat. §65B.49, Subd. 3a(5), he is limited to the coverage available for the policy covering his vehicle, and he may not seek additional UM benefits from Illinois Farmers.

CONCLUSION

Based on the foregoing, Appellant Illinois Farmers Insurance Company respectfully requests that this Court vacate the district court's judgment and order in Respondent's favor, and declare that Mr. Stewart is not entitled to additional UM benefits from Illinois Farmers arising out of the accident in question: (a) because the No-Fault Act and Illinois Farmers policy do not provide coverage for accidents involving vehicles owned but not insured by the claimant; and (b) because Mr. Stewart qualifies as a named insured under his employer's policy.

Respectfully submitted,

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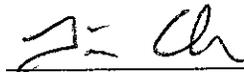
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CERTIFICATION AS TO WORD COUNT

Pursuant to Rule 132.01, subd. 3(a) of Minnesota Rules of Civil Appellate Procedure, the undersigned hereby certifies that:

1. Appellant's Brief contains 3,250 words;
2. The software used is Microsoft Word 97; and
3. The Brief complies with the typeface requirements.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).