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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0446**

American Family Mutual Insurance Company,
Respondent,

vs.

Angela Bauer, et al.,
Defendants,

Irene Livesay,
Appellant.

**Filed March 25, 2008
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CV-06-15231

John M. Bjorkman, Louise Dovre Bjorkman, Larson • King, LLP, 2800 Wells Fargo
Place, 30 East Seventh Street, St. Paul, MN 55101 (for respondent)

Bruce W. Larson, Charles A. Beckjord, Law Office of Bruce W. Larson, 746 Mill Street,
Wayzata, MN 55391 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and
Poritsky, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Irene Livesay was injured in an accident involving defendant-driver Angela Bauer. Appellant challenges the district court's grant of summary judgment in a declaratory-judgment action, in which the district court ruled that the regular-use exclusion in the driver's insurance policy barred coverage. Appellant argues that: (1) the exclusion violates Minn. Stat. § 65.49, subd. 3 (2006), and is void; and (2) alternatively, the district court erred in applying the exclusion to the facts here. We affirm.

DECISION

I.

Appellant contends that the district court erred in applying the regular-use exclusion arguing that the exclusion is void because excess-liability coverage under the driver's policy is mandated by Minn. Stat. § 65B.49, subd. 3 (2006), of the No-Fault Automobile Insurance Act. We disagree.

When construing a statute, we first determine whether the statute is ambiguous, that is, whether the statute is "subject to more than one reasonable interpretation." *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation omitted). If the statute is unambiguous, we apply the plain meaning of the statute. *In re Welfare of E.S.C.*, 731 N.W.2d 149, 152 (Minn. App. 2007). We construe a statute to give effect to all of its provisions, and construe it as a whole to avoid conflicting interpretations. *Schroedl*, 616 N.W.2d at 277.

The Minnesota No-Fault Automobile Insurance Act provides:

(2) Under residual liability insurance the reparation obligor shall be liable to pay, on behalf of the insured, sums which the insured is legally obligated to pay as damages because of bodily injury and property damage arising out of the ownership, maintenance or use of any motor vehicle, including a motor vehicle permissively operated by an insured as that term is defined in section 65B.43, subdivision 5, if the injury or damage occurs within this state, the United States of America, its territories or possessions, or Canada. A reparation obligor shall also be liable to pay sums which another reparation obligor is entitled to recover under the indemnity provisions of section 65B.53, subdivision 1.

(3) Every plan of reparation security shall be subject to the following provisions which need not be contained therein:

....

(d) Except as provided in subdivision 5a, a residual liability insurance policy shall be excess of a nonowned vehicle policy whether the nonowned vehicle is borrowed or rented, or used for business or pleasure. A nonowned vehicle is one not used or provided on a regular basis.

Minn. Stat. § 65B.49, subd. 3 (2006). Here, the driver's insurance policy includes the following exclusion:

This coverage does not apply to:

....

9. Bodily injury or property damage arising out of the use of any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you or any resident of your household.

Appellant argues that the exclusion in respondent's policy violates the statute because the statute requires respondent to provide excess coverage on nonowned vehicles. We disagree.

Unlike first-party coverage, which follows the person, liability (third-party) coverage follows the vehicle. *Progressive Specialty Ins. Co. v. Widness*, 635 N.W.2d 516, 521 (Minn. 2001). The residual-liability provisions in the No-Fault Act refer to coverage in terms of the vehicle rather than the individual. Minn. Stat. § 65B.49, subd. 3(2) (“arising out of the ownership, maintenance or use of any motor vehicle . . .”); *see id.* at 520. And the No-Fault Act does not contemplate the “stacking” of coverage sought by appellant here. In *Hilden v. Iowa Nat. Mut. Ins. Co.*, the Minnesota Supreme Court upheld a policy exclusion that prevented the stacking of liability-coverage limits from a family’s two vehicles when a third vehicle was involved in the accident giving rise to liability. 365 N.W.2d 765, 769 (Minn. 1985) (reasoning that “the declination to cumulate the limits of liability applicable to various automobiles does not result in the insurer reaping a windfall in premiums paid for coverage not honored.”). Similarly here, appellant having received the maximum benefit under the vehicle’s owner’s policy’s third-party coverage, is not entitled to additional first-party compensation under the driver’s policy.

In addition, Minnesota courts have held that “regular use” exclusions similar to the one here are valid. *See Toomey v. Krone*, 306 N.W.2d 549, 550 (Minn. 1981). In *Toomey v. Krone*, the Minnesota Supreme Court held that a policy provision excluding from coverage liability arising out of vehicles “owned by or regularly or frequently used by the named insured or any resident of the same household” did not violate the No-Fault Act. 306 N.W.2d at 549-50. The *Toomey* court stated:

The Minnesota No-Fault Act has not altered the basic framework of liability law. The premise underlying no-fault and uninsured motorist coverage is first-party in nature, as opposed to the third-party coverage involved in the instant case.

Id. at 550. And the court reaffirmed *Toomey*'s holding in 2001, reasoning that there was nothing in the No-Fault Act "to indicate that [third-party] liability coverage must extend to the same persons and under the same circumstances as first-party liability coverage." *Widness*, 635 N.W.2d at 522. In sum, because the No-Fault Act does not prohibit respondent's regular-use exclusion, we conclude that respondent's insurance policy does not violate the Act. Thus, the district court did not err in applying the exclusion.

II.

Appellant argues that the district court erred in granting summary judgment in favor of respondent. We disagree.

The parties do not dispute the underlying facts. "On appeal from a grant of summary judgment when there are no disputed issues of material fact, we review de novo whether the [district] court erred in its application of the law." *Kelly v. State Farm Mut. Auto. Ins. Co.*, 666 N.W.2d 328, 330 (Minn. 2003). Similarly, the "[i]nterpretation of insurance policy language based on undisputed underlying facts is a question of law," which this court reviews de novo. *Jensen v. United Fire & Cas. Co.*, 524 N.W.2d 536, 538 (Minn. App. 1994), *review denied* (Minn. Feb. 3, 1995).

An insurance policy is construed according to the plain and ordinary meaning of its text with the purpose of effectuating the parties' intent. *Canadian Universal Ins. Co. v. Fire Watch, Inc.*, 258 N.W.2d 570, 572 (Minn. 1977). But "[t]he terms of an insurance

policy should be construed according to what a reasonable person in the position of the insured would have understood the words to mean,” not what the insurance company intended the text to mean. *Canadian*, 258 N.W.2d at 572. And any reasonable doubt as to the meaning of the policy is resolved in favor of the insured. *Steele v. Great W. Cas. Co.*, 540 N.W.2d 886, 888 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996).

Appellant maintains that the owner’s vehicle was not “furnished or available for regular use by” the driver. But “regular use” is an unambiguous term, to be given its “common and ordinary meaning.” *Grinnell Mut. Reinsurance Co. v. Anderson*, 427 N.W.2d 274, 275-76 (Minn. App. 1988) (citation omitted). The record here supports the district court’s finding that the owner’s vehicle was “available” for the driver’s regular use. The record indicates that the owner and driver were engaged and living together. Both owner and driver testified that driver was allowed to borrow the vehicle whenever she asked. Accordingly, we conclude that the district court did not err in applying the regular-use exclusion and granting summary judgment in favor of respondent.

Affirmed.