STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1329

Daniel Bryan Horn,
Appellant,

vs.

Progressive Preferred Insurance Company,
Respondent.

Filed March 22, 2011
Affirmed
Worke, Judge

Benton County District Court
File No. 05-CV-09-2254

Michael A. Bryant, Nicole L. Bettendorf, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Scott A. Brehm, McCarthy & Barnes - Metro, PLC, St. Louis Park, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Stauber, Judge; and Crippen, Judge.*

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

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent, arguing that (1) he is entitled to underinsured-motorist (UIM) benefits under his sister's insurance policy, and (2) the policy definition of "relative" is ambiguous. We affirm.

FACTS

Appellant Daniel Bryan Horn was injured when the vehicle in which he was a passenger was in an accident. Appellant recovered the policy limit from the driver's insurer, but because he claimed damages in excess of that recovery, he filed a claim for UIM benefits with his sister's insurer, respondent Progressive Preferred Insurance Company. Appellant was insured under his own policy with respondent at the time of the accident, but chose to file a claim under his sister's policy because he claimed to be living with his sister and she had a higher limit for UIM benefits. Respondent denied appellant's claim based on the definition of "relative" in the policy that excludes persons identified by name as an insured in another insurance policy.

Appellant filed a complaint against respondent, and the district court granted respondent's motion for summary judgment after finding that appellant held his own insurance policy and that his sister's policy was unambiguous and excluded coverage for a "relative 'identified by name as an insured in any other contract for a plan of reparation security complying with section 65B.41 to 65B.71 of the Minnesota No-Fault Automobile Insurance Code.'" This appeal follows.

D E C I S I O N

Appellant challenges the district court's grant of summary judgment. A district court grants a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, this court reviews "de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). This court reviews the record in the light most favorable to the nonmoving party. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008).

Appellant argues that the district court erred as a matter of law in determining that appellant was not an "insured" under his sister's insurance policy or the Minnesota No-Fault Automobile Insurance Act. This issue involves statutory interpretation and interpretation of an insurance policy. "Statutory interpretation is a question of law subject to de novo review." *Schons v. State Farm Mut. Auto. Ins. Co.*, 621 N.W.2d 743, 745 (Minn. 2001). The object of statutory interpretation is to determine and give effect to the legislature's intent. Minn. Stat. § 645.16 (2010). If a statute is unambiguous, this court applies its plain language. *Id.* (providing that when the language of a statute is

"clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit"). This court reviews de novo the interpretation of a particular provision of an insurance policy and its application to the facts of the case. *Franklin v. W. Nat'l Mut. Ins. Co.*, 574 N.W.2d 405, 406 (Minn. 1998). In interpreting an insurance policy, "words are to be given their natural and ordinary meaning and any ambiguity regarding coverage is construed in favor of the insured." *Am. Family Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn. 2001).

In Minnesota, persons injured in an automobile accident and who are uncompensated or undercompensated may be entitled to benefits under the No-Fault Automobile Insurance Act. Minn. Stat. §§ 65B.41 to .71 (2010). Under the Act:

> 'Insured' means 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). Thus, under the statutory definition, appellant would not be considered an "insured" under his sister's policy because, although he may be a relative residing in the same household as his sister, he was "identified by name in [another] contract for a plan of reparation security." *See id.*

Appellant's sister's policy issued by respondent also defines an "insured person" as the policy holder and the policy holder's relatives. The policy specifically defines "relative" as "a person residing in the same household as [the named insured], and related to [the named insured] by blood . . . . *Relative does not include a person identified by name as an insured in any other contract for a plan of reparation security* complying with . . . the Minnesota No-Fault Automobile Insurance Code." (Emphasis added.) The language of the statute and the language of the insurance policy provide similar definitions of "insured." Both the statute and the policy exclude "a person identified by name as an insured" in any other insurance policy. It is undisputed that appellant was a named insured in a policy the he held with respondent; thus, he was not an insured under his sister's policy. The district court did not err in interpreting the statute or insurance policy in applying the law.

Appellant argues, however, that the definition of "relative" in the insurance policy is ambiguous and unenforceable. "Whether a contract is ambiguous is a question of law," which this court reviews de novo. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008). The determination of whether a contract is ambiguous depends "not upon words or phrases read in isolation, but rather upon the meaning assigned to the words or phrases in accordance with the apparent purpose of the contract as a whole." *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). A contract must be construed to give effect to every word and phrase. *Casey v. Bhd. of Locomotive Firemen & Enginemen*, 197 Minn. 189, 193, 266 N.W. 737, 739 (1936). A contract is ambiguous if its language, when given its plain and ordinary meaning, is reasonably

susceptible to more than one interpretation. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

Appellant argues that respondent's "creative and extended definition of 'relative' . . . changed the common usage definition of the term 'relative' versus changing the definition of insured." Appellant claims that respondent's definition changes the common usage of the word relative because brothers and sisters are relatives. However, the policy also defines relative as someone who resides with the policy holder; not everyone would define a relative as individuals who live together. The policy also defines "you." The common usage of the word "you" is not the way that it is defined in the policy, but it is a definition that is applicable under the policy. Each word holds a specific definition under the policy, but that does not change the words' common usages.

Appellant contends that it would have been acceptable if respondent had defined "insured" the way that it defined "relative," but that respondent hid the exception to relative in the definition of "relative." It appears that appellant argues that respondent's insurance policy should have defined "insured" to exclude a relative "identified by name as an insured in any other contract for a plan of reparation security." But the policy is clear in its definitions. The term "relative" is defined under "General Definitions" on the second page of the policy. On the third page of the policy, there is a section entitled "Additional Definitions." The term "insured person" is defined under "Additional Definitions." Included in the "insured person" definition is the term "relative." The word relative is in bold print, as is every other word that includes a definition. Thus, the phrase "insured person" is defined to include "relative," which is clearly defined only one

page earlier in the policy. Appellant's argument is meritless because the definition of "relative" is not hidden in the policy; the definition of "insured person" directs the reader to the definition of "relative," just as it directs the reader to the definition of "you." The district court did not err in concluding that the terms of appellant's sister's insurance policy are unambiguous and in granting summary judgment in favor of respondent.

Affirmed.