

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1068

Filed: 17 March 2015

Beaufort County, No. 12 CVS 823

INTEGON NATIONAL INSURANCE COMPANY, Plaintiff,

v.

DAIJAH MAURIZZIO, by and through her Guardian ad Litem, BARBARA LANGLEY, and JASON and RENAE MAURIZZIO, Defendants.

Appeal by plaintiff from order entered 23 July 2014 by Judge Wayland J. Sermons, Jr. in Beaufort County Superior Court. Heard in the Court of Appeals 18 February 2015.

Frazier Hill & Fury, R.L.L.P., by Torin L. Fury, for plaintiff-appellant.

Hardee & Hardee, L.L.P., by Charles R. Hardee and Moulton B. Massey, IV, for defendants-appellees.

TYSON, Judge.

Integon National Insurance Company (“Plaintiff”) appeals from order denying Plaintiff’s motion for summary judgment and granting the motion for summary judgment of Daijah Maurizzio and Jason and Renae Maurizzio (collectively, “Defendants”). We affirm.

I. Factual Background

Both parties stipulated to the following facts: On 15 February 2011, Destany Maurizzio (“Destany”) was operating a vehicle owned by her grandmother, Suzanne

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Maurizzio (“Suzanne”). The vehicle was involved in a single car accident. Daijah Maurizzio (“Daijah”) and Desiree’ Maurizzio (“Desiree”) were passengers in the vehicle. Desiree’ and Daijah suffered injuries as a result of the accident.

The vehicle operated by Destany and owned by Suzanne was insured by Plaintiff. This policy provided \$50,000 per person/\$100,000 per accident in liability coverage for bodily injury and \$50,000 per person/\$100,000 per accident in underinsured motorist coverage (“UIM coverage”). The bodily injury claim of Desiree’ was settled within the available liability coverage limits provided by this policy.

Daijah sustained permanent injury in this accident. Defendants alleged expenses in excess of \$200,000 were incurred to treat her injuries. Plaintiff tendered the \$50,000 per person liability limits from Suzanne’s policy to settle Daijah’s claim pursuant to a covenant not to enforce judgment.

Daijah was not a named insured under Suzanne’s policy, nor was she a resident household member of Suzanne. However, she is an insured under Suzanne’s policy for the purposes of UIM coverage, because she was an occupant inside Suzanne’s vehicle when the accident occurred.

At the time of the accident, Daijah’s parents, Jason and Renae Maurizzio, were insured under an automobile policy also issued by Plaintiff. This policy provided \$50,000 per person/\$100,000 per accident in UIM coverage. At the time of the accident, Daijah resided with her parents and was an insured under their policy for purposes of UIM coverage.

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On 27 August 2012, Plaintiff filed a complaint for declaratory judgment. Plaintiff sought for the trial court to declare the policy issued to Jason and Renae Maurizzio did not provide UIM coverage for this accident.

On 8 July 2014, Defendants filed a motion for summary judgment. Defendants contended the UIM coverage provided by Plaintiff's policy issued to Jason and Renae Maurizzio could be stacked on the UIM coverage provided by Plaintiff's policy issued to Suzanne for Daijah's personal injury claim. As a result, Defendants alleged Suzanne's vehicle was an "underinsured motor vehicle" for purposes of Daijah's personal injury claim.

On 14 July 2014, Plaintiff also filed a motion for summary judgment, asserting Defendants were not entitled to UIM coverage. Plaintiff contended North Carolina law did not permit the stacking of UIM coverage from Suzanne's policy with any additional UIM coverage provided to the Defendants, because more than one claimant was injured.

The parties' cross-motions for summary judgment were heard and an order was entered on 23 July 2014. The order denied Plaintiff's motion for summary judgment and granted Defendants' motion for summary judgment. Judge Sermons' order declared Plaintiff's policies issued to Suzanne and Daijah's parents provided \$100,000 in aggregate UIM coverage less a \$50,000 credit for the exhausted liability coverage. The order also declared Plaintiff's policy issued to Daijah's parents

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provided Defendants with \$50,000 in UIM coverage for Daijah's personal injury claim.

Plaintiff gave timely notice of appeal to this Court.

II. Issues

Plaintiff argues the trial court erred by granting Defendants' motion for summary judgment, because there were two injured parties inside the tortfeasor vehicle.

A. Standard of Review

Summary judgment is proper where "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 any party is entitled to judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2013).

An issue is "genuine" if it can be proven by substantial evidence and a fact is "material" if it would constitute or irrevocably establish any material element of a claim or a defense.

A party moving for summary judgment may prevail if it meets the burden (1) of proving an essential element of the opposing party's claim is nonexistent, or (2) of showing through discovery that the opposing party cannot produce evidence to support an essential element of his or her claim. Generally this means that on undisputed aspects of the opposing evidential forecast, where there is no genuine issue of fact, the moving party is entitled to judgment as a matter of law. If the moving party meets this burden, the non-moving party must in turn either show that a genuine issue of material fact exists for trial or must provide an excuse for not doing so.

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Lowe v. Bradford, 305 N.C. 366, 369, 289 S.E.2d 363, 366 (1982) (citations and internal quotation marks omitted).

“In a motion for summary judgment, the evidence presented to the trial court must be . . . viewed in a light most favorable to the non-moving party.” *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 467, 597 S.E.2d 674, 692 (2004) (citation omitted). This Court reviews an order granting summary judgment *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008).

B. Analysis

Pursuant to N.C. Gen. Stat. § 20-279.21(b)(4) (“the Financial Responsibility Act”), an “underinsured highway vehicle” is defined as

a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner’s policy.

N.C. Gen. Stat. § 20-279.21(b)(4) (2013).

The General Assembly amended N.C. Gen. Stat. § 20-279.21(b)(4) in 2004, adding the following:

For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an “underinsured highway vehicle” if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the

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accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle *unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits.*

N.C. Gen. Stat. § 20-279.21(b)(4) (2013) (emphasis supplied). This amendment was subsequently referred to as the "multiple claimant exception" in *Benton v. Hanford*, 195 N.C. App. 88, 671 S.E.2d 31, *disc. review denied*, 363 N.C. 744, 688 S.E.2d 452 (2009).

Prior to the 2004 amendment to the Financial Responsibility Act, this Court decided the case of *Ray v. Atlantic Cas. Ins. Co.*, 112 N.C. App. 259, 435 S.E.2d 80, *disc. review denied*, 335 N.C. 559, 439 S.E.2d 151 (1993). In *Ray*, the plaintiff's vehicle was struck head-on by another vehicle. The plaintiff, along with two passengers in her vehicle, and the passenger in the tortfeasor's vehicle were all injured. Aetna Insurance Company ("Aetna") insured the tortfeasor's vehicle. This policy had liability limits of \$100,000 per person/\$300,000 per accident.

Atlantic Casualty Insurance Company ("Atlantic Casualty") insured the plaintiff, and her policy had UIM limits of \$100,000 per person/\$300,000 per accident. Aetna paid \$98,000 of its liability coverage to the injured passenger in the tortfeasor's

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vehicle, leaving \$202,000 in liability coverage to be divided amongst the plaintiff and her two passengers. *Id.* at 260-61, 435 S.E.2d at 80-81.

When a coverage dispute arose, this Court was required to determine whether the tortfeasor's vehicle was an "underinsured highway vehicle." The statute, as it existed at the time, required this Court to base this determination on a comparison of the tortfeasor's overall liability *coverage* (not the actual liability *payment*) to the victim's UIM coverage. We held, although the liability funds available to be paid to the plaintiff and her two passengers were less than the plaintiff's UIM coverage, no UIM coverage was available under the Atlantic Casualty policy because the tortfeasor's vehicle was not statutorily defined as an "underinsured highway vehicle," as the liability coverage and the UIM coverage were the same. *Id.* at 262, 435 S.E.2d at 81.

The 2004 amendment to the Financial Responsibility Act changed the rule this Court applied to reach its result in *Ray*. This amendment provided an additional definition of "underinsured highway vehicle" for situations where multiple claimants seek liability funds. Under the multiple claimant exception,

where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" *if the total amount actually paid* to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy.

N.C. Gen. Stat. § 20-279.21(b)(4) (2013) (emphasis supplied).

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The multiple claimant exception prevents an increase in liability or UIM exposure of the carrier providing coverage for the tortfeasor's vehicle. The exception states a vehicle is not an "underinsured motor vehicle" if the owner's policy provides UIM coverage with limits, which are less than or equal to that policy's bodily injury liability limits. *Id.*

Plaintiff contends the multiple claimant exception applies to the present case because there were two injured parties in the tortfeasor vehicle. Plaintiff asserts the multiple claimant exception applies, and the statutory amendment disallows Suzanne's vehicle from being defined as an "underinsured motor vehicle." Plaintiff argues Defendants are not entitled to any UIM coverage under either policy because the UIM limits are equal to the liability limits. [D. Br. p. 10.] We disagree.

1. Discussion of *Benton v. Hanford*

This Court considered the applicability of the multiple claimant exception in *Benton v. Hanford*, 195 N.C. App. 88, 671 S.E.2d 31 (2009). In *Benton*, the plaintiff was injured in a single car accident in a vehicle insured by Nationwide Mutual Insurance Company ("Nationwide"). The Nationwide policy had liability limits of \$50,000 per person/\$100,000 per accident and UIM limits of \$50,000 per person/\$100,000 per accident.

The plaintiff was also insured as a household resident on a Progressive Southeastern Insurance Company ("Progressive") policy providing \$100,000 per person UIM coverage. After Nationwide paid the plaintiff the policy's \$50,000

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liability limits, a UIM coverage dispute arose. Progressive relied on the second sentence of the multiple claimant exception and argued, as Defendant does at bar, because the Nationwide policy provided UIM coverage with limits equal to that of the policy's bodily injury liability limits, the vehicle was not an "underinsured highway vehicle" within the meaning of the statute.

This Court noted the purpose of the Financial Responsibility Act, as stated by our Supreme Court,

is to compensate the innocent victims of financially irresponsible motorists. The Act is remedial in nature and is to be liberally construed so that the beneficial purpose intended by its enactment may be accomplished. The purpose of the Act . . . is best served when every provision of the Act is interpreted to provide the innocent victim with the fullest possible protection.

Liberty Mut. Ins. Co. v. Pennington, 356 N.C. 571, 573-74, 573 S.E.2d 118, 120 (2002) (citations and internal quotation marks omitted).

With the statutory purpose in mind, *Benton* held "applicable UIM coverage may be stacked interpolicy to calculate the applicable limits of underinsured motorist coverage for the vehicle involved in the accident for the purpose of determining if the tortfeasor's vehicle is an underinsured highway vehicle." *Benton*, 195 N.C. App. at 92, 671 S.E.2d at 34 (citation and internal quotation marks omitted); *see also N.C. Farm Bureau Mut. Ins. Co. v. Bost*, 126 N.C. App. 42, 50-51, 483 S.E.2d 452, 458 (holding the legislature's use of the plural "limits" in the statutory definition of "underinsured highway vehicle" indicates an insured may stack all applicable UIM policies to

determine if the definition is met), *disc. review denied*, 347 N.C. 138, 492 S.E.2d 25 (1997).

This Court also concluded the second sentence of the multiple claimant exception “applies *only to accidents with multiple claimants*.” *Benton*, 195 N.C. App. at 94, 671 S.E.2d at 35 (emphasis supplied). The plaintiff in *Benton* was the only claimant, the multiple claimant exception did not apply, and the court utilized the general definition of “underinsured highway vehicle.” *Id.*

2. Benton’s Application to Plaintiff’s Argument

Plaintiff argues the multiple claimant exception applies here because two persons were injured. However, the enactment of the 2004 amendment following our decision in *Ray* and our subsequent holding in *Benton* clearly establish the multiple claimant exception is not triggered simply because there were two injuries in an accident. The multiple claimant exception applies only when the amount paid to an individual claimant is less than the claimant’s limits of UIM coverage after liability payments to multiple claimants. *Id.*

Here, two injuries resulted from the accident. Desiree’ Maurizzio’s bodily injury claim was settled within the per person liability coverage limits provided by Suzanne’s policy with Plaintiff. This liability payment *did not* reduce the liability coverage available for Daijah’s claim. Plaintiff tendered its full \$50,000 per person liability limits from Suzanne’s policy to settle Daijah’s claim. The multiple claimant exception does not apply here. The amount paid to Daijah was not reduced due to

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liability payments to multiple claimants. *Id.* This ruling is also consistent with our appellate courts' longstanding interpretation of the Financial Responsibility Act as a mechanism by which innocent victims may be compensated and provided with the fullest protection. *Pennington*, 356 N.C. at 573-74, 573 S.E.2d at 120; *Sutton v. Aetna Cas. & Sur. Co.*, 325 N.C. 259, 265, 382 S.E.2d 759, 763 (1989); *Proctor v. N.C. Farm Bureau Mut. Ins. Co.*, 324 N.C. 221, 225, 376 S.E.2d 761, 764 (1989).

The general definition of "underinsured highway vehicle" must be used to determine the UIM coverage in this case. The applicable UIM coverage of both policies may be stacked in order to calculate the UIM limits and determine if the vehicle is an "underinsured highway vehicle." *Benton*, 195 N.C. App. at 92-93, 671 S.E.2d at 34; *Bost*, 126 N.C. App. at 50-51, 483 S.E.2d at 458.

Using these guidelines, the \$50,000 per person UIM coverage provided by the parents' policy stacks on the \$50,000 UIM coverage provided by Suzanne's policy, for a total of \$100,000 UIM coverage. This amount of UIM coverage is greater than the \$50,000 liability limits of Suzanne's policy. Suzanne's vehicle is an "underinsured highway vehicle" for the purposes of Daijah's UIM coverage claim. Plaintiff's argument is overruled.

Conclusion

The trial court's order granting summary judgment in favor of Defendants is affirmed. We also affirm the trial court's denial of Plaintiff's motion for summary judgment.

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AFFIRMED.

Judges STEPHENS and HUNTER, JR. concur.