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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-708

Filed 04 April 2023

Wake County, No. 21 CVS 7683

NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, INC.,  
Plaintiff,

v.

KYRIE JAMAL MEBANE and ALISHA MEBANE, Defendants.

Appeal by Plaintiff from judgment entered 12 July 2022 by Judge John W. Smith in Wake County Superior Court. Heard in the Court of Appeals 22 February 2023.

*Lipscomb Law Firm, by William F. Lipscomb, for Plaintiff-Appellant.*

*CR Legal Team, LLP, by Timothy A. Sheriff, Natalie M. Walters, & Joseph V. Scibelli, for Defendant-Appellees.*

CARPENTER, Judge.

North Carolina Farm Bureau Mutual Insurance Company, Inc. (“Plaintiff”) appeals from judgment after the trial court granted summary judgment in Defendant Kyrie Jamal Mebane and Defendant Alisha Mebane’s favor. On appeal, Plaintiff argues the trial court improperly interpreted and applied the Financial

Responsibility Act. After careful review, we discern no error. Therefore, we affirm the trial court's grant of summary judgment.

### **I. Factual & Procedural Background**

Plaintiff, an insurance provider, sued Defendants on 4 June 2021 in Wake County Superior Court, seeking a declaratory judgment concerning its underinsured motorist ("UIM") insurance coverage. Specifically, Plaintiff sought a judgment stating that a vehicle insured by Plaintiff was not "underinsured." The relevant facts are as follows.

On 6 June 2020, Defendant Kyrie was a passenger in a vehicle owned and operated by Terell Bellamy. Bellamy was driving westbound on North Carolina Highway 87 in Rockingham County, where Bellamy crossed into the eastbound lane and collided with a vehicle owned by Jose Gilberto Hernandez and operated by Minerva Isabel Zuniga. The Hernandez vehicle had five passengers. All drivers and passengers, including Defendant Kyrie, were injured in the collision.

Bellamy's vehicle was insured by a personal automobile policy (the "Bellamy Policy"), which provided liability coverage of \$50,000 per person and \$100,000 per accident, and UIM coverage of \$50,000 per person and \$100,000 per accident. Plaintiff issued the Bellamy Policy. The Bellamy Policy covered Defendant Kyrie, a passenger in Bellamy's vehicle. Plaintiff offered \$100,000, the per-accident liability-coverage limit of the Bellamy Policy, to Defendant Kyrie and the five occupants of the Hernandez vehicle, to be apportioned as follows:

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Minerva Isabel Zuniga Garcia	\$26,000
Jose Gilberto Hernandez	\$25,000
Heidy Hernandez	\$22,000
Uriel Zuniga	\$12,000
Roxanna Zuniga	\$10,000
Kyrie Mebane	\$5,000

At the time of the accident, Defendant Alisha, Defendant Kyrie’s mother, was insured by a separate personal automobile policy, also issued by Plaintiff. Defendant Alisha’s policy provided UIM coverage of \$50,000 per person and \$100,000 per accident. At the time of the accident, Defendant Kyrie resided with Defendant Alisha, so he was also covered by Defendant Alisha’s policy with respect to the 6 June 2020 accident.

The parties disagreed about how much of the Bellamy Policy Defendant Kyrie could reach, so they filed competing motions for summary judgment on 12 July 2022. After the accident, Plaintiff offered to pay Defendant Kyrie \$45,000 (the \$50,000 per-person limit from Defendant Alisha’s UIM coverage less \$5,000 received from Bellamy’s liability coverage plus nothing from Bellamy’s UIM coverage). In its motion for summary judgment, Plaintiff contended Bellamy’s vehicle was not “underinsured,” and Defendant Kyrie was therefore not entitled to Bellamy’s UIM coverage, because the limit of Bellamy’s UIM coverage was equal to the limit of Bellamy’s liability coverage.

In their motion for summary judgment, Defendants contended Bellamy’s vehicle was “underinsured,” and Defendant Kyrie was entitled to \$95,000 (\$45,000

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offered by Plaintiff plus the \$50,000 per-person limit from Bellamy’s UIM coverage). To determine whether Bellamy’s vehicle was “underinsured,” Defendants contended the correct comparison was between Bellamy’s liability coverage and the sum of Defendant Alisha’s and Bellamy’s UIM coverage. Under this “stacked” calculation, Defendants contended Bellamy’s vehicle was underinsured, and Defendant Kyrie was entitled to Bellamy’s UIM coverage.

On 22 July 2022, Judge John W. Smith granted Defendant’s motion. Plaintiff filed a written notice of appeal on 1 August 2022.

**II. Jurisdiction**

This Court has jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b) (2021).

**III. Issue**

The issue on appeal is whether Bellamy’s UIM policy covers Defendant Kyrie. Specifically, we must consider whether Bellamy’s UIM policy can be “stacked” with Defendant Alisha’s UIM policy to determine whether Bellamy’s vehicle was underinsured, and thus, whether Bellamy’s UIM policy covers Defendant Kyrie.

**IV. Standard of Review**

“Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that ‘there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.’” *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 523–24, 649 S.E.2d 382, 385 (2007)). “Under a de novo

review, th[is C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (citation and quotation marks omitted).

## **V. Analysis**

On appeal, the parties renew their arguments for summary judgment: Plaintiff argues Bellamy was not underinsured; Defendants argue he was.

“Whether the tortfeasor’s vehicle is an underinsured highway vehicle as the term is used in N.C. [Gen. Stat.] § 20-279.21(b)(4) is the threshold question in determining if UIM coverage applies.” *Benton v. Hanford*, 195 N.C. App. 88, 91, 671 S.E.2d 31, 33 (2009) (citations and quotation marks omitted). The Financial Responsibility Act defines an “underinsured highway vehicle” 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) (2021). In other words, “the vehicle involved in the accident” is underinsured if the vehicle’s total liability coverage is less than the vehicle’s total UIM coverage. *See id.* Additionally:

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

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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.

*Id.* Stated differently, even if a vehicle's liability coverage is greater than or equal to its UIM coverage, a vehicle is deemed underinsured if multiple people are injured in an accident, and one of those people receives a liability payment that is less than the vehicle's UIM coverage. *See id.* The "multiple claimant exception" to the Act, however, directly follows the quoted language above. The exception reads:

*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 if the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are less than or equal to that policy's bodily injury liability limits.*

*Id.* (emphasis added). The multiple claimant exception applies to accidents with multiple claimants. *Benton*, 195 N.C. App. at 94, 671 S.E.2d at 35. The exception, however, is not triggered "simply because there were two injuries in an accident." *Integon Nat'l Ins. Co. v. Maurizzio*, 240 N.C. App. 38, 44, 769 S.E.2d 415, 420 (2015). Rather, the exception's applicability is limited to "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.* at 44, 769 S.E.2d at 420–21.

This Court directly addressed the multiple claimant exception in *Nationwide Affinity Insurance Company of America v. Le Bei*. 259 N.C. App. 626, 627, 816 S.E.2d

251, 253 (2018). In *Le Bei*, there was a car crash with five claimants in the at-fault vehicle and two claimants in other vehicles. *Id.* at 627, 816 S.E.2d at 252–53. The at-fault vehicle was insured with a policy providing liability and UIM coverage; both the liability and UIM coverages had \$50,000 per-person and \$100,000 per-accident limits. *Id.* at 627, 816 S.E.2d at 253. Under the liability coverage, the at-fault driver’s insurance provider, the plaintiff, distributed the following amounts to injured claimants: (1) \$26,000; (2) \$26,000; (3) \$26,000; (4) \$13,000; (5) \$5,000; (6) \$2,500; and (7) \$1,500. *Id.* at 627, 816 S.E.2d at 253. However, “[t]he parties disagreed on whether the passengers were entitled to recover under [the at-fault vehicle’s] UIM coverage for the difference between the amounts received under the liability coverage and the per-person limits of UIM coverage.” *Id.* at 627, 816 S.E.2d at 253.

One of the defendant-claimants had a separate insurance policy with the plaintiff that “provided UIM coverage with limits of \$50,000 per person and \$100,000 per accident.” *Id.* at 628, 816 S.E.2d at 253. Another defendant-claimant also had an insurance policy with the plaintiff that “provided coverage with UIM limits of \$100,000 per person and \$300,000 per accident.” *Id.* at 628, 816 S.E.2d at 253. These “[d]efendants contended the UIM coverage under their separate policies should be ‘stacked’ with the UIM coverage under the [at-fault driver’s] policy” to determine whether the at-fault vehicle was “underinsured.” *Id.* at 628, 816 S.E.2d at 253. The plaintiff contended the multiple claimant exception applied and prohibited stacking the policies. *See id.* at 634, 816 S.E.2d at 257.

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This Court, notwithstanding the apparent plain language of the statute, “agree[d] with [the defendants’] framing of the issue and conclude[d] the multiple claimant exception d[id] not apply” because “[t]he General Assembly added the multiple claimant exception . . . in an effort to further protect innocent victims of financially irresponsible motorists.” *Id.* at 634, 816 S.E.2d at 257.

We are bound by the holding in *Le Bei* which is controlling on the issue before us. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.”).

Here, Defendant Kyrie was Bellamy’s passenger and was insured under the Bellamy Policy, provided by Plaintiff. Defendant Kyrie was one of multiple claimants injured in the crash caused by Bellamy. Like the defendants in *Le Bei*, Defendant Kyrie argues he should be allowed to stack Defendant Alisha’s separate UIM coverage, also provided by Plaintiff, with Bellamy’s UIM coverage to determine whether Bellamy’s vehicle was underinsured.

Because a previous panel of this Court allowed stacking in *Le Bei*—a case with facts analogous to the facts of this case—the trial court did not err in granting Defendant’s motion for summary judgment. *See Le Bei*, 259 N.C. App. at 634, 816 S.E.2d at 257. Specifically, the trial court did not err in allowing Defendants to stack Defendant Alisha’s UIM coverage on top of Bellamy’s UIM coverage to determine



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whether Bellamy's vehicle was underinsured. *See id.* at 634, 816 S.E.2d at 257. In other words, the trial court did not err in finding the multiple claimant exception inapplicable here. *See id.* at 634, 816 S.E.2d at 257.

**VI. Conclusion**

Based solely upon stare decisis, we hold the trial court did not err in granting Defendants' motion for summary judgment. *See id.* at 634, 816 S.E.2d at 257.

AFFIRMED.

Judges DILLON and STADING concur.

Report per Rule 30(e).