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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-708-2

Filed 16 July 2024

Wake County, No. 21 CVS 7683

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

v.

ALISHA MEBANE and KYRIE JAMAL 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. Vacated and remanded by order of the North Carolina Supreme Court 20 March 2024. The Court of Appeals reconvened 9 April 2024.

*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”) appealed from judgment after the trial court granted summary judgment to Alisha Mebane and Kyrie Jamal Mebane (collectively, “Defendants”). On appeal, Plaintiff

argued that the trial court erred in granting Defendants’ motion for summary judgment because it improperly interpreted and applied the Financial Responsibility Act (the “FRA”). Our initial review discerned no error. *See N.C. Farm Bureau Mut. Ins. Co. v. Mebane*, No. COA22-708, 2023 N.C. App. LEXIS 147, at \*8–9 (N.C. Ct. App. Apr. 4, 2023). On remand from the North Carolina Supreme Court for further consideration in light of *North Carolina Farm Bureau Mutual Insurance Co. v. Hebert*, 385 N.C. 705, 898 S.E.2d 718 (2024), we now reverse the trial court’s summary-judgment order.

### **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.” On 9 May 2022, Plaintiff moved for summary judgment, and on 18 May 2022, Defendants moved for summary judgment. The relevant facts show the following.

On 22 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 he crossed into the eastbound lane and collided with a vehicle owned by Jose Gilberto Hernandez and operated by Minerva Isabel Zuniga Garcia. The Hernandez vehicle had five occupants. All drivers and passengers, including Defendant Kyrie, were injured in the collision.

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Bellamy's vehicle was insured under 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:

Minerva Isabel Zuniga Garcia	\$26,000
Jose Gilberto Hernandez	\$25,000
Heidy Hernandez	\$22,000
Uriel Zuniga	\$12,000
Roxanna Zuniga	\$10,000
Defendant Kyrie	\$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 was also covered by Defendant Alisha's policy.

The parties disagreed about how much of the Bellamy Policy Defendant Kyrie could reach. 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

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“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 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 that the correct comparison was between Bellamy’s liability coverage and the sum of Defendant Alisha’s UIM coverage 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 agreed with Defendants’ approach, granted their motion for summary judgment, and denied Plaintiff’s motion for summary judgment. Plaintiff filed a written notice of appeal on 1 August 2022.

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

## **III. Issue**

The issue on appeal is whether the trial court erred by granting Defendants’ motion for summary judgment. Specifically, the issue is 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 covered Defendant Kyrie.

#### **IV. Analysis**

We review summary-judgment orders de novo. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). Under a de novo review, this Court “considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

Summary judgment is appropriate when “there is no genuine issue as to any material fact,” and a party is “entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2023). Concerning summary judgment, courts “must view the presented evidence in a light most favorable to the nonmoving party.” *Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001).

Under the FRA, “[w]hether 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) (*purgandum*). The FRA 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

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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) (2023). 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 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 FRA, 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 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.*

*Id.* (emphasis added). Said another way, “for a claimant pursuing a UIM claim under the multiple claimant exception and proceeding under an owner’s policy insuring the allegedly underinsured vehicle (i.e., the at-fault vehicle), that owner’s policy’s liability limits must be less than its UIM limits.” *Hebert*, 385 N.C. at 715, 898 S.E.2d at 726.

The question before us is whether Defendant Kyrie 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. The North Carolina Supreme Court recently answered this question in the negative: “Cognizant of our duty to dispassionately give effect to subdivision 20-279.21(b)(4)’s plain language, we conclude that defendant is not permitted to stack his parents’ policy’s UIM limits with his own policy’s UIM limits in order to qualify his vehicle as an underinsured highway vehicle.” *See id.* at 716, 898 S.E.2d at 727.

The North Carolina Supreme Court explained that subsection 20-279.21(b)(4):

is concerned with the claimant’s UIM coverages that pertain to the vehicle involved in the accident, not all UIM policies for which the UIM claimant is personally eligible. In other words, if an insured’s UIM policy is not “for” the vehicle involved in the accident and insured under the owner’s policy, it is outside the scope of consideration when determining whether the at-fault vehicle is an underinsured highway vehicle.

*Id.* at 716–17, 898 S.E.2d at 727.

Here, by granting Defendants’ summary judgment, the trial court allowed Defendants to stack Defendant Alisha’s UIM coverage on top of Bellamy’s UIM

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coverage in order to determine whether Bellamy’s vehicle was underinsured under the multiple-claimant exception. Based on recent guidance from the North Carolina Supreme Court, the trial court erred by doing so. *See id.* at 716, 898 S.E.2d at 727.

The trial court erred because Defendant Alisha’s UIM coverage was “not ‘for’ the vehicle involved in the accident,” Bellamy’s vehicle, so Defendant Alisha’s UIM coverage was “outside the scope of consideration when determining whether the at-fault vehicle [was] an underinsured highway vehicle.” *See id.* at 716–17, 898 S.E.2d at 727. Therefore, although a party here was “entitled to a judgment as a matter of law,” *see* N.C. Gen. Stat. § 1A-1, Rule 56(c), that party was Plaintiff, *see Hebert*, 385 N.C. at 716–17, 898 S.E.2d at 727.

**V. Conclusion**

In accordance with recent guidance from the North Carolina Supreme Court, we conclude that the trial court erred by granting Defendants’ motion for summary judgment. Accordingly, we reverse the trial court’s order.

REVERSED.

Chief Judge DILLON and Judge STADING concur.

Report per Rule 30(e).