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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-404

Filed 17 December 2024

Cabarrus County, No. 22 CVS 568

NORTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY,
Plaintiff,

v.

LILA K. BARNHARDT Individually, and as Executor of the ESTATE OF TROY
BARNHARDT, Defendants.

Appeal by Plaintiff from order entered 12 October 2023 by Judge Joseph N.
Crosswhite in Cabarrus County Superior Court. Heard in the Court of Appeals 22
October 2024.

*Young Moore and Henderson, P.A., by Andrew P. Flynt and Angela Farag
Craddock, for plaintiff-appellant.*

*DAS Law Group, P.A., by S. Cramer Lewis, F. William Devore, IV, and Brittany
N. Conner, for defendants-appellees.*

MURPHY, Judge.

Defendants are not entitled to interpolicy stacking of the UIM coverage
afforded by the auto policy insuring the American Monarch motor home with the UIM

coverage afforded by the auto policy insuring the pickup truck, as the American Monarch motor home is not a private passenger motor vehicle.

BACKGROUND

The record before us tends to reflect that, on 5 February 2020, Troy Barnhardt was struck and killed by a motor vehicle driven by Lester Lowder in a collision involving Mr. Barnhardt's 2001 Dodge Dakota pickup truck. Thereafter, Defendants Lila K. Barnhardt individually, and as Executor of the Estate of Troy Barnhardt, filed a lawsuit against Mr. Lowder and Plaintiff ("Barnhardt Action"). All claims against Plaintiff in the Barnhardt Action were dismissed without prejudice. Mr. Lowder's liability insurer tendered its \$50,000.00 policy limit to the Estate, and the Estate's wrongful death claim was submitted to arbitration. On 29 December 2021, the arbitration panel returned an award in the amount of \$625,000.00 in favor of Defendants.

Prior to the collision, Plaintiff issued an auto policy naming Troy W. Barnhardt and Lila Barnhardt as insured and naming three covered vehicles, including Mr. Barnhardt's 2001 Dodge Dakota. The pickup truck auto policy provides, *inter alia*, UIM coverage with bodily injury limits of \$250,000.00 per person and medical payments coverage with limits of \$2,000.00 per person. On or about 30 December 2021, Plaintiff paid the available UIM limits under the pickup truck policy of \$198,000.00 to the Estate.

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Prior to the collision, Plaintiff also issued an auto policy naming Lila Barnhardt as insured and naming an American Monarch motor home on the “schedule of covered autos you own.” The motor home policy provides, *inter alia*, UIM coverage with bodily injury limits of \$500,000.00 per person.

On 30 December 2021, Plaintiff filed a *Complaint for Declaratory Relief*, seeking a judgment declaring that the UIM coverage afforded by the motor home policy cannot be stacked with the UIM coverage afforded by the pickup truck policy and cannot be applied otherwise to provide any UIM coverage in the 5 February 2020 collision.

On 3 March 2023, Plaintiff filed an *Amended Complaint for Declaratory Relief*. On 30 March 2023, Defendants filed an *Answer to Amended Complaint for Declaratory Relief*. On 8 May 2023, Plaintiff filed a motion for judgment on the pleadings, and, on 10 May 2023, Defendants filed a motion for judgment on the pleadings. On 12 October 2023, the trial court granted judgment on the pleadings in favor of Defendants, concluding that the American Monarch was a private passenger motor vehicle within the meaning of N.C.G.S. § 58-49-10 and that the pickup truck policy shall stack UIM coverages with the motor home policy as a matter of law, and entering judgment against Plaintiff in the amount of \$375,000.00 with interest. Plaintiff appealed.

ANALYSIS

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On appeal from the trial court's order denying Plaintiff's motion for judgment on the pleadings and granting Defendants' motion for judgment on the pleadings, Plaintiff presents a single issue for our review: whether the American Monarch motor home insured under the motor home policy is a private passenger motor vehicle within the meaning of N.C.G.S. § 58-40-10(10) such that, under N.C.G.S. § 20-279.21(b)(4), Defendants are entitled to interpolicy stacking of the \$500,000.00 UIM coverage limits provided in the motor home policy with the coverage limits provided in the pickup truck policy.

"The construction and interpretation of provisions in an insurance contract is a question of law[,]” reviewed de novo. *Kessler v. Shimp*, 181 N.C. App. 753, 756, *disc. rev. denied*, 361 N.C. 568 (2007) (citing *Shelton v. Duke Univ. Health Sys.*, 179 N.C. App. 120, 123 (2006)).

This Court reviews de novo a trial court's ruling on motions for judgment on the pleadings. Under a de novo standard of review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court.

Builders Mut. Ins. Co. v. Glascarr Properties, Inc., 202 N.C. App. 323, 325 (2010).

Pursuant to N.C.G.S. § 20-279.21(b)(4):

Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of

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liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in [N.C.G.S. §] 58-40-15(9) and (10).

N.C.G.S. § 20-279.21(b)(4) (2023).

N.C.G.S. § 58-40-15 exempts several types of insurance from the provisions of Chapter 58, Article 40, including insurance “[f]or private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists’ coverage and other insurance coverages written in connection with the sale of such liability insurance.” N.C.G.S. § 58-40-15(9) (2023). Pursuant to N.C.G.S. § 58-40-10(1), as used in N.C.G.S. § 58-40-15(9), a “private passenger motor vehicle” means

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a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

b. A motor vehicle that is a pickup truck or van that is owned by an individual or by husband and wife or individuals who are residents of the same household if it:

1. Has a gross vehicle weight as specified by the manufacturer of less than 14,000 pounds; and

2. Is not used for the delivery or transportation of goods or materials unless such use is (i) incidental to the insured's business of installing, maintaining, or repairing furnishings or equipment, or (ii) for farming or ranching. Such vehicles owned by a family farm copartnership or a family farm corporation shall be considered owned by an individual for the purposes of this section; or

c. A motorcycle, motorized scooter, moped, or other similar motorized vehicle not used for commercial purposes.

(2) "Nonfleet" motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or fewer motor vehicles hired under a long-term contract or owned by the insured named in the policy.

N.C.G.S. § 58-40-10 (2023).

Here, where the American Monarch is not a station wagon, pickup truck, van, motorcycle, motorized scooter, moped, or other similar motorized vehicle, "interpolicy stacking" of the auto policy covering the American Monarch with the auto policy covering the pickup truck under N.C.G.S. § 20-279.21(b)(4) "is available only when the coverage is nonfleet and the vehicle covered is of the private passenger type." *See*

N.C. Farm Bureau Mut. Ins. Co. v. Stamper, 122 N.C. App. 254, 258, *disc. rev. denied*, 343 N.C. 513 (1996).

“If the language of a statute is clear, the court must implement the statute according to the plain meaning of its terms so long as it is reasonable to do so.” *Lenox, Inc. v. Tolson*, 353 N.C. 659, 664 (2001). Defendants suggest that a motor vehicle of the private passenger type clearly and unambiguously refers to any vehicle with a motor and a place for passengers. However, this overbroad reading of the term motor vehicle of the private passenger type would render the remaining provisions of N.C.G.S. § 58-40-10 meaningless, as other private passenger motor vehicles specifically enumerated within the statute, such as a van that weighs less than 14,000 pounds, might also fall within this definition.

Our Supreme Court has held that, “in determining what the legislature intended when defining ‘private passenger motor vehicle,’ common sense tells us that the legislature was referring to vehicles used every day by the citizens of this State.” *Nationwide Mut. Ins. Co. v. Mabe*, 342 N.C. 482, 501 (1996). The term “motor vehicle of the private passenger . . . type” clearly and unambiguously refers to a motor vehicle which is not put to commercial use; is used every day by the citizens of this State; and is a passenger vehicle that is not a motor vehicle of the station wagon type, pickup truck, van, motorcycle, motorized scooter, moped, or other similar motorized vehicle. The American Monarch motor home, the chief purpose of which is to provide living quarters, does not fall within the common sense understanding of a motor vehicle of

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the private “*passenger*” type. *See* N.C.G.S. § 58-40-10 (2023) (emphasis added). Thus, the American Monarch motor home is not a private passenger motor vehicle within the meaning of N.C.G.S. § 58-40-10.

CONCLUSION

The American Monarch motor home is not a private passenger motor vehicle within the meaning of N.C.G.S. § 58-40-10, and Defendants are not entitled to interpolicy stacking of UIM coverage.

REVERSED.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).