



In the Missouri Court of Appeals Eastern District

DIVISION TWO

LESLIE SEATON,	)	ED105895
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	St. Louis County
v.	)	15SL-CC03927
	)	
SHELTER MUTUAL INSURANCE	)	Honorable Joseph L. Walsh, III
COMPANY,	)	
	)	Filed: September 11, 2018
Appellant.	)	

OPINION

Shelter Mutual Insurance Company (“Shelter”) appeals the trial court’s judgment granting Leslie Seaton’s (“Plaintiff”) motion for summary judgment. We affirm.

BACKGROUND

Chelsea Seaton, Plaintiff’s daughter, was killed in an accident while riding as a passenger in a vehicle driven by Megan Deaton. Plaintiff settled a wrongful death claim with Deaton’s insurer, American Family Insurance, for policy limits. Plaintiff then sought underinsured motorist coverage from Shelter pursuant to three separate endorsements to her own auto insurance policies. Shelter paid the claim under one policy but denied coverage pursuant to the endorsements to the two remaining policies (“the policies”). Plaintiff filed a petition for

declaratory judgment and damages, seeking a declaration of coverage. Both parties filed for summary judgment. The trial court found Plaintiff was entitled to underinsured motorist coverage for all three endorsements to her insurance policies as a matter of law. Shelter now appeals.

DISCUSSION

In each of its points on appeal, Shelter claims the trial court erred in granting summary judgment in favor of Plaintiff because she was not entitled to underinsured motorist coverage pursuant to two of the three endorsements to her Shelter policies.

Standard of Review

We review the trial court's grant of summary judgment *de novo*. *Nationwide Ins. Co. of America v. Thomas*, 487 S.W.3d 9, 12 (Mo. App. E.D. 2016) (citing *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993)). We will affirm the decision if there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *Id.* If the underlying facts are not in question, disputes arising from the interpretation of insurance contracts are matters of law to be decided by the court. *Id.* (internal citation omitted). "We will affirm the trial court's grant of summary judgment if it is correct as a matter of law on any ground." *Lonero v. Dillick*, 208 S.W.3d 323, 327 (Mo. App. E.D. 2006) (citing *JTL Consulting, L.L.C. v. Shanahan*, 190 S.W.3d 389, 395 (Mo. App. E.D. 2006)).

Analysis

Shelter asserts four points on appeal, each of which sets forth separate grounds upon which it contends the trial court erred granting summary judgment in favor of Plaintiff. However, each of Shelter's separate arguments concern the same underlying question of whether

Plaintiff was entitled to underinsured motorist coverage pursuant to the two separate endorsements to the remaining two policies issued by Shelter. Our review of this question is dispositive; therefore, we do not consider each of Shelter's points on appeal individually.

Underinsured motorist insurance provides coverage to insureds who have been injured by a motorist whose own liability insurance coverage is insufficient to fully compensate the insured's actual damages. *Fanning v. Progressive Northwestern Ins. Co.*, 412 S.W.3d 360, 365 (Mo. App. W.D. 2013) (quoting *Long v. Shelter Ins. Co.*, 351 S.W.3d 692, 696 (Mo. App. W.D. 2011)). This coverage is personal accident insurance that follows the individual policy holder rather than a particular vehicle. *Id.* Missouri does not require underinsured motorist coverage by statute or public policy; therefore, the policy defines the limits of coverage. *Id.* In the present case, Plaintiff purchased underinsured motorist coverage as a separate endorsement to each of her Shelter insurance policies. This endorsement was an attachment to the policies and contained its own definition section of specific terms.

Shelter argues the underinsured motorist coverage in the policies did not apply to Chelsea because she did not meet the definition of insured. Although she was named as an "Additional Listed Insured," Chelsea was not listed as a named insured on the declarations page of the policies. However, Plaintiff asserts Chelsea is a "relative" as defined within the endorsements. Thus, the issue is solely one of interpretation of the insurance policies.

We look to the policy language to determine whether it is ambiguous or unambiguous. *Fanning*, 412 S.W.3d at 364 (internal citations omitted). If the policy is unambiguous, we enforce it as written. *Id.* However, if an ambiguity exists, we construe the policy language against the insurance company. *Id.* Ambiguities are construed in favor of the insured for the following reasons: (1) insurance is designed to provide protection to the insured, and therefore,

where provisions designed to restrict or limit coverage already granted or which introduce exceptions or exemptions are ambiguous, the provisions must be strictly construed against the insurance company; and (2) as the drafter of the policy language, the insurance company is in the better position to remove an ambiguity from the contract. *Golden Rule Ins. Co. v. R.S.*, 368 S.W.3d 327, 334 (Mo. App. W.D. 2012) (quoting *Pruitt v. Farmers Ins. Co.*, 950 S.W.2d 659, 664 (Mo. App. S.D. 1997)). The rule is more rigorously applied to insurance contracts in Missouri than in other contracts. *Fanning*, 412 S.W.3d at 364 (internal citations omitted). While exclusions or limitations may be used to narrow an initially broad grant of coverage, such exclusions will only be enforced if they are clear and unambiguous. *Maxam v. Amer. Fam. Mut. Ins. Co.*, 504 S.W.3d 124, 127 (Mo. App. W.D. 2016). The policy language will be considered ambiguous if there is “duplicity, indistinctness, or uncertainty” in the language. *Fanning*, 412 S.W.3d at 364 (internal citations omitted). In determining whether the policy provisions are ambiguous, we consider the words or phrases in the manner in which they would normally be understood by the lay person purchasing the policy. *Id.* Typically we construe the terms of an insurance policy by applying the meaning of such terms as they would be defined by an ordinary person of average understanding. *Seeck v. Geico General Ins. Co.*, 212 S.W.3d 129, 132 (Mo. banc 2007) (internal citation omitted).

In the present case, in addition to the insurance policies Shelter refers to in its points on appeal, Plaintiff contracted and paid for an additional endorsement to each policy for underinsured motorist coverage with limits of \$100,000 per person and \$300,000 per accident. Each separate endorsement contains its own definitions and defines the terms damages, uncompensated damages, and underinsured motor vehicle. “Insured” is defined as “(a) **You**,”

and “(b) any **relative**. . . .” (emphasis in original). The term relative is not further defined.

Furthermore, Shelter would pay the uncompensated damages subject to the limits of liability if:

- (a) an **insured** sustains **bodily injury** as a result of an **accident** involving the **use** of an **underinsured motor vehicle**; and
- (b) the **owner** or **operator** of that **underinsured motor vehicle** is legally obligated to pay some or all of the **insured’s damages** . . . (emphasis in original)

However, within the separate policies, “you” is defined as “any person listed as a **named insured** in the **Declarations** and, if that **person** is an **individual**, his or her **spouse**.” As applicable to the present case, the term relative is defined in the policies as “an **individual** related to **you** by blood, marriage, or adoption, who is primarily a **resident** of, and actually living in, **your** household.” The policies further define relative to exclude “any **individual** who **owns a motor vehicle**” Own is defined in part as the person who “holds the legally recognized title to, or is a **leaseholder** of, an item or real or personal property, even if there are other **owners**.” (emphasis in original)

This exclusion is so clearly a departure from the conventional definition of the term relative no ordinary person would construe the word in this manner. A reasonable lay person purchasing the additional underinsured motorist coverage and reviewing the endorsement to the policy containing such coverage could not reasonably interpret the definition of relative to exclude an individual who owns a motor vehicle. Shelter’s definition of the term relative in the body of its policies so severely constrains a reasonable interpretation of the term to create an ambiguity as to the definition of relative between the policy and the separate underinsured motorist endorsement. The ambiguity is resolved in favor of Plaintiff, the insured. *Fanning*, 412 S.W.3d at 364.

Similar policy language defining the term “relative” has been considered by Missouri courts; however, the relevant cases are readily distinguishable from the present case. In *Carter v. Shelter Mut. Ins. Co.*, 516 S.W.3d 370 (Mo. App. E.D. 2017), and *Taylor v. Owners Ins. Co.*, 499 S.W.3d 351 (Mo. App. W.D. 2016), insureds were denied *uninsured* motorist coverage based upon exclusionary language within the insurance policy’s definition of the term relative if the insured owned a vehicle.

Neither *Carter*¹ nor *Taylor* considered separate *underinsured* motorist coverage contracted and paid for as an endorsement to the policies. The uninsured motorist coverage at issue in both cases is statutorily mandated in Missouri. Section 379.203 RSMo (2016). There is no such statutory requirement for underinsured motorist coverage. Thus, uninsured motorist coverage is unquestionably distinct from underinsured motorist coverage at issue in the present case. The additional coverage for underinsured motorist liability is determined by the contract entered into between the insured and the insurer in an endorsement separate from the policy. *Niswonger v. Farm Bureau Town & Country Ins. Co. of Missouri*, 992 S.W.2d 308, 314 (Mo. App. E.D. 1999).

In addition, the policy language at issue in *Taylor* was clearly distinct from the present case. *Taylor*, 499 SW.3d at 356. The *Taylor* court considered an exclusion for owning a vehicle in the “COVERAGE” section of the uninsured motorist provision. *Id.* at 355-56. Unlike the underinsured motorist coverage definition in the present case, this general definition of “relative” was contained within the actual uninsured motorist coverage provisions in the policy itself and not in a separate underinsured motorist endorsement purchased by an insured which contained no such limiting provisions. The court in *Taylor* acknowledged the result may have differed in

¹ In contrast to this matter, it was undisputed that Carter did not qualify as a relative, and our holding did not address the exclusion. *Carter*, 516 S.W.3d at 373-74.

circumstances similar to this matter if the limitation was not stated directly in the coverage subsection but was contained in the definitions section of the policy. *See Id.* at 356. We agree. It is patently unfair to expect an insured to search for an exclusionary definition far beyond a reasonable lay person's interpretation of the term relative in any policy. In this matter, if Shelter intended to so limit its underinsured motorist coverage, the exclusionary definition should have been clearly set forth in the separate endorsement itself.

Here, there is no dispute Chelsea was related to Plaintiff by blood and resided in Plaintiff's household. Shelter's illogical exclusionary definition of the term relative in its policy creates an ambiguity between the policy and the endorsement which is construed in Plaintiff's favor. Accordingly, Plaintiff was entitled to underinsured motorist coverage pursuant to the policies, and the trial court did not err in granting summary judgment in her favor.

CONCLUSION

As a result of the foregoing, the trial court did not err in granting summary judgment in favor of Plaintiff. Shelter's points on appeal are denied, and the judgment of the trial court is affirmed.



Lisa P. Page, Presiding Judge

Roy L. Richter, J., and
Philip M. Hess, J., concur.