MISSOURI COURT OF APPEALS
WESTERN DISTRICT

AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.,

Respondent,

v.

DAVID BROWNING and KYLE HIMMELBERG,

Appellants.

DOCKET NUMBER WD83627

Date: February 16, 2021

Appeal from:

Jackson County Circuit Court
The Honorable Dale Youngs, Judge

Appellate Judges:

Division Two: W. Doug Thomson, Presiding Judge, Lisa White Hardwick and Edward R. Ardini, Jr., Judges

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Attorneys:
Tim Dollar, Tom Hershewe, Brett Williams, Kansas City for Appellants.
Wm. Clayton Crawford, Jordan T. Stanley, Kevin D. Brooks, Kansas City for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I., Respondent,
v.
DAVID BROWNING and KYLE HIMMELBERG, Appellants.

WD83627 Jackson County

Before Division Two Judges: W. Doug Thomson, Presiding Judge, Lisa White Hardwick and Edward R. Ardini, Jr., Judges

Kyle Himmelberg and David Browning ("Appellants") appeal the circuit court's grant of summary judgment in favor of American Family Mutual Insurance Company, S.I., ("American Family") on American Family's declaratory judgment petition. The court determined that Browning was not entitled to the payment of first aid expenses pursuant to the American Family automobile liability policy under which Himmelberg was insured because Himmelberg did not "incur" any first aid expenses for Browning. On appeal, Appellants contend that this determination was erroneous because Himmelberg became legally liable for first aid expenses when he caused Browning's injuries. Appellants alternatively assert that summary judgment cannot be affirmed on the basis that Browning's settlement offer did not comply with Section 537.058, RSMo Cum. Supp. 2020.

AFFIRMED.

Division Two holds:

The decision is affirmed on the alternative basis that Browning's time-limited demand under Section 537.058 did not include first aid expenses allegedly incurred by Himmelberg; therefore, American Family did not owe a duty to pay first aid coverage, in addition to the $50,000 policy limits, in response to Browning's demand. While Browning demanded that American Family pay "all applicable policy limits and payments," he did not state that the "payments" to which he was referring were for first aid expenses and, in fact, he did not indicate that he had first aid expenses. Additionally, Section 537.058.2(2) requires that a time-limited demand request a specific, identifiable sum – either an "amount of monetary payment" or the "applicable policy limits." Browning's demand for an

unspecified amount of "payments" in addition to the policy limits did not meet this requirement.

Opinion by: Lisa White Hardwick, Judge February 16, 2021

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