STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0701

Mariese Marvin, et al.,
Appellants,

vs.

Illinois Farmers Insurance Company,
Respondent.

Filed April 15, 2008
Affirmed
Poritsky, Judge[*]

Washington County District court
File No. C6-06-6138

Brendan J. Cody, Daniel T. Cody, Cody Law Offices, 810 Degree of Honor Building, 325 Cedar Street, St. Paul, MN 55101 (for appellants)

Roger H. Gross, Timothy J. Crocker, Gislason & Hunter LLP, Suite 500, 701 Xenia Avenue South, Minneapolis, MN 55416 (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Connolly, Judge; and Poritsky, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

PORITSKY, Judge

Appellant appeals from the decision granting summary judgment in favor of respondent insurance company in a declaratory-judgment action, claiming that the district court erred by considering documents other than the evidence she proffered. The district court determined that the evidence proffered by appellant was irrelevant and the evidence supplied by the respondent was conclusive. We affirm.

FACTS

On May 2, 2001, appellant Mariese Marvin was loading toys into the back of Tonya Weigel's Ford Explorer. *Ill. Farmer's Ins. Co. v. Marvin*, 707 N.W.2d 747, 749 (Minn. App. 2006). As she did so, Joseph Betz backed into the Ford Explorer, pinning Marvin between the two cars and causing compound fractures to her knees and right ankle. *Id.* at 749-50. The Weigels were insureds under an automobile insurance policy ("the underlying policy") issued by respondent Illinois Farmers Insurance Company ("Farmers" or "the insurance company"). Marvin settled with Betz for the limits of his liability coverage. *Id.* at 750. But because her damages were not fully satisfied, Marvin then sought underinsured motorist (UIM) coverage under Weigel's underlying policy. *Id.* On appeal, this court determined that Marvin was an "occupant" of the Ford Explorer, and was therefore an insured under the Farmers UIM coverage. *Id.* at 751-52, 757.

Although Marvin was covered by the underlying policy, the parties disputed the amount of coverage. Marvin brought a declaratory judgment action seeking to place the UIM coverage at $500,000. Farmers claimed that the UIM limit was $250,000. Marvin

moved for summary judgment. In support of her position, she submitted the declarations page from an umbrella policy that Farmers had issued to the Weigels. Farmers submitted a "reconstruction" of a copy of the declarations page from the underlying policy. Curiously, the record contains no affidavits or testimony from the Weigels themselves concerning their understanding of the coverages in their underlying policy, and neither party submitted a copy of the actual declarations page from the underlying policy purporting to have been in the Weigels' possession.

The district court denied Marvin's motion for summary judgment, ruling that the documentation Marvin supplied in support of her motion was irrelevant. The court determined that there were no material facts in dispute and ruled that as a matter of law the limit for the UIM was $250,000. This appeal follows.

D E C I S I O N

Marvin contends (1) that summary judgment should have been granted in her favor, and (2) that the district court erred in considering evidence presented by Farmers in addition to the document that she supplied.[1] Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, that have been submitted "show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented. *Ill. Farmers Ins. Co. v. Tapemark Co.*, 273

[1] We note Marvin does not argue that there are any disputed issues of material fact, which would make summary judgment inappropriate.

N.W.2d 630, 633 (Minn. 1978). A district court may enter summary judgment sua sponte, provided conditions exist that "would justify a summary judgment on motion of a party." *Fed. Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988) (quotation omitted), *review denied* (Minn. Oct. 26, 1988).

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [trial] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). No genuine issue for trial exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party. . . ." *DLH, Inc., v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)).

Here, Farmers did not move for summary judgment, but merely responded to the motion for summary judgment filed by Marvin. The district court entered summary judgment in favor of Farmers sua sponte as permitted by Minn. R. Civ. P. 56.03.

A. Was the Umbrella Declaration Page an Unambiguous Contract for Auto Insurance Coverage?

Interpretation of insurance policy language and application of the policy to the facts in a case are also questions of law that this court reviews de novo. *Franklin v. W. Nat'l Mut. Ins. Co.*, 574 N.W.2d 405, 406 (Minn. 1998). Whether the language of an insurance policy is ambiguous is a question of law. *St. Paul Fire & Marine Ins. Co. v. Nat'l Computer Sys., Inc.*, 490 N.W.2d 626, 631 (Minn. App. 1992), *review denied* (Minn. Nov. 17, 1992). "Any ambiguity is to be resolved against the insurer and in

accordance with the reasonable expectations of the insured." *Id.* "'[O]nly if more than one meaning applies within that context does ambiguity arise.'" *Landico, Inc. v. Am. Family Mut. Ins. Co.*, 559 N.W.2d 438, 441 (Minn. App. 1997) (alterations in the original) (quoting *Board of Regents v. Royal Ins. Co. of Am.*, 517 N.W.2d 888, 892 (Minn. 1994)), *review denied* (Minn. Apr. 24, 1997). Declarations pages, when considered in tandem with other clauses or documents, may be considered to be ambiguous. *Id.* at 440-41; *cf. Farmers Home Mut. Ins. Co. v. Lill*, 332 N.W.2d 635, 637-38 (Minn. 1983) (determining that the alternative interpretation of a declarations page adopted by a district court was not reasonable, and that the declarations page was therefore not ambiguous).

In support of her motion for summary judgment, Marvin supplied a copy of a declarations page from a special umbrella policy issued by Farmers, on which the Weigels were the insureds.[2] The declarations page for the umbrella policy contained a

[2] The Minnesota Supreme Court has explained:

> An umbrella policy, typically, requires the insured to carry underlying liability insurance up to a certain limit with a different insurance company. The umbrella insurer then provides an "umbrella" over this underlying coverage by agreeing to pay that part of any claim against the insured that exceeds the limits of the underlying coverage up to the limits of the umbrella. This arrangement enables the umbrella insurer to offer high limits at a relatively modest premium. The umbrella policy is attractive to the prudent person who wants protection for the infrequent but always possible and much-to-be-dreaded catastrophic loss. The policy can be issued for a relatively modest premium because most claims are absorbed by the underlying insurer, and also because the umbrella insurer's defense costs are ordinarily less than those of other insurers. The cost of defense is no small item.

recitation to the effect that the UIM limit for the underlying policy was $500,000. But Marvin was *not* seeking coverage under the umbrella policy, to which the declarations page pertained. Instead, she was seeking coverage under the underlying policy. Although Marvin does not claim that she was insured under the umbrella policy, she claims that the declarations page from the umbrella policy was "a contract which combines the umbrella with the automobile policies for two motor vehicles . . . . The Umbrella Policy Declarations page . . . is clear, concise and unambiguous as to the policy [auto insurances] coverage."

This argument is unpersuasive. The umbrella declarations page is from a separate policy; it is not from the policy under which Marvin is seeking coverage. According to the umbrella insurance policy, the policy operates to provide insurance in "excess over all other applicable insurance . . . covering the same loss." The umbrella policy also advises the insured that if the insured changes the terms of the underlying insurance policies, "your coverage will continue as if your underlying policies had not been altered. If you acquire an additional auto, watercraft, or real property, you must notify us as soon as possible." On the declarations page Marvin proffers as conclusive evidence of her proposition, the auto insurance is referred to as "underlying" insurance.

Additionally, the umbrella insurance policy declarations page facially contradicts the notion that it is a document that constitutes a contract with the insureds for underlying coverage. In fact, just beneath the listed "Underlying Limits" section where the auto

---

Jostens, Inc. v. Mission Ins. Co., 387 N.W.2d 161, 165 (Minn. 1986) (citation and footnote omitted).

insurance policy at issue is recited as $500,000 limit, the umbrella declarations page states:

> Important Notice: You have told us you have underlying insurance policies with liability limits listed above. If your underlying insurance policies have lower limits than shown above, you will be unprotected for the difference. You must keep the above coverages and limits in effect to avoid these gaps in your protection.

Therefore, the underlying limits listed on the umbrella declarations page do not serve to guarantee UIM coverage of $500,000 under the underlying policy, but instead to inform the insureds that the umbrella policy would not pay anything until the insured's damages reached $500,000. If the underlying policy did not cover the full $500,000, there would be a gap in coverage.

Moreover, as exhibited by the above, the umbrella declarations page explicitly contemplates the existence of and possible future changes made to policies external to its own provisions. The quoted language acknowledges that insurance contracts for underlying insurance can be changed independently of the umbrella insurance contract, and warns the policy holder that this might result in a gap of coverage. It merely serves to notify an insured that there may be a gap in coverage—and resulting personal liability—if the insured fails to coordinate the insurance plans. The umbrella declarations page does not purport to combine the two coverage contracts, nor does it have the effect of doing so.

The district court found that, as a matter of law, the umbrella declarations page was irrelevant to the determination of UIM coverage under the underlying policy. We

agree.[3] The umbrella declarations page is for another policy, and states, on its face, that the limits of coverage for the underlying insurance may be inaccurate.

The reference to auto-insurance-liability coverage on the umbrella declarations page does not present conclusive evidence of the UIM coverage such that summary judgment in favor of Marvin would be appropriate. Although Marvin urges the court to find that the umbrella declarations page constituted an unambiguous and binding contract between the insureds and Farmers with regard to the underlying policy, the document at hand does not lend itself to such an interpretation. The declarations page for the umbrella policy is not an unambiguous contract for auto insurance. Therefore, Marvin's argument that the district court erred in denying her motion for summary judgment cannot be sustained.

B. Was the Documentation Produced by Respondent Unreliable?

Marvin contends that the documents provided by Farmers are "reconstructed," and therefore unreliable. As noted earlier, summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented. *Tapemark Co.*, 273 N.W.2d at 633. "However, when determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons

[3] There may be cases, not before us here, in which the coverage recited on the declarations page of an umbrella policy has probative value on the issue of coverage of the underlying policy, such as when there is no conclusive evidence of the coverage available under the underlying policies.

could not draw different conclusions from the evidence presented." *DLH, Inc.*, 566 N.W.2d at 70.

In opposition to Marvin's motion for summary judgment, Farmers provided several documents indicating that the limit of the auto policy was $250,000, rather than $500,000. Among them were three copies of certified declarations pages for the auto insurance policy at issue, along with a supporting affidavit from their custodian of records which stated that they were accurate. In addition, respondent insurance company supplied declarations pages that indicated the Weigels had increased their liability coverage from $250,000 to $500,000 *after* the accident. Farmers also supplied notes from the Weigel's insurance agent referring to their request to increase their uninsured motorist coverage after the accident.

Each of the auto declarations pages offered by Farmers states that it is a "reconstruction" of benefits available on May 2, 2001, when the accident occurred. At the summary judgment hearing, counsel for Farmers stated that these "reconstructions" were computer print-offs of the records Farmers had on file for the relevant time period and that had been certified as accurate by their records custodian.

Although Marvin disputes the reliability of these auto declarations pages, the district court did not err in concluding, in the absence of relevant contradictory evidence, that the certified declarations pages provided by Farmers, coupled with corroborative evidence of their accuracy, were conclusive. Had this case gone to trial, the declarations pages provided by Farmers would have been an admissible duplicates under Minn. R.

Evid. 1003. The district court accepted this evidence, found it to be probative, and relied upon it.

Although Marvin made several conclusory allegations regarding the reliability of the declarations pages provided by Farmers, there was no evidence before the district court indicating that they were somehow fraudulent or otherwise unreliable. In order to make a showing sufficient to prevent summary judgment, a party "must do more than rest on mere averments." *DHL, Inc.*, 566 N.W.2d at 71. Other than the umbrella declarations page Marvin proffered as conclusive evidence of UIM coverage, she has supplied no documentation that the certified declarations pages submitted by Famers were somehow inaccurate.

Under these facts, the district court did not err in concluding that the declarations page for a different policy was irrelevant, and the court correctly concluded that the documents submitted by Farmers were adequate to direct summary judgment in its favor. The district court is not required to ignore its conclusion that a particular piece of evidence, such as a declarations page for a different policy, has no probative value. *Id.* at 70. In this case, because of the irrelevance of the umbrella declarations page in terms of UIM coverage, and the certified declarations pages proffered by Farmers, the district court fairly concluded that reasonable persons could not draw different conclusions from the evidence presented. *See id.*

Affirmed.