STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1895

Jeffrey V. Fischer,
Respondent,

vs.

Western National Mutual Insurance Company,
Appellant.

Filed August 12, 2008
Affirmed
Muehlberg, Judge[*]

Dakota County District Court
File No. C9-06-9452

Wilbur W. Fluegel, Fluegel Law Office, 150 South Fifth Street, Suite 3475, Minneapolis, MN 55402; and

William J. Kranz, Montpetit Freiling & Kranz, 222 Grand Avenue West, Suite 100, South St. Paul, MN 55075 (for respondent)

James T. Martin, Gislason, Martin, Varpness & Janes, P.A., 7600 Parklawn Avenue South, Suite 444, Edina, MN 55435 (for appellant)

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and Muehlberg, 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

MUEHLBERG, Judge

Appellant insurer challenges the district court's denial of its motion for a collateral-source offset for the difference between the amount respondent's medical providers billed for medical expenses and the amount respondent's health insurer actually paid, arguing that respondent insured should not be awarded the difference. Because the collateral-source statute is inapplicable and any windfall amount should be awarded to the insured and not the insurer, we affirm.

FACTS

Respondent Jeffrey V. Fischer was injured in an automobile accident. Fischer carried no-fault and underinsured motorist (UIM) coverage purchased from appellant Western National Mutual Insurance Company (Western National). The at-fault driver had an automobile-liability policy with a $30,000 coverage limit. Fischer brought a claim against the at-fault driver, which was settled for $28,000 after Fischer gave timely notice to Western National. Fischer then brought the present action to recover UIM benefits from Western National. The parties stipulated that the at-fault driver had been 100% at fault and the only issue for jury determination was the extent of Fischer's damages.

Medical providers had billed $87,368.76 for Fischer's care, but, based on prearranged discounts or agreed-fee schedules, Fischer's health insurer paid the medical providers $27,710.64. Prior to trial, Western National paid Fischer's health insurer's subrogation claim in full. In return, the health insurer furnished a release and assignment

of claim which released Western National from any liability with respect to the health insurer's subrogation claims and assigned to Western National any further claims that the health insurer could have asserted.

After a three-day jury trial, the jury returned a verdict awarding Fischer $190,062.65, including $120,235.23 for past medical expenses. Western National brought a motion for a collateral-source determination. The district court then subtracted from Fischer's recovery the no-fault economic-loss benefits paid by Western National pursuant to Minn. Stat. § 65B.51, subd. 1 (2006) and the collateral sources, which included the tort recovery from the at-fault driver and the amount paid by Fischer's health insurer, for a total of $74,319.46. The district court denied Western National's request for a further $59,656.14 reduction based on the difference between what Fischer's medical providers billed and what Fischer's health insurer actually paid pursuant to prearranged discounts or agreed-fee schedules. Fischer received a net judgment for $115,743.19.

Western National appeals the district court's order, arguing that it is entitled to pursue a collateral-source offset for the total cost of the medical services that Fischer received, not the amount that Fischer's health insurer actually paid.

D E C I S I O N

Western National argues that the district court erred in failing to reduce the jury award by the difference between what Fischer's medical providers billed and what his health insurer actually paid. Western National contends that the district court's failure to provide an offset for the difference between the amount of medical expenses incurred and

that actually paid by Fischer's health insurer violates the primary objective of avoiding double recoveries as stated in both the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. § 65B.42(5) (2006), and the collateral-source statute, Minn. Stat. § 548.36 (2006). "Statutory interpretation is a question of law subject to de novo review." *Stout v. AMCO Ins. Co.*, 645 N.W.2d 108, 112 (Minn. 2002). This court is not bound by the district court's conclusions when applying a statute to undisputed essential facts. *Id.* Where there is no factual dispute, this court reviews de novo whether the district court has properly applied the law. *Dean v. Am. Family Mut. Ins. Co.*, 535 N.W.2d 342, 343 (Minn. 1995).

Under the No-Fault Act, an insurer's maximum liability with respect to UIM coverage is "the amount of damages sustained but not recovered from the insurance policy of the driver or owner of any underinsured at fault vehicle." Minn. Stat. § 65B.49, subd. 4a (2006). No Minnesota cases have specifically addressed the issue of whether an insured may recover from his or her UIM insurer the full amount of medical expenses incurred when the insured's health insurer has paid less than the full amount due to agreements with medical providers. But caselaw has repeatedly held that an injured party is entitled to recover the full amount of medical expenses incurred regardless of reductions in the actual amount billed.

In *Stout*, the supreme court rejected an argument nearly identical to appellant's argument in this case, noting that a no-fault insurer may not "attempt[] to reduce its obligation to provide basic economic loss benefits on the ground that another source of benefits has stepped in and decreased the amount of the injured person's medical bills—

whether by paying them, obtaining discounts, or some other means." 645 N.W.2d at 114. An uninsured pedestrian brought a claim against a no-fault carrier to recover the full amount of his medical expenses, which had been discounted by the Department of Human Services. *Id.* at 109-10. The supreme court observed that "a no-fault insurer has a duty to provide basic economic loss benefits to reimburse an injured person's loss even when the injured person is entitled to compensation for the same loss from a different source." *Id.* at 112.

In *Stout*, the supreme court reasoned that, under the No-Fault Act, a "loss" is the amount originally billed by the medical service providers, not the amount actually paid in satisfaction of the medical bills, and any reduction in the amount pursuant to an agreement does not modify the amount of medical expense incurred. *Id.* at 113. The supreme court then concluded that if there is a windfall, the windfall should go to the insured, stating that "it seems more just that the insured who has paid a premium should get all he paid for rather than that the insurer should escape liability for that for which it collected a premium." *Id.* at 114-15 (quotation omitted); *see also Tezak v. Bachke*, 698 N.W.2d 37, 39-41 (Minn. App. 2005) (holding that trustee for next of kin of injured person entitled to recover full amounts of medical expenses incurred, even if it resulted in double recovery), *review denied* (Minn. Aug. 24, 2005); *Foust v. McFarland*, 698 N.W.2d 24, 29, 36 (Minn. App. 2005) (holding that any windfall resulting from difference in amount of medical expenses incurred and amount paid should be awarded to insured, who has paid a premium), *review denied* (Minn. Aug. 16, 2005).

Western National attempts to distinguish *Stout*, *Tezak*, and *Foust*, arguing that none of these cases are controlling because they do not involve an insurance policy between an insured injured party and the injured party's no-fault insurer. But while the cases may be factually distinct, the underlying premise stated in *Stout* is still applicable: "if there is to be a windfall either to an insurer or to an insured, the windfall should go to the insured." 645 N.W.2d at 114. Here, Fischer paid a premium for his UIM coverage with Western National, and he is entitled to any windfall that results from a claim against Western National arising from that UIM coverage.

Western National argues that the district court erred because Western National's obligation under its insurance policy with Fischer applies only to compensatory damages and not to "windfall" damages. A reviewing court gives unambiguous language in an insurance contract its plain and ordinary meaning. *State Farm Ins. Co. v. Seefeld*, 481 N.W.2d 62, 64 (Minn. 1992). "Under Minnesota's No-Fault Automobile Insurance Act [] an insurer's liability is governed by the contract between the parties only as long as coverage required by law is not omitted and policy provisions do not contravene applicable statutes." *Am. Nat'l Prop. & Cas. Co. v. Loren*, 597 N.W.2d 291, 292 (Minn. 1999) (quotations omitted). "An insurer may not provide less coverage than that required by the Act." *Id.*

The No-Fault Act requires that every vehicle owner carry, and every insurer provide, UIM coverage with liability limits of at least $25,000 per person and $50,000 per accident. Minn. Stat. § 65B.49, subd. 3a(1) (2006). The purpose behind UIM coverage is to pay, subject to its policy limits, benefits an insured would otherwise have

collected from an underinsured motorist. *McIntosh v. State Farm Mut. Auto. Ins. Co.*, 488 N.W.2d 476, 479 (Minn. 1992). Therefore, any contract language that eliminates statutorily required UIM coverage is invalid. *See Stewart v. Ill. Farmers Ins. Co.*, 727 N.W.2d 679, 683 (Minn. App. 2007) (stating that policy terms "that conflict with the No-Fault Act will be held invalid").

Under the No-Fault Act, a vehicle is defined as underinsured when it is one "to which a bodily injury liability policy applies at the time of the accident but its limit for bodily injury liability is less than the amount needed to compensate the insured for *actual damages*." Minn. Stat. §65B.43, subd. 17 (2006) (emphasis added). The supreme court has recognized that the term "actual damages" is not defined in the No-Fault Act. *Richards v. Milwaukee Ins. Co.*, 518 N.W.2d 26, 27 (Minn. 1994). The supreme court subsequently concluded that the term "actual damages" referred to the total liability of the tortfeasor, except those damages paid by no-fault coverage. *Id.* at 28. In *Stout*, the supreme court concluded that, under the No-Fault Act, the amount of loss incurred by an injured party is the full amount of medical expenses reflected on the injured party's medical bills and not the amount actually paid by the health insurer in satisfaction of those bills. 645 N.W.2d at 113.

Fischer's UIM endorsement states that Western National "will pay all sums the 'insured' is legally entitled to recover as compensatory damages from the owner or driver of an . . . 'underinsured motor vehicle.'" Western National argues that payment of the undiscounted amount of Fischer's medical bills does not qualify as payment of "compensatory damages" as specified in Western National's UIM endorsement. The

district court found that the present case was indistinguishable from the previous cases and Western National's use of the phrase "compensatory damages" did not entitle Western National to deduct the full amount of the medical bills. The district court's conclusion is correct. In *Tezak*, this court rejected a similar argument that "compensatory damages" did not include the difference between medical expenses billed and medical expenses actually paid. 698 N.W.2d at 39-41. Western National's interpretation of the UIM endorsement in Fischer's insurance policy would effectively provide less coverage than that required under the No-Fault Act because the supreme court concluded in *Stout* that a tortfeasor's liability includes the amount of medical expenses incurred and in *Richards* that "actual damages" includes the total liability of the tortfeasor. *Stout*, 645 N.W.2d at 113; *Richards*, 518 N.W.2d at 28. Therefore, the use of "compensatory damages" in the UIM endorsement does not limit Western National's obligation to only the medical expenses actually paid by Fischer or his health insurer.

Furthermore, the district court's decision in the present case does not violate the collateral-source statute because the collateral-source statute is inapplicable. The collateral-source statute defines "collateral sources" as payments related to the injury or disability in question. Minn. Stat. § 548.36, subd. 1 (2006). It states that upon an award of damages in a civil action, a party may file a motion requesting determination of collateral sources, and the court shall determine "amounts of collateral sources that *have been paid* for the benefit of the plaintiff." *Id.*, subd. 2(1) (2006) (emphasis added). The collateral-source statute does not apply to the gap between the amount of medical bills

and the discounted amount paid by the health insurer because the gap is not a payment and therefore not a collateral source under the statute. *Tezak*, 698 N.W.2d at 41.

"[W]hen benefits are not subject to the collateral-source statute, the common-law collateral-source rule still applies." *Id.* In *Smith v. Am. States Ins. Co.*, this court stated the common-law collateral-source rule as follows:

> [I]f the plaintiff's special damages . . ., such as hospital or medical expenses or loss of wages, are paid for by some third person, either as a gift or on the basis of some contractual obligation, this circumstance does not bar the plaintiff from recovering this item from the defendant, even though it may in effect accord to the plaintiff a double benefit or a double recovery.

586 N.W.2d 784, 786 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999). Accordingly, the common-law collateral-source rule does not require a deduction for the portion of an injured person's medical expenses billed but not actually paid by the health insurer due to discounts or fee schedules.

Western National argues that the common-law collateral-source rule is inapplicable because the cause of action in the present case arises from contract, not tort. Historically, the common-law collateral-source rule is generally applied only in tort cases. *Hubbard Broad., Inc. v. Loescher*, 291 N.W.2d 216, 222 (Minn. 1980). The underlying rationale is that application of the collateral-source rule to a breach-of-contract action "would violate the contractual damage rule that no one shall profit more from the breach of an obligation than from its full performance." *Id.* at 223 (quotation omitted). But there is no absolute bar preventing the application of the collateral-source rule in contract cases. *Id.*

A UIM claim is unique and "is both alike and unlike a tort cause of action." *Employers Mut. Ins. Cos. v. Nordstrom*, 495 N.W.2d 855, 856 (Minn. 1993). UIM coverage is considered "tort-based" coverage which entitles an insured to seek from the UIM insurer damages that the insured is legally entitled to recover from the tortfeasor, when the damages exceed the tortfeasor's liability limits. *Dean*, 535 N.W.2d at 344. Although Fischer's claim is a contract claim, it is not a breach-of-contract action, but rather a tort-based claim that arises from a contract between the parties. Therefore the traditional rationale for barring application of the collateral-source rule does not bar application of the rule in this context, and Western National is not entitled to a collateral-source offset equal to the entire amount of medical expenses incurred by Fischer.

Affirmed.