STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0559

George Ellis Johnson, et al.,
Appellants,

vs.

Progressive Northern Insurance Company,
Respondent.

Filed February 24, 2009
Affirmed
Klaphake, Judge

Wright County District Court
File No. 86-CV-07-5356

Gordon P. Raisanen, Raisanen & Associates Law Firm, Ltd., 15725 US Highway 12 Southwest, Cokato, MN 55321 (for appellants)

Kenneth H. Bayliss, III, Quinlivan & Hughes, P.A., 400 South First Street, Suite 600, P.O. Box 1008, St. Cloud, MN 56302 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

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

KLAPHAKE, Judge

Appellant Lance Clarke (Clarke) was severely injured in a one-car accident in 2004 while riding as a passenger in a vehicle driven by Jordan Wuollet. Because Wuollet's vehicle was underinsured, Clarke elected to seek $250,000 in underinsured

motorist (UIM) benefits from each of two policies issued by Unigard Insurance Company (Unigard) and Farm Bureau Insurance Company (Farm Bureau) covering vehicles owned by Clarke's father and grandfather, respectively.[1] Consistent with the language in the Unigard policy, a district court concluded that Clarke's father's ERISA carrier, Great West Health Care, had priority to recover the $250,000 tendered by Unigard for Clarke's paid medical expenses. Clarke then sought excess UIM coverage in the amount of $250,000 from respondent Progressive Northern Insurance Company (Progressive), an insurer of his grandfather's vehicle.

We affirm the district court's decision to enter judgment on the pleadings because (1) although the record includes evidence outside the pleadings, such evidence does not differ from the evidence alleged in the complaint, and (2) the district court did not err in interpreting Minn. Stat. § 65B.49, subd. 3a(5) (2008), to limit Clarke's UIM recovery to the $250,000 he received from Farm Bureau in excess UIM benefits.

D E C I S I O N

1. Judgment on the Pleadings

Appellants first claim that the district court erred in entering judgment on the pleadings, rather than summary judgment, because the parties supplemented the record with materials outside the pleadings. Before trial, a party may move for judgment on the pleadings if a plaintiff fails to set forth a legally sufficient claim for relief. Minn. R. Civ.

[1] As Clarke was a minor at the time of the accident, he was an insured under the Progressive and Farm Bureau policies purchased by his grandfather, George Johnson, with whom he resided, and the Unigard policy owned by his parents. Clarke is joined in this appeal by his grandfather and others who have an interest in any UIM benefits Clarke receives.

P. 12.03. In deciding such motions, the district court must take the facts alleged in the complaint as true and draw all inferences in favor of the nonmoving party. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (reviewing dismissal on the pleadings for failure to state a claim under Minn. R. Civ. P. 12.02). On review, the appellate court must review de novo the judgment on the pleadings, *Bodah*, 663 N.W.2d at 553, and determine only "whether the complaint sets forth a legally sufficient claim for relief." *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). Judgment on the pleadings is particularly appropriate in disputes concerning the legal effect of documents, such as contracts. *McReavy v. Zeimes*, 215 Minn. 239, 244, 9 N.W.2d 924, 927 (1943).

When "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." Minn. R. Civ. P. 12.03; *see N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (applying summary judgment standard of review to motion for judgment on the pleadings when district court considered matters outside of the pleadings). But this court has declined to apply a summary judgment standard of review to a judgment on the pleadings, when the matters a district court considered pertained to legal, not factual, issues. *Dahl v. R.J. Reynolds Tobacco Co.*, 742 N.W.2d 186, 197 (Minn. App. 2007), *review denied* (Minn. Jan. 20, 2009).

Here, the additional materials included Progressive's insurance policy and two affidavits. Progressive's policy is not outside the pleadings because it is specifically referenced in the complaint. *See Piper Jaffray Co. v. Nat'l Union Fire Ins. Co.*, 967 F.

Supp. 1148, 1152 (D. Minn. 1997); *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 95 (Minn. App. 2005).

One of the attached affidavits was signed by George Johnson, Clarke's grandfather, who purchased the Progressive and Farm Bureau policies. Johnson's affidavit provides facts establishing Clarke's residency with Johnson and Johnson's purchase of the Progressive policy. The other affidavit was signed by Gordon P. Raisanen, appellants' attorney. Raisanen's affidavit includes the Progressive policy as an exhibit and alleges that appellant's UIM recovery is $250,000, derived from the Farm Bureau policy, and that the $250,000 from Unigard was awarded to the Clarkes' ERISA plan. The facts asserted in these affidavits are not disputed and do not differ from those alleged in the complaint. We therefore need not consider this appeal as one from summary judgment.

Appellants further argue that there are disputed facts in this case and that the opinions expressed in the affidavits show that there are factual disputes about whether Clarke is entitled to receive UIM benefits under the three UIM policies. Because the determinative facts in this case are included in the complaint and are not in dispute, this is a legal question. Therefore, the district court's ruling did not rely on matters outside of the pleadings, and we review its judgment on the pleadings de novo. *See Bodah*, 663 N.W.2d at 553.

2. Recovery of UIM Benefits

Appellants next contend that they should be entitled to recover $250,000 from Progressive in UIM benefits, in addition to the $250,000 tendered by Unigard and the $250,000 received from Farm Bureau for UIM coverage.

Minnesota's No-Fault Act contains strong language prohibiting the stacking of like coverages, as follows:

> Regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, in no event shall the limit of liability for uninsured and underinsured motorist coverages for two or more motor vehicles be added together to determine the limit of insurance coverage available to an injured person for any one accident.

Id.

As an occupant of Wuollet's vehicle, Clarke received liability coverage under Wuollet's vehicle. Because he was not entitled to and did not receive UIM benefits under that policy, he was entitled to receive "excess" UIM benefits under policies in which he is an insured. Minn. Stat. § 65B.49, subd. 3a(5), provides:

> [I]f the injured person is occupying a motor vehicle of which the injured person is not an insured, the injured person may be entitled to excess insurance protection afforded by a policy in which the injured party is otherwise insured. The excess insurance protection is limited to the extent of covered damages sustained, and further is available only to the extent by which the limit of liability for like coverage applicable to any one motor vehicle listed on the automobile insurance policy of which the injured person is an insured exceeds the limit of liability of the coverage available to the injured person from the occupied motor vehicle.

Id.

The question here is the legal effect to be given Unigard's tender of UIM benefits to Clarke under the anti-stacking provisions and the non-insured occupant provisions of the no-fault statute. Clarke argues that he did not actually receive the Unigard benefits because, by operation of law, they were given to an ERISA insurer who had provided medical benefits to him.

Under Minn. Stat. § 65B.49, subd. 3a(5), Clarke was entitled to UIM coverage made "available" to him. By tendering UIM benefits to Clarke, Unigard made its UIM coverage "available" to him as required by Minn. Stat. § 65B.49, subd. 3a(5), even though the ERISA insurer who had paid medical benefits for Clarke's injuries had priority to receive that tendered amount. We conclude that the tender of insurance benefits was sufficient to make that coverage "available" for purposes of Minn. Stat. § 65B.49, subd. 3a(5). *See* Minn. Stat. § 645.16 (2008) (requiring courts to interpret statutes to "ascertain and effectuate the intention of the legislature"). Here, Clarke had available the $250,000 from Unigard and actually received $250,000 on the $500,000 policy from Farm Bureau. The anti-stacking statute prohibits Clarke from obtaining another limit of UIM coverage from Progressive. *See* Minn. Stat. § 65B.49, subd. 3a(6). He therefore had available to him the "excess" UIM coverage to which he was entitled. Accordingly, judgment on the pleadings was appropriate, and we affirm.

Affirmed.