STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1596

Cody Devereaux Sleiter, et al.,
Appellants,

vs.

American Family Mutual Insurance Company,
Respondent.

Filed March 31, 2014
Affirmed
Crippen, Judge[*]

Lyon County District Court
File No. 42-CV-11-869

James S. Ballentine, Richard L. Tousignant, Schwebel, Goetz & Sieben, P.A., Minneapolis, Minnesota (for appellants)

Steven F. Lamb, Fargo, North Dakota (for respondent)

Considered and decided by Johnson, Presiding Judge; Rodenberg, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

Appellant Cody Sleiter challenges the district court's summary-judgment dismissal of his claim for underinsured motorist (UIM) benefits from his personal

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

insurance policy, which provided limits of coverage that were much less than the policy limits on coverage for the bus that he occupied when he was injured. Appellant contends that under the relevant statute the limits on his personal policy should be compared to the lesser, actual amount that he received under coverage for the occupied vehicle. Because the district court followed the clear language of the statute, we affirm.

FACTS

Appellant was injured in February 2008 when the school bus that he occupied was struck by a pickup truck. As a result of this accident, four children were killed and fifteen individuals were injured. The school bus carried a $1 million UIM policy issued by Auto Owners Insurance Company (Auto Owners). Along with a tender to the court of $61,218.21 maximum liability coverage on the pickup, Auto Owners tendered $1,011,511.23 to the court, which represented the full amount of its UIM policy limit plus interest.

A special master was appointed by an agreement of the parties due to the limited insurance coverage and the number of claimants, whose damages were in excess of $5 million dollars. Although appellant had sustained damages in the amount of $140,000, he was awarded only his representative shares from the pickup truck's liability policy and the school bus's UIM policy—$1,600.33 and $34,543.70, respectively.

Appellant next sought UIM benefits from respondent American Family Mutual Insurance Company (American Family), which insured the Sleiter family and contained UIM coverage limits of $100,000 per person and $300,000 per accident. American

Family refused the claim due to the much greater UIM limits under the school bus policy, citing both to the relevant statute and related policy language.

In these proceedings, following cross-motions for summary judgment on the coverage question, the district court granted American Family's motion, finding that the governing statute prevented appellant from recovering additional benefits under his family's policy. The district court did not address American Family's assertions on a related policy provision.

D E C I S I O N

On appeal from summary judgment, we examine the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The facts here are undisputed, and the parties disagree only regarding statutory and contract interpretation. We review both issues de novo. *Dohney v. Allstate Ins. Co.*, 632 N.W.2d 598, 600 (Minn. 2001) (stating that appellate courts review statutory interpretation and interpretation of insurance contracts de novo).

The statute at issue initially provides that the insurer's liability for uninsured and UIM coverages available to a motor vehicle occupant is "the limit specified for that motor vehicle." Minn. Stat. § 65B.49, subd. 3a(5) (2012). But if an injured occupant is not an insured under the policy covering the host vehicle, the occupant "may be entitled to excess insurance protection afforded by a policy in which the injured party is otherwise insured." *Id.* The dispute regards the next clause of the statute, which limits this excess insurance entitlement:

> 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. Contending that subdivision 3a(5) does not limit his excess coverage claim against American Family, appellant argues that the phrase "limit of liability of the coverage available" should be confined to the precise amount of coverage received from the school bus's UIM policy rather than the school bus's UIM policy limits. Applying subdivision 3a(5), the district court found that appellant was precluded from excess UIM benefits under his family's policy because the family's UIM policy limits did not exceed the school bus's UIM policy limits. The district court properly applied subdivision 3a(5).

Arguments similar to appellant's under subdivision 3a(5) have previously failed. In *LaFave v. State Farm Mut. Auto. Ins. Co.*, 510 N.W.2d 16 (Minn. App. 1993), an insured brought an action to recover uninsured benefits under her personal policy. LaFave was a passenger in her husband's pickup truck when they were struck by an uninsured motorist. *Id.* at 17. LaFave and her husband received an un-apportioned settlement of $81,250 from the pickup truck's UIM policy. *Id.* The pickup truck's UIM coverage limit was $100,000 per person. *Id.* Thereafter, LaFave sought UIM benefits from a policy issued on her own vehicle. *Id.* LaFave's vehicle's UIM limits were $50,000 per person and $100,000 per occurrence. *Id.* at 17-18.

LaFave argued that in determining whether excess UIM coverage was available to her, this court should look at the amount a claimant actually receives as opposed to the

applicable policy limits. *Id.* at 19. We rejected this argument and found that, under its plain meaning, the phrase "limit of liability of the coverage available" in subdivision 3a(5) "refers to the maximum amount of liability coverage accessible to the injured person, regardless of whether that person recovers that maximum amount." *Id.* And we further clarified that

> [e]ven where there are multiple injured persons and none receives the maximum amount of coverage available under the involved vehicle's policy, uninsured motorist benefits are not recoverable as excess coverage if the amount available to those multiple injured persons equals or exceeds the injured person's own uninsured per accident limit.

Id. (citing *Kothrade v. Am. Family Mut. Ins. Co.*, 462 N.W.2d 413, 416 (Minn. App. 1990)).[1]

More recently, the supreme court has addressed and applied a similar policy-limits comparison in determining whether excess UIM coverage was available to a claimant under subdivision 3a(5). *Schons v. State Farm Mut. Auto. Ins. Co*., 621 N.W.2d 743, 747 (Minn. 2001). *Schons* involved a claimant seeking UIM benefits under her policy when the policy provided UIM coverage equal to the UIM coverage limit of the host vehicle. *Id.* at 744. In finding that the appellant could not recover excess UIM benefits under subdivision 3a(5), the supreme court explained that because the appellant's and the host

[1] *Kothrade* established precedent for the *LaFave* court's refusal to divide liability coverage among multiple injured persons. In *Kothrade*, multiple appellants were involved in the same automobile accident and sought UIM benefits under Minn. Stat. § 65B.49, subd. 4a (1986). 462 N.W.2d at 415. Addressing a declared limits-less-paid limitation of UIM benefits, we held that multiple injured persons must compare per-accident UIM coverage with their total per-accident liability recovery; we rejected the appellants' argument that per-person UIM coverage should be recovered to the extent in excess of each person's part of the per-accident liability recovery. *Id.* at 416-17.

vehicle's UIM coverage limits were the same, the appellant could not recover additional UIM benefits from her own insurer. *Id.* at 747; *see also id.* n.1 (comparing limits with limits).

There is no cause for this court to reject what has been determined before on the construction of subdivision 3a(5). *See Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012) ("[W]hen we have interpreted a statute, that interpretation guides us in reviewing subsequent disputes over the meaning of the statute."). Moreover, under Minn. Stat. § 65B.49, subd. 3a(5), the legislature requires a claimant to first seek UIM coverage from the host vehicle before seeking coverage under their personal insurance's UIM policy; appellant has failed to address the question of whether comparing personal-coverage limits with the amount received creates the hazard of diminishing claims on host-vehicle coverage in deference to other insurance coverage.

Affirmed.