Hoffman v. Progressive Express Ins. Co.

Court of Appeal of Florida, First District

April 27, 2020, Decided

No. 1D19-1218

Reporter
2020 Fla. App. LEXIS 5576 *; 294 So. 3d 448; 45 Fla. L. Weekly D 997

MICHAEL T. HOFFMAN and GINNIE SUE HOFFMAN, Appellants, v. PROGRESSIVE EXPRESS INSURANCE COMPANY, an Ohio corporation, Appellee.

Prior History: [*1] On appeal from the Circuit Court for Wakulla County. Kevin J. Carroll, Judge.

Case Summary

Overview

HOLDINGS: [1]-The trial court did not err in determining that appellants were not entitled to non-stacked uninsured motorist (UM) benefits under their policy with appellee because, by logically choosing to receive greater stacked benefits under their other two policies, appellants elected not to receive lesser non-stacked benefits under their policy with Appellee. Appellants were unable to seek non-stacked UM benefits from appellee on top of stacked UM benefits from the two other insurers; to do so would be contrary to appellee's policy and *§ 627.727(9)(c), Fla. Stat.* (2017).

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Insurance Law > Claim, Contract & Practice Issues > Policy Interpretation > Question of Law

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Legal Entitlement

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

Insurance Law > ... > Policy Interpretation > Ambiguous Terms > Unambiguous Terms

HN1[] **Entitlement as Matter of Law, Genuine Disputes**

Summary judgment is proper if there is no genuine

issue of material fact and if the moving party is entitled to a judgment as a matter of law. Where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment. Generally, interpretation of an insurance contract is a question of law, to be decided by the court. If the language used in an insurance policy is plain and unambiguous, a court must interpret the policy in accordance with the plain meaning of the language used so as to give effect to the policy as it was written. The trial court's ruling on a motion for summary judgment based upon the interpretation of an insurance contract is reviewed de novo.

Insurance Law > ... > Coverage > Uninsured Motorists > Stacking Provisions

HN2[] **Uninsured Motorists, Stacking Provisions**

Stacked uninsured motorist (UM) coverage is expansive and generally provides protection whenever or wherever the insured is injured by an uninsured motorist, which gives rise to the practice of aggregating or stacking UM coverage limits when an insured has purchased multiple policies. By contrast, non-stacked UM coverage applies in a narrower set of circumstances and does not generally stack or aggregate because it does not apply whenever or wherever the insured is injured by an uninsured motorist. Although the legislature has never defined UM coverage, *§ 627.727(9), Fla. Stat.* (2017) provides a list of coverage limitations that a non-stacked UM policy may contain with the insured's informed consent in exchange for the payment of a reduced premium. Non-stacked UM coverage provides less protection than stacked UM coverage.

Insurance Law > ... > Coverage > Uninsured Motorists > Stacking Provisions

HN3[] **Uninsured Motorists, Stacking Provisions**

Section 627.727(9)(c), Fla. Stat. (2017) applies regardless of whether the available UM benefits are provided in policies issued to the named insured by a single insurer or by multiple insurers.

Counsel: John S. Mills, Courtney Brewer, and Jonathan Martin of Bishop & Mills, PLLC, Tallahassee; Robert M. Scott and J. Clint Wallace of Scott & Wallace LLP, Tallahassee, for Appellants.

Stuart J. Freeman of Freeman, Goldis & Cash, P.A., St. Petersburg, for Appellee.

Judges: B.L. THOMAS, WINOKUR, and JAY, JJ., concur.

Opinion

PER CURIAM.

In this appeal from a final summary judgment, Appellants claim that the trial court erred in determining that they were not entitled to non-stacked uninsured motorist (UM) benefits under their policy with Appellee where they accepted stacked UM benefits under their policy with another insurer. We affirm because the trial court properly interpreted the unambiguous language of both the UM policy and *section 627.727(9)(c), Florida Statutes* (2017).

I.

On November 8, 2017, Appellants, Michael and Ginnie Hoffman, were injured while Mr. Hoffman

was driving a 1992 Volvo truck that was struck by another vehicle driven by an uninsured motorist. The Volvo was insured by a commercial auto policy that was issued by Appellee to Charles Hoffman and Hoffman Enterprises and provided non-stacked UM coverage with a policy limit of $300,000. Appellants reached **[*2]** a settlement under this policy in the amount of $300,000.

At the time of the accident, Appellants had three insurance policies of their own that also provided UM coverage. First, Appellants had a family auto insurance policy with GEICO General Insurance Company for two vehicles, a 2000 Ford 250 and a 1989 Jeep Wrangler, that provided stacked UM coverage with a policy limit of $300,000 per person and $300,000 per occurrence. After they filed suit against GEICO, Appellants reached a settlement under the GEICO policy in the amount of $600,000.

Second, Mrs. Hoffman had an auto insurance policy with Allstate Insurance Company for two vehicles, a 2013 Toyota RAV4 and a 1999 Chevrolet S10, that also provided stacked UM coverage with a policy limit of $50,000 per person and $100,000 per accident. Appellants reached a settlement under the Allstate policy in the amount of $100,000.

Third, Mr. Hoffman had a commercial auto insurance policy with Appellee for a 1984 International SS2 that provided non-stacked UM coverage up to $300,000. Appellee refused to pay any UM benefits pursuant to this policy because Mr. Hoffman had elected non-stacked coverage.

Appellee then filed a complaint seeking a declaratory **[*3]** judgment that Appellee was not obligated under the commercial auto policy issued to Mr. Hoffman to provide UM coverage to Appellants. Appellee claimed that under the non-stacking policy, Appellants could not recover the policy limit for UM coverage from Appellee where Appellants elected to recover UM benefits from GEICO.

Appellants filed a motion for summary judgment. In doing so, they asserted that no case supported Appellee's position that a named insured was prevented from recovering non-stacking UM coverage, for which he had paid a premium, when the named insured was injured by an uninsured motorist while occupying a non-owned vehicle. Alternatively, they argued that the insurance contract was ambiguous and ought to be construed in their favor.

Appellee responded by filing a cross-motion for summary judgment. In doing so, Appellee cited the language of the UM policy, the election of non-stacked UM coverage form, and *section 627.727(9)(c), Florida Statutes*, for the proposition that in selecting non-stacking coverage, the insured is given the option of pursuing only one UM policy in which the insured is a named insured or insured family member. Accordingly, Appellee argued that Appellants were prohibited from recovering **[*4]** UM benefits under the commercial auto policy issued to Mr. Hoffman because Appellants (1) were not occupying a motor vehicle owned by them or a family member who resided with them and (2) elected to recover from GEICO, whose policy provided the highest limits of UM coverage for any one vehicle as to which Appellants were a named insured or an insured family member. Appellee further argued that such a conclusion was mandated by this court's decision in *Padgett v. Horace-Mann Insurance Co., 704 So. 2d 627 (Fla. 1st DCA 1997)*, which recognized that *section 627.727(9)(c)* limited the stacking of UM policies regardless of whether they were issued by a single insurer or multiple insurers.

Following a hearing, the trial court entered an order granting Appellee's motion for summary judgment based on the plain language of *section 627.727(9)(c)* and the language of the policy itself. The court noted:

> [Appellants] sustained bodily injury while occupying an auto, other than the insured auto under the subject policy. They could elect to

> receive excess uninsured or underinsured motorist benefits under only one policy of insurance under which the insured was uninsured [sic]. Having elected to receive uninsured or underinsured motorist benefits under a policy of insurance of [sic] other than the subject policy, the **[*5]** Progressive policy provides that it would not pay any uninsured or underinsured motorist benefits due to bodily injury to the insured.

Citing this court's holding in *Padgett*, the court also recognized that *section 627.727(9)(c)* was "intended to be a limitation on stacking of uninsured motorist benefits, regardless of whether the available UM benefits are contained in policies issued to the name[d] insureds by a single insurer or by multiple insurers." After denying Appellants' motion for reconsideration, the trial court entered final summary judgment for Appellee. This appeal followed.

II.

HN1[⬆] "Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." *Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)*. "[W]here the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment." *Id. at 131* (quoting *Angell v. Don Jones Ins. Agency Inc., 620 So. 2d 1012, 1014 (Fla. 2d DCA 1993)*). "Generally, interpretation of an insurance contract is a question of law, to be decided by the court." *Lee v. Montgomery, 624 So. 2d 850, 851 (Fla. 1st DCA 1993)*. "If the language used in an insurance policy is plain and unambiguous, a court must interpret the policy in accordance **[*6]** with the plain meaning of the language used so as to give effect to the policy as it was written." *State Farm Mut. Auto. Ins. Co. v. Menendez, 70 So. 3d 566, 569-70 (Fla. 2011)*. The trial court's ruling on a motion for summary judgment based upon the interpretation of an insurance contract is reviewed de novo. *Chandler v. Geico Indem. Co., 78 So. 3d 1293, 1296 (Fla. 2011)*.

In this case, Appellants claim that the trial court erred in entering summary judgment for Appellee upon determining that Appellants were not entitled to non-stacked UM benefits under their policy with Appellee where they accepted stacked UM benefits under their policy with another insurer. At the outset, it is important to note the distinction between "stacked" and "non-stacked" UM coverage. ***HN2***[⬆] "Stacked" UM coverage is expansive and generally provides protection "whenever or wherever" the insured is injured by an uninsured motorist, which gives rise to the practice of aggregating or stacking UM coverage limits when an insured has purchased multiple policies. *Manfredi v. State Farm Mut. Auto. Ins. Co., 550 F. App'x 718, 720 (11th Cir. 2013)* (citing *Coleman v. Fla. Ins. Guar. Ass'n, 517 So. 2d 686, 689 (Fla. 1988)*). By contrast, "non-stacked" UM coverage applies in a narrower set of circumstances and does not generally stack or aggregate because it does not apply "whenever or wherever" the insured is injured by an uninsured motorist. *Id. at 721* (citing *Swan v. State Farm Mut. Auto. Ins. Co., 60 So. 3d 514, 518 (Fla. 3d DCA 2011)*). Although the legislature has never defined UM coverage, **[*7]** *section 627.727(9), Florida Statutes*, provides a list of coverage limitations that a non-stacked UM policy may contain with the insured's informed consent in exchange for the payment of a reduced premium. *Am. S. Home Ins. Co. v. Lentini, 286 So. 3d 157, 160-62 (Fla. 2019)* (Muñiz, J., concurring in part and concurring in the judgment). In short, as Appellants properly concede on appeal, non-stacked UM coverage provides less protection than stacked UM coverage.

Turning to the facts of this case, it is undisputed that Appellants were injured in a vehicle not owned by them or insured by the policy in question, which provided non-stacked UM coverage. Thus, their entitlement to UM benefits was governed by the

following policy provision:

> If an insured sustains bodily injury while occupying an auto, other than an insured auto, the insured may elect to receive excess uninsured or underinsured motorist benefits under only on[e] policy of insurance under which the insured is insured. If the insured elects to receive excess uninsured or underinsured motorist benefits under a policy of insurance other than this policy, we will not pay any uninsured or underinsured motorist benefits due to bodily injury to the insured.

Contrary to Appellants' assertion, there is nothing ambiguous about the language **[*8]** of this provision, which is essentially a restatement of *section 627.727(9)(c)* that provides:

> If the injured person is occupying a motor vehicle which is not owned by her or him or by a family member residing with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.

See Akel v. Dorcelus, 793 So. 2d 1049, 1052-53 (Fla. 4th DCA 2001). ***HN3***[⬆] This court has held that *section 627.727(9)(c)* applies regardless of whether the available UM benefits are provided in policies issued to the named insured by a single insurer or by multiple insurers. *Padgett, 704 So. 2d at 629*.

Under the above policy and statutory provisions, Appellants could elect either non-stacked UM benefits under their policy with Appellee, which limited benefits to $300,000, or stacked UM benefits under their policies with GEICO and Allstate, which provided total benefits of $700,000. By logically choosing to receive greater stacked benefits under their GEICO and Allstate policies, Appellants elected not to receive lesser non-stacked benefits under their policy with Appellee. Appellants cannot seek to stack non-stacked UM benefits **[*9]** from Appellee on top of stacked UM benefits from GEICO and Allstate. As noted by the trial court, this would be contrary to the plain language of both Appellee's policy and *section 627.727(9)(c)*. Accordingly, we affirm the trial court's entry of final summary judgment for Appellee.

AFFIRMED.

B.L. THOMAS, WINOKUR, and JAY, JJ., concur.

End of Document