

IN THE COURT OF APPEALS OF IOWA

No. 2-100 / 11-1142
Filed April 25, 2012

SARA HAINES,
Plaintiff-Appellant,

vs.

**PROGRESSIVE NORTHERN INSURANCE
COMPANY,**
Defendant-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy
O'Grady, Judge.

Sara Haines appeals from the district court order granting summary
judgment in favor of the defendants on her claim for uninsured motorist benefits.

AFFIRMED.

Randall J. Shanks of Shanks Law Firm, Council Bluffs, for appellant.

Steven T. Durick and Joseph M. Barron of Peddicord, Wharton, Spencer,
Hook, Barron & Wegman, L.L.P., for appellee.

Heard by Vogel, P.J., and Tabor and Bower, JJ.

BOWER, J.

Sara Haines appeals from the district court order granting summary judgment in favor of the defendants on her claim for uninsured motorist benefits through her insurance carrier, Progressive Northern Insurance Company. She contends the district court erred in interpreting her insurance policy to exclude her recovery of uninsured motorist benefits. Because the language of her insurance policy reduces her uninsured motorist benefits by the amount paid by any person legally responsible, we affirm the district court's order granting summary judgment in favor of the defendants.

I. Background Facts and Proceedings.

On September 17, 2008, Jason and Sara Haines, who are husband and wife, were involved in a motor vehicle accident. Jason was the driver of the vehicle and Sara was a passenger as they traveled east on Highway 6. Jason attempted to pass a vehicle driven by Casey Hutchinson as Hutchinson slowed and signaled to make a left-hand turn onto Three Bridge Road. Jason moved into the "right turn only lane" to pass when Hutchinson instead made a right-hand turn into the path of the Haines vehicle.

Sara sustained a fracture of her right ankle that required surgery. She incurred \$39,840.21 in medical expenses and lost wages in excess of \$7000 as a result of the collision. Hutchinson's insurance carrier, MetLife, paid Sara the limit of his policy: \$100,000.

At the time of the collision, Jason and Sara Haines were insured by Progressive. Their policy contains both uninsured and underinsured motorist

benefits, with a liability limit of \$50,000 per person and \$100,000 per accident. Sara alleged Hutchinson was an underinsured motorist and that the family exclusion provision of her policy with Progressive rendered Jason an uninsured motorist. She sought to recover both uninsured and underinsured motorist benefits from Progressive for the damages she sustained from the collision. Progressive maintained that it was only liable for underinsured motorist benefits and offered Sara \$50,000 in such benefits, which Sara accepted. She did not release her right to bring an action against Progressive for uninsured motorist benefits.

On July 2, 2010, Sara filed the instant action against Progressive, seeking to collect uninsured motorist benefits as a result of the collision. Progressive filed a motion for summary judgment, alleging Sara was precluded from collecting under both the uninsured and underinsured motorist provisions of her policy. Sara filed her resistance.

The district court filed its order granting summary judgment in favor of Progressive. It found that the unambiguous language of the policy limits Sara's recovery to \$50,000 for either uninsured or underinsured motorist benefits. Because Sara recovered \$50,000 from Progressive in underinsured motorist benefits, the limits of liability on her policy had been paid. Accordingly, the court granted summary judgment in favor of Progressive. Sara filed a timely notice of appeal.

II. Scope and Standard of Review.

Our review of a district court decision granting or denying a motion for summary judgment is for correction of errors at law. *Pavone v. Kirke*, 807 N.W.2d 828, 832 (Iowa 2011). If there is no genuine issue of material fact in the record, summary judgment is appropriate. *Id.* Accordingly, we review a summary judgment to determine whether Progressive has demonstrated “the absence of any genuine issues of material fact and established entitlement to judgment as a matter of law.” *See id.* In performing this review, we examine the record in the light most favorable to Haines, the nonmoving party. *See id.*

III. Analysis.

The facts of this case are undisputed. The only question before the court is whether the Haines’s insurance policy with Progressive operates to limit Sara’s recovery to \$50,000. This is a matter of construction and interpretation of the insurance policy.

Construction of an insurance policy is the process of determining its legal effect. *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 681 (Iowa 2008). Interpretation is the process of determining the meaning of the words used in the policy. *Id.* Because no extrinsic evidence has been offered on the meaning of the policy language, the questions of interpretation and construction of the Progressive policy are questions of law for the court. *See id.*

When construing insurance policies, the intent of the parties is controlling. *Id.* Unless there is ambiguity, the intent of the parties is determined by what the policy itself says. *Id.* To determine whether ambiguity exists, the court must ask

whether the policy's language is susceptible to two *reasonable* interpretations.

Id. In deciding questions of ambiguity, the insurance contract is read as a whole.

Id. When an exclusionary provision is fairly susceptible to two reasonable constructions, the court adopts the construction most favorable to the insured.

Id. at 682. However, if there is no ambiguity, the court will not "write a new contract" for the parties. *Id.*

Sara argues her policy with Progressive covers her from both uninsured and underinsured motorists and contained two separate limits of \$50,000 per person and \$100,000 per accident with regard to each protection. Accordingly, she seeks to recover her \$50,000 policy limit for underinsured motorist benefits with regard to Hutchinson and her \$50,000 policy limit for uninsured motorist benefits with regard to her husband, Jason.

In addressing Sara's arguments, we must consider what the policy itself says. *Id.* at 683. The section of the policy pertaining to uninsured/underinsured motorist coverage reads in pertinent part:

LIMITS OF LIABILITY

The limit of liability shown on the **declarations page** for liability coverage is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

If **your declarations page** shows a split limit:

1. the amounts shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person resulting from any one accident;

2. subject to the “each person” limit, the amount shown for “each accident” is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident.

The “each person” limit applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that “combined single limit” or “CSL” applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

The declarations page on the Haines’s Progressive policy provided for:

Uninsured Motorist	\$50,000 each person/\$100,000 each accident
Underinsured Motorist	\$50,000 each person/\$100,000 each accident

Sara’s policy included a five dollar premium for uninsured and underinsured motorist coverage each.

Sara argues her policy should not be read to merge the separate limits for uninsured and underinsured motorist coverage. The district court rejected this argument, finding the unambiguous language of the policy states the limits contained on the declarations page apply regardless of the number of claims made, lawsuits brought, vehicles involved, or premiums paid. Sara claims the court erred because even though Progressive sold her separate coverages for uninsured and underinsured motorist benefits, the district court’s ruling has the effect of merging these two coverages into one.

Even if we were to assume Sara was correct and she was entitled to recover her policy limit of \$50,000 in uninsured motorist benefits for the accident,

her claim would still not survive summary judgment. Although the district court did not reach the issue, Progressive argued the reduction clause in her policy would serve to deny her recovery in this action. We may affirm the summary judgment ruling on a proper ground urged below but not relied on by the district court. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 662 (Iowa 2008).

The reduction clause in the Haines insurance policy states in pertinent part:

The limits of liability for Uninsured Motorist Coverage under this Part III will be reduced by all sums:

1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible

Hutchinson was legally responsible for Sara's injuries and settled with her in the amount of \$100,000. Sara's entitlement to the \$50,000 maximum uninsured motorist benefit from Jason is reduced by this amount. Because Sara's recovery of uninsured motorist coverage is extinguished by the reduction clause, we affirm the district court order granting summary judgment in favor of the defendants.

AFFIRMED.