

IN THE COURT OF APPEALS OF IOWA

No. 7-974 / 07-1166
Filed February 13, 2008

TIMOTHY EWING,
Plaintiff-Appellant,

vs.

**AMERICAN NATIONAL PROPERTY AND
CASUALTY COMPANY & AMERICAN
NATIONAL GENERAL INSURANCE
COMPANY, a/k/a ANPAC,**
Defendants-Appellees.

Appeal from the Iowa District Court for Benton County, Patrick R. Grady,
Judge.

Insured attempting to stack coverage in multiple insurance policies
appeals district court's grant of summary judgment in favor of the insurance
companies. **AFFIRMED.**

David A. O'Brien of Willey, O'Brien L.C., Cedar Rapids, for appellant.

Dirk J. Hamel of Gilloon, Wright & Hamel, P.C., Dubuque, for appellees.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

In October 2006, Timothy Ewing was injured in a motorcycle accident and the other driver had insufficient insurance to cover all of Ewing's accident-related damages. Ewing had three of defendant ANPAC's insurance policies covering four vehicles, including the motorcycle, and each policy provided \$100,000 of underinsured motorist (UIM) coverage per vehicle. Ewing sought to stack¹ the policies and recover \$400,000. When ANPAC declined to pay more than \$100,000 to Ewing, he sued for breach of contract. ANPAC moved for summary judgment which Ewing resisted while moving for partial summary judgment. Ewing now appeals the district court's grant of summary judgment to ANPAC and subsequent dismissal of his case.

We review a district court grant of a motion for summary judgment for errors of law. Iowa R. App. P. 4. We consider the entire record in the light most favorable to Ewing and determine whether any issue of material fact exists. See *Mewes v. State Farm Auto. Ins. Co.*, 530 N.W.2d 718, 721 (Iowa 1995).

Ewing's appeal raises two issues: (1) whether the trial court misinterpreted Iowa Code section 516A.2; and (2) whether Ewing had a reasonable expectation of \$400,000 of underinsurance coverage. See Iowa Code § 516A.2 (2005).

We begin our analysis with the provisions of Iowa Code section 516A.2. The first subsection reveals "legislative intent to permit insurers to include provisions . . . which prohibit the stacking of . . . underinsured motorist benefits."

¹ "Stacking is a term which refers to the availability of more than one insurance policy, or one policy with multiple vehicles, providing reimbursement of the losses of the insured." *Mortensen v. Heritage Mut. Ins. Co.*, 590 N.W.2d 35, 38 (Iowa 1999).

Mortensen v. Heritage Mut. Ins. Co., 590 N.W.2d 35, 39 (Iowa 1999); see Iowa Code § 516A.2(1). The second subsection establishes “the insured and the insurer may contract to include stacking of . . . underinsured coverage in a policy.” *Mortensen*, 590 N.W.2d at 39; see Iowa Code § 516A.2(2). The third subsection provides when more than one policy is purchased and the contract is silent² regarding the stacking of benefits, “the insured is entitled to recover up to the highest policy limit, with no stacking of coverage.” *Mortensen*, 590 N.W.2d at 39; see Iowa Code § 516A.2(3). Relying on *Mortensen*, the district court ruled Ewing can “only recover an amount equal to the highest single UIM coverage limit . . . which is \$100,000.”

Ewing argues the district court misinterpreted the statute. He urges us to interpret subsection two to require all insurance companies to offer stacked insurance or, at a minimum, require companies to inform customers stacked insurance may be available from a competitor. See Iowa Code § 516A.2(2)

We decline Ewing’s invitation to rewrite and expand the statute because “when a statute’s language is clear, we look no further for meaning than its express terms.” *State v. Kamber*, 737 N.W.2d 297, 298 (Iowa 2007). Subsection two is a directive to the commissioner of insurance to assure the availability of stacked coverage and its clear language and express terms do not support the expanded requirements urged by Ewing. See Iowa Code § 516A.2(2); see also Iowa Code § 516A.1 (containing an example of clear language for insurance

² While there is policy language that could be considered “anti-stacking,” ANPAC requested the court interpret the policies as silent on the issue of stacking and this position was also urged by Ewing.

contract requirements). Under the express terms of the statute, Ewing's recovery is limited to \$100,000. See Iowa Code § 516A.2(3).

Ewing's other argument is based on the doctrine of reasonable expectations. Ewing claims the payment of multiple premiums and the absence of any anti-stacking language would cause a reasonable person to believe Ewing purchased \$400,000 of UIM coverage. The doctrine of reasonable expectations allows an insured to avoid bizarre policy exclusions or favorably interpret other policy language; "[h]owever, as a prerequisite . . . the insured must show circumstances attributable to the insurer that fostered coverage expectations or that the policy is such that an ordinary layperson would misunderstand its coverage." *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Federated Mut. Ins. Co.*, 596 N.W.2d 546, 551 (Iowa 1999) (holding act of paying premium does not establish circumstances fostering coverage).

The district court correctly concluded the record shows no evidence ANPAC did anything when the policy was negotiated and issued to lead Ewing to think coverage would be stacked.

Additionally, the doctrine is inapplicable because Ewing is not attempting to utilize the doctrine to interpret policy language, but instead is attempting to avoid directly-applicable statutory language. The exclusion of UIM stacking is due to a statutory provision and is not pursuant to policy language drafted by ANPAC. The legislature has specifically stated: "It is the intent of the general assembly that when more than one motor vehicle insurance policy is purchased . . . the injured insured is entitled to recover . . . an amount equal to the highest single limit." Iowa Code § 516A.2(3); see *Mortensen*, 590 N.W.2d at 40 (holding

“516A.2 prohibits stacking . . . unless specifically provided [for] in the insurance policy”). When there are no “circumstances attributable to the insurer that fostered coverage expectations,” the doctrine of reasonable expectations cannot be used to avoid the consequences of the express statutory provisions. *Iowa Comprehensive Petroleum*, 596 N.W.2d at 551. The district court’s granting of ANPAC’s motion for summary judgment is affirmed.

AFFIRMED.