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2012 IL App (3d) 110619-U

Order filed June 6, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

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STATE FARM MUTUAL	)	Appeal from the Circuit Court
AUTOMOBILE INSURANCE	)	of the 12th Judicial Circuit,
COMPANY,	)	Will County, Illinois
	)	
Plaintiff-Appellant,	)	
	)	Appeal No. 3-11-0619
v.	)	Circuit No. 10 MR 00005
	)	
MICHAEL T. DAMPTZ and KAREN D.	)	
DAMPTZ,	)	
	)	Honorable Bobbi Petrunaro
Defendant-Appellees.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Justices O'Brien and Carter concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Where the intent of the parties to the insurance contract is manifested in the clear and unambiguous language of an antistacking clause, the clause does not violate public policy.

¶ 2 In this appeal, we are asked to decide whether defendants, Michael T. Damptz and Karen D. Damptz, are entitled to “stack” the underinsured-motorist coverage contained in five

automobile policies issued by plaintiff, State Farm Mutual Automobile Insurance Company (State Farm). State Farm initiated an action for declaratory judgment arguing that the anti-stacking clause found in the five policies unambiguously bars defendants' ability to "stack" the coverage. The trial court held, on cross motions for summary judgment, that the five policies could be "stacked" to provide an aggregate of \$500,000 underinsured-motorist coverage. We reverse and remand for further proceedings.

¶ 3

### FACTS

¶ 4 The facts are not in dispute. On July 15, 2007, Michael T. Dampz was struck by a vehicle operated by Richard Ellis. The Ellis vehicle was insured by State Farm. State Farm settled with defendants for \$100,000, the limit of Ellis's policy.

¶ 5 Defendants were also covered on five separate policies which were purchased from State Farm. Each of the five policies insured a different vehicle owned by defendants: (1) 2001 Chrysler, (2) 2005 Dodge, (3) 2000 Dodge, (4) 2002 Ford, and (5) 2002 Harley. All five policies provided coverage to defendants and their family members for damages caused by an underinsured-motorist. All five policies also provided coverage for any nonfamily passenger for damages caused by an underinsured-motorist for which defendants paid a separate premium under each policy. The underinsured-motorist coverage was \$100,000 for each person and \$300,000 for each occurrence.

¶ 6 Defendants demanded payment from State Farm, claiming that all of Michael's damages were not covered by the \$100,000 limit of Ellis's policy. Defendants believed that they were entitled to a combined total of \$500,000 underinsured-motorist coverage under their five policies. They arrived at this \$500,000 figure by quintupling the \$100,000 limit under each policy,

reasoning that separate premiums for each vehicle entitled separate \$100,000 amounts of coverage.

¶ 7 State Farm denied defendants' claim and filed the instant declaratory judgment. State Farm argued that the antistacking clause contained in each policy does not permit defendants to "stack" underinsured-motorist benefits. The antistacking clause in defendants' policies provided:

"If There Is Other Underinsured Motor Vehicle Coverage –  
Coverage W

1. If underinsured motor vehicle coverage for **bodily injury** is available to an **insured** from more than one policy provided by us or any other insurer, the total limit of liability available from all policies provided by all insurers shall not exceed the limit of liability of the single policy providing the highest limit of liability. This is the most that will be paid regardless of the number of policies involved, **persons** covered, claims made, vehicles insured, premiums paid or vehicles involved in the accident. (Emphasis in original.)"

¶ 8 The parties filed cross motions for summary judgment. Defendants contended that the insurance policies, including the antistacking clauses, were ambiguous and therefore should be construed in favor of coverage. Specifically, defendants' motion states:

"When the Dampazes purchased five separate and distinct policies of motor vehicle insurance from State Farm, each providing underinsured motorist coverage of \$100,000 and

requiring Dampczes to pay a separate premium for each underinsured motorist coverage, it is unreasonable to contemplate that the anti-stacking clauses therein would reduce the Dampczes' overall recovery to what would have been obtained under one policy and one premium.”

¶ 9 Defendants also alleged that “State Farm’s conduct in charging the Dampczes for five policies of underinsured-motorist coverage violated public policy by overreaching.” Defendants called attention to the fact that they were charged five separate premiums for “identical coverage.” Stated another way, defendants believed that State Farm “overreached” because they were charged “five times the amount that was needed \*\*\* [for] the same underinsured coverage [that] would have been available” had they only paid one individual premium.

¶ 10 State Farm, in turn, alleged that the antistacking clause was unambiguous and therefore must be enforced as written. In support, State Farm cited *Grzeszczak v. Illinois Farmers Insurance*, 168 Ill. 2d 216 (1995) and *Menke v. Country Mutual Insurance Co.*, 78 Ill. 2d 420 (1980).

¶ 11 Upon hearing argument, the trial court granted defendants’ motion for summary judgment and denied State Farm’s motion for summary judgment. Specifically, the court held:

“In this case, the language of the policy is not ambiguous.

Thus, the next question is whether the anti-stacking provisions should be enforced or if doing so would be against public policy.

In this case, the Affidavit of Troy Cottrell, Systems Coordinator in the Auto Underwriting department of State Farm Mutual

Automobile Insurance Company, asserts that the Defendants were paying identical premiums for three of the auto policies. One other auto policy was different because the policy had a later renewal date and the premium rates had declined by the time of renewal.

No evidence has been presented that the Defendants received additional coverage under any of the automobile policies. Unlike *Grzeszczak* and *Menke*, the Defendants are receiving identical coverage with almost identical premiums and without receiving any additional coverage. As such, following the reasoning of *Greszczak* and *Menke*, the Defendants are paying duplicative premiums but are not receiving any additional coverage. Thus, the multiple identical premiums for identical coverage are exorbitant, and allowing the anti-stacking provisions to defeat coverage would be against public policy.”

¶ 12

#### ANALYSIS

¶ 13 The sole issue on appeal is whether the trial court erred when it found that the five policies could be “stacked” to provide an aggregate of \$500,000 underinsured-motorist coverage and granted summary judgment in favor of defendants. Where the intent of the parties to the insurance contract is manifested in the clear and unambiguous language of an antistacking clause, we hold the clause does not violate public policy.

¶ 14 Summary judgment is proper when the pleadings, depositions, and admissions on file, together with the affidavits, if any, reveal that there is no genuine issue of material fact and that

the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005© (West 2010). We review *de novo* an order granting summary judgment. *Harris Bank v. City of Geneva*, 278 Ill. App. 3d 738, 741 (1996).

¶ 15 The construction of an insurance policy is a question of law that this court reviews *de novo* with the purpose of ascertaining the parties' intent. *Smagala v. Owen*, 307 Ill. App. 3d 213, 217 (1999). "When determining whether an ambiguity exists, a court must read a provision in its factual context." *American Family Mutual Insurance Co. v. Martin*, 312 Ill. App. 3d 829, 832 (2000). "If policy language is unambiguous, we must discern the parties' intent directly from that language without resorting to rules of construction, unless to do so would violate public policy." *Martin*, 312 Ill. App. 3d at 832.

¶ 16 In *Menke*, the supreme court held that an antistacking clause was unambiguous and did not violate public policy. The clause there provided:

" 'With respect to any occurrence, accident, death or loss to which this and any other automobile insurance policy issued to the Named Insured by the Company also applies, the total limit of the Company's liability under all such policies shall not exceed the highest applicable limit of liability or benefit amount under any one such policy.' " *Menke*, 78 Ill. 2d 423.

¶ 17 Fifteen years after *Menke*, the supreme court in *Grzeszczak* again held an antistacking clause was unambiguous and did not violate public policy. The clause there provided:

" 'With respect to any accident or occurrence to which this and any other auto policy issued to you by any member company of

the Farmers Insurance Group of Companies applies, the total limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.’ ” *Grzeszczak*, 168 Ill. 2d at 220-21.

¶ 18 Like the *Menke* and *Grzeszczak* courts, we find, as did the trial court, the antistacking clause in the instant case is unambiguous. The clause clearly states that “the total limit” of State Farm’s liability under all the policies “shall not exceed the limit of liability of the single policy providing the highest limit of liability. This limit of liability applies “regardless of the number of policies involved, **persons** covered, claims made, vehicles insured, premiums paid or vehicles involved in the accident.” (Emphasis in original.) Affording these words their plain, ordinary and popular meaning, the clause is clear: the coverage cannot be stacked. The fact that State Farm used five separate declaration pages and one common form policy does not change this conclusion. Nor does the fact that defendants paid separate premiums for the five policies. These facts would only be useful to resolve an ambiguous provision and cannot be used to create an ambiguity where none exists. *Grzeszczak*, 168 Ill. 2d at 229; *Menke* 78 Ill. 2d at 424-25.

¶ 19 In coming to this conclusion, we acknowledge defendants’ general citations to *Kaufmann v. Economy Fire & Casualty Co.*, 76 Ill. 2d 11 (1979) (holding that the existence of multiple policies with identical uninsured-motorist coverage created an ambiguity permitting stacking coverage) and *Squire v. Economy Fire & Casualty Co.*, 69 Ill. 2d 167, 179-80 (1977) (holding that the existence of two declarations pages, both setting \$10,000 limits for liability for each person, created an ambiguity permitting the aggregation of those coverage amounts). The *Menke* court found both *Kaufmann* and *Squire* distinguishable. Specifically, the court stated:

“Also distinguishable is *Squire v. Economy Fire & Casualty Co.*, 69 Ill. 2d 167 (1977), in which this court found a right to stack because the policy did not clearly express that no additional coverage was provided. Our recent case of *Kaufmann v. Economy Fire & Casualty Co.*, 76 Ill. 2d 11 (1979), in which we found that stacking was permissible, differs from this cause on numerous grounds, including the fact that the clause purportedly prohibiting stacking there was ambiguous, whereas the clause at issue here is not.”

¶ 20 We, too, find *Kaufmann* and *Squire* distinguishable. Unlike the clause in the present case, the antistacking clauses in *Kaufmann* and *Squire* lacked the key phrase, “regardless of the number of policies involved, **persons** covered, claims made, vehicles insured, premiums paid or vehicles involved in the accident.” (Emphasis in original.) Upon review, we find the instant clause to be similar to the clauses in *Menke* and *Grzeszczak*. The clause is likewise both clear and unambiguous in its prohibition of “stacking” coverages.

¶ 21 Having concluded that the antistacking clause is clear and unambiguous, the next issue we must address is whether the clause violates public policy. The *Menke* court held that “[p]ublic policy does not require invalidation of clearly written provisions simply to avoid disappointment to the insured.” *Menke*, 78 Ill. 2d at 425. The Illinois Insurance Code (the Code) (215 ILCS 5/1 *et seq.* (West 2010)) subsequently adopted the *Menke* decision and now expressly authorizes the use of antistacking provisions in motor vehicle insurance policies. See 215 ILCS 5/143a-2(5) (West 2010)). Specifically, section 143a-2(5) of the Code provides, in pertinent part:

“Nothing herein shall prohibit an insurer from setting forth policy terms and conditions which provide that if the insured has coverage available under this Section under more than one policy or provision of coverage, any recovery or benefits may be equal to, but may not exceed, the higher of the applicable limits of the respective coverage, and the limits of liability under this Section shall not be increased because of multiple motor vehicles covered under the same policy of insurance.” 215 ILCS 5/143a-2(5) (West 2010).

¶ 22 Since the *Menke* decision was codified, the supreme court in *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 184 (1993) held that provisions which forbid stacking of uninsured-motorist coverage are not contrary to public policy and must be enforced as written if they are unambiguous. Furthermore, the *Grzeszczak* court found that “[c]harging identical premiums for underinsured-motorist coverage on multiple vehicles is not a basis for refusing to enforce clear and unambiguous antistacking clauses, where an insured receives some additional coverage for each premium paid.” *Grzeszczak*, 168 Ill. 2d at 234. The plaintiff in *Grzeszczak* conceded that the second premium did purchase some additional coverage for nonhousehold members. *Grzeszczak*, 168 Ill. 2d at 234.

¶ 23 We begin by noting that defendants agreed to the unambiguous antistacking clause. Thus, the clause must be enforced as written. The trial court in the instant case, however, disregarded this principle because it was laboring under the belief that defendants did not receive any additional coverage for their premiums. The record rebuts this belief. Similar to the second

premium in *Grzeszczak*, the additional premiums in the instant case did purchase some additional coverage for nonfamily passengers. Accordingly, as provided by the unambiguous antistacking clause, coverage cannot be stacked in this case.

¶ 24 For the foregoing reasons, we reverse the judgment of the trial court and remand the matter for further proceedings.

¶ 25 Reversed and remanded.