No. 3-10-0024

Order filed January 11, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

TINA STAMM and CLIFFORD STAMM,	)	Appeal from the Circuit Court of the 10th Judicial Circuit Peoria County, Illinois,
Plaintiffs-Appellants,	)	
	)	No. 07 L 279
v.	)	
	)	
ILLINOIS FARMERS INSURANCE CO.,	)	The Honorable Stephen A. Kouri,
Defendant-Appellee.	)	Judge, Presiding.

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

ORDER

Held: Where an insurance policy excludes underinsured-motorist coverage for a vehicle owned by the insured when such vehicle has underinsured-motorist coverage under another insurance policy, the exclusion provision will be upheld and coverage will only be provided under the policy covering such vehicle.

FACTS

Plaintiffs, Tina and Clifford Stamm, had two automobile policies issued by defendant, Illinois Farmers Insurance Company. Policy number 22-11816-54-09, insured plaintiffs' 2001

Chevrolet pickup truck and provided $100,000 per person/$300,000 per accident in underinsured-motorist coverage (the pickup policy). Policy number 22-11816-64-08, insured plaintiffs' 1999 Chevrolet Tahoe and provided $20,000 per person/$40,000 per accident in underinsured-motorist coverage (the Tahoe policy).

On September 23, 2000, Tina Stamm, was involved in an accident while driving the Tahoe. The other driver involved in the accident had $20,000/$40,000 in liability limits, which were paid to Tina. Plaintiffs subsequently filed a complaint seeking underinsured-motorist coverage under the pickup policy.[1]

The pickup policy contains the following exclusionary clause:

> "5. If you or your family member has another policy on another vehicle issued by any member company of the Farmers Insurance Group of Companies:
>
> a. The limits of this policy do not apply to any 'occurrence' arising out of the ownership, maintenance or use of such other insured vehicle.' "

Defendant filed a counterclaim for declaratory relief requesting that the court find that the "pickup policy does not apply to the underinsured motorist claim being made by the STAMMS." Defendant also filed a motion for summary judgment. Upon hearing argument, the trial court granted defendant's motion for summary judgment. This appeal followed.

ANALYSIS

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[1] Initially, plaintiffs sought recovery under both policies, but conceded in summary judgment proceedings that the Tahoe policy would not provide coverage.

The sole issue before us is whether plaintiffs can recover underinsured-motorist coverage under the pickup policy. The trial court determined that the pickup policy's language precludes coverage. We review *de novo* the propriety of the trial court's grant of summary judgment. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

In an effort to establish coverage, plaintiffs call our attention to the fact that the pickup policy does not expressly state that coverage would not apply to any "occurrence" arising out of the use of another vehicle. Rather, the pickup policy only states that the "limits" of the policy would not apply. Thus, plaintiffs concluded that there are no applicable policy limits and coverage is limitless. Because plaintiffs have failed, however, to support their proposed reading with any legal authority, we find they have waived this issue. Even absent waiver, we would find that plaintiff's proposed reading produces an absurd result that the parties never intended upon creating. Finally, we note that the relief plaintiff seeks in this case is contrary to public policy considerations that the supreme court recognized in *Luechtefeld v. Allstate Insurance Co.*, 167 Ill. 2d 148, 160 (1995).

Here, plaintiffs attempt to argue that the exclusionary clause does not act to bar coverage since the clause employs the term "limits" rather than the term "coverage." Initially, we note that plaintiff has waived this contention by failing to cite any authority supporting its construction. See *Village of Riverwoods v. BG Limited Partnership*, 276 Ill. App. 3d 720, 729 (1995) (failure to cite supporting authority results in waiver). Even absent waiver, we would find that plaintiffs' proposed reading of the policy produces an absurd result. Plaintiffs have voluntarily elected underinsured-motorist coverage with limits of $20,000 per person/$40,000 per accident for the Tahoe. Plaintiffs' premium is calculated based on this election. If we find the exclusionary

clause contained within the pickup policy inapplicable, plaintiffs receive a windfall of excess coverage for which they have not bargained. We decline to hold that the parties intended such an absurd result. See *Farmers Automobile Insurance Association v. Rowland*, 379 Ill. App. 3d 696, 698 (2008) (an insurance contract will not be construed to permit an absurd result).

The supreme court's decision in *Luechtefeld* supports our holding herein. In *Luechtefeld*, the plaintiff was operating his motorcycle when he was struck by an uninsured motorist. Plaintiff's motorcycle was insured under a policy by an insurance company other than defendant. The policy protected plaintiff against injuries caused by uninsured motorists while riding his motorcycle and provided uninsured-motorist coverage with limits of $20,000 per person/$40,000 per accident. Although plaintiff received the full amount of uninsured-motorist coverage from the motorcycle policy, plaintiff sought uninsured-motorist coverage from his policy with defendant. Defendant's policy protected plaintiff against injuries caused by uninsured motorists while driving his three automobiles and provided uninsured-motorist coverage of $100,000 per person/$300,000 per accident. Defendant's policy also contained an exclusionary clause, which provided that coverage did not apply to:

> "(3) Any person while in, on, getting into or out of a vehicle you own which is insured for this coverage under another policy." *Luechtefeld*, Ill. 2d at 151.

Upon examining the exclusionary clause, the trial court granted summary judgment in favor of defendant. *Luechtefeld*, Ill. 2d at 149. Thereafter, the supreme court was called upon to examine whether an insurance policy may, consistently with public policy, exclude uninsured-motorist coverage for vehicles owned by the insured when such vehicles have

uninsured-motorist coverage under another insurance policy. *Luechtefeld*, Ill. 2d at 149. In answering this question in the affirmative, the court stated:

> "Here, when the plaintiff insured his motorcycle *** he voluntarily elected to purchase uninsured-motorist coverage with limits of only $20,000 per person/$40,000 per accident. If we hold that he is nevertheless entitled to recover an additional $ 80,000 in uninsured-motorist coverage under *** [the policy issued by defendant], we will simply encourage consumers to purchase adequate uninsured-motorist protection for one automobile and minimal or no uninsured-motorist protection for all other automobiles. Invalidating the exclusionary clause in [defendant's] policy would therefore discourage consumers from purchasing the maximum amount of uninsured-motorist coverage when insuring their automobiles.
>
> Further, as [defendant] points out, the relief the plaintiff seeks in this case is contrary to public policy considerations that this court has previously recognized. When the plaintiff insured his motorcycle ***, he elected liability coverage with limits of $25,000 per person/$50,000 per accident. Thus, if the plaintiff was involved in an accident with his motorcycle in which he was at fault, only that amount of coverage would be available to injured third parties. The plaintiff is now attempting to recover more

benefits for himself when injured by others than he elected to make available to third parties whom he injured." *Luechtefeld*, Ill. 2d at 159-60.

For the foregoing reasons, we affirm the trial court's order granting defendant's motion for summary judgment.

Affirmed.