STATE OF MICHIGAN

COURT OF APPEALS

MARIE STOYKA, Individually, and the Estate of PETER STOYKA, Deceased, by his Personal Representative, MARIE STOYKA,

Plaintiffs-Appellants,

-v-

No. 97886

ALAN ARTHUR HILTUNEN and DEBORAH J. ARTHUR HILTUNEN, Jointly and Severally,

Defendants-Appellees.

/

DEC 28 1987

BEFORE: J.H. Gillis, P.J., and D.E. Holbrook, Jr. and S.N. Andrews*, JJ.

PER CURIAM

This case concerns a declaratory judgment on the residual liability coverage owed by defendants' insurer, Auto Club Insurance Association ("ACIA") to plaintiffs. The declaratory judgment action, like this appeal, was based on stipulated facts. Plaintiffs appeal by right from the trial court's finding that an "anti-stacking" clause in the policy was enforceable, thereby preventing plaintiffs from obtaining any additional recovery. We affirm.

On October 17, 1980, a vehicle operated by Peter Stoyka was struck by a vehicle operated by defendant Alan Hiltunen and owned by defendant Deborah Hiltunen. As a result of the accident, Peter Stoyka died. His passenger, plaintiff Marie Stoyka, was injured.

The vehicle operated by defendant Alan Hiltunen, a 1972 Mercury, was insured under a multiple vehicle policy issued by ACIA. The other vehicle insured under the policy, a 1978 Volkswagen owned by Alan Hiltunen, was not involved in the accident.

*Circuit judge, sitting on the Court of Appeals by assignment.

The policy provided residual liability coverage of $20,000 per person with a limitation of $40,000 per occurrence. Pursuant to a partial consent judgment and settlement agreement, ACIA agreed to pay plaintiffs $40,000 plus the applicable statutory interest on behalf of defendants. This represented the maximum residual liability coverage on the 1972 Mercury. The additional recovery sought by plaintiffs in the declaratory judgment action was the $40,000 residual liability coverage on the 1978 Volkswagen.

In finding that plaintiffs were not entitled to the additional recovery, the trial court relied on the following coverage applicability endorsement to the policy:

> "Under no circumstances will the company be required to pyramid or duplicate any types, amounts or limits of coverages purchased in connection with any automobile insured hereunder by virtue of the fact that more than one automobile is insured under this policy. However, this condition does not apply to Death Indemnity Coverage."

On appeal, plaintiffs contest the declaratory judgment on several grounds. First, plaintiffs contend that our Supreme Court's decision in Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1986), established that it was entitled to the additional recovery. We disagree. Since Powers did not contain a majority rationale, it is not binding precedent. People v Anderson, 389 Mich 155, 170; 204 NW2d 461 (1973). Even if Justice Williams' rationale was considered, as argued by plaintiffs, it would not establish that plaintiffs were entitled to an additional recovery. The policy language at issue in Powers was certain "owned vehicle" exclusions. Justice Williams' opinion clearly indicates that his rationale was limited to the owned-vehicle exclusion relied on by the insurers. Powers, supra, 635. Because the policy language at issue in this case was not an owned-vehicle exclusion, Powers does not demonstrate that the declaratory judgment was incorrect.

Secondly, plaintiffs contend that State Farm Mutual Automobile Ins Co v Ruuska, 412 Mich 321; 314 NW2d 184 (1982)

established their right to an additional recovery. Ruuska, like Powers, concerned the validity of an owned-vehicle exclusionary clause in a no-fault policy, and not the "anti-stacking" policy language at issue in this case. Except for a determination that the Michigan no-fault act, MCL 500.3101 et seq.; MSA 24.13101 et seq., does not require an owner of one vehicle to carry residual liability coverage when operating another vehicle, Ruuska contained no majority rationale. The result reached in Ruuska turned on one Justice's determination that the particular language used in the exclusionary clause was not enforceable. Accordingly, Ruuska does not support plaintiff's position.

Finally, plaintiffs contend that they should be allowed the additional recovery because ACIA provided a policy holder of a multiple vehicle policy with less coverage than a policy holder of individual vehicle policies for the same premium. The trial court correctly rejected this argument. The parties did stipulate that there would be no difference in the total premium paid, regardless of whether ACIA issued a single "multiple vehicle policy" on two household vehicles or separate policies on the two vehicles. However, plaintiffs and ACIA disagreed on whether the liability coverage would be the same. Consequently, the stipulated facts do not support plaintiffs' claim.

Furthermore, we find plaintiffs' reliance on Inman v Hartman Ins Group, 132 Mich App 29; 346 NW2d 885 (1984), lv den 419 Mich 937 (1984), misplaced. Inman upheld a multiple vehicle policy's anti-stacking provision, despite the fact that both vehicles covered by the policy were involved in the same accident. The injured party's argument that he was entitled to a double recovery because the insured paid separate, but equal, premium amounts for each covered vehicle was rejected because the injured party failed to establish an expectation of stacking arising from the policy. As stated in Citizens Ins Co v Tunney, 91 Mich App 223, 229; 283 NW2d 700 (1979), which addressed a similar issue:

"In the absence of proof of double payment warranting double recovery, we will not override the unambiguous contract language limiting the insurer's liability and permit 'stacking'."

We find this reasoning equally applicable to plaintiffs' converse argument that defendants paid a single premium payment for half a recovery. The proofs do not support this claim.

Anti-stacking clauses in multiple vehicle policies are enforceable. See Auto Club Ins Ass'n v Lanyon, 142 Mich App 108; 369 NW2d 269 (1985). The anti-stacking clause at issue in this case was contained in a coverage applicability endorsement. None of the arguments raised by plaintiffs demonstrate that the endorsement was unenforceable. Accordingly, we uphold the trial court's determination that plaintiffs were not entitled to an additional recovery.

Affirmed.

/s/ John H. Gillis
/s/ Donald E. Holbrook, Jr.
/s/ Steven N. Andrews