STATE OF MICHIGAN

COURT OF APPEALS

ALMA McLAUGHLIN, Guardian and Conservator of LEO JAMES McLAUGHLIN,

Plaintiff-Appellee,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 8, 1995

No. 165972
LC No. 88-8271 NI

Before: Connor, P.J., and Sawyer and G.R. Corsiglia,* JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's judgment in favor of plaintiff in the amount of $300,000.00. We reverse.

Leo James McLaughlin was seriously injured after being struck by an automobile while walking in a crosswalk. Plaintiff settled the case against the driver of the automobile for the policy limits of $25,000.00. The case before us involves plaintiff's claim for underinsured benefits pursuant to two policies issued to plaintiff by defendant insuring three vehicles. Each of the policies provided for underinsured coverage for damages incurred while plaintiff was a pedestrian, each with a policy limit of $100,000.00 per person. Defendant contends that pursuant to other insurance clauses contained in the policies, it is liable only on one of the three vehicles. In addition, defendant argues that it is liable only for the difference between the policy limit of $100,000.00 and the $25,000.00 already received from the driver. As such, defendant argues its total liability is $75,000.00. We agree.

This Court has held that antistacking provisions that are clear and unambiguous are not contrary to public policy. State Farm Mut Auto Ins Co v Teidman, 181 Mich App 619, 624; 450 NW2d 13 (1989). In Bradley v Mid Century Ins Co, 409 Mich 1, 48; 294 NW2d 141 (1980), the Supreme Court held that stacking of uninsured motorist coverage was no longer allowed under "other insurance" clauses. Specifically, the Bradley Court stated that

> [t]he insured does not purchase two coverages; he contributes twice to the total cost of uninsured motorist coverage. He is required to do so because he has chosen to have both vehicles participate in the system. [Id. at 56.]

Bradley rejected the plaintiff's argument that the "other insurance" clause defeats the reasonable expectations of insureds, citing as unpersuasive the theory that a person injured by a negligent uninsured motorist expects to have recourse to more than one policy. Id. at 57. The Bradley Court also ruled that "the effect of the 'limits of liability' clause is the same as the 'other insurance' clause." Id. at 44.

Defendant in the instant case relies on case law which interprets "other insurance" clauses to prohibit both intrapolicy and interpolicy stacking, and relies on the "limit of liability" clause appearing

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

in plaintiff's two policies for its proposition that neither intrapolicy nor interpolicy stacking is permitted under the policies.

We hold that plaintiff was not entitled to recover twice under the one policy which covered two of plaintiff's vehicles (intrapolicy stacking). The policy issued by defendant provides that

> [r]egardless of the number of . . . automobiles to which this policy applies, . . . [t]he limit of liability . . . as applicable to 'each person' is the limit of the Company's liability for all damages . . . arising out of bodily injury to one person in any one occurrence.

This limit of liability provision unambiguously prohibits intrapolicy stacking because the language clearly indicates that the inclusion of more than one vehicle does not affect the limits of liability. Inman v Hartford Ins Group, 132 Mich App 29, 34; 346 NW2d 885 (1984). The trial court erred by reaching the contrary conclusion.

We also hold that plaintiff was not entitled to recover under both of the policies issued by defendant to plaintiff (interpolicy stacking). In light of Bradley, supra, we believe that the limit of liability provision, quoted above, prohibits interpolicy stacking where multiple vehicles are insured. In addition to ruling that "other insurance" clauses have the same effect as "limit of liability" clauses, the Bradley Court concluded that "other insurance" clauses prohibit stacking. Id. at 44, 48, 56-58. Furthermore, we do not find the limit of liability provision to be ambiguous. The trial court erred in ruling that the policy allows interpolicy stacking.

Finally, we find that defendant is entitled to set off amounts recovered by plaintiff from the underinsured motorist. Nankervis v Auto-Owners Ins Co, 198 Mich App 262, 263-266; 497 NW2d 573 (1993). Plaintiff concedes that the trial court erred by not allowing defendant a setoff of the $25,000.00 plaintiff received. A portion of plaintiff's policy specifically provides for reducing any payable loss by the amount already paid to the insured by the owner or operator of the uninsured vehicle.

Reversed.

/s/ Michael J. Connor
/s/ David H. Sawyer
/s/ George R. Corsiglia