STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0591

Bernadette L. Russell,
Appellant,

vs.

Sentinel Insurance Company, Ltd.,
Respondent.

Filed January 2, 2018
Reversed and remanded
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-16-3487

Scott Wilson, Minneapolis, Minnesota; and

James G. Vander Linden, Levander & Vander Linden, P.A., St. Louis Park, Minnesota (for appellant)

Raymond L. Tahnk-Johnson, Law Offices of Steven G. Piland, Overland Park, Kansas (for respondent)

Matthew J. Barber, James S. Ballentine, Schwebel, Goetz & Sieben, P.A., Minneapolis, Minnesota (for amicus curiae Minnesota Association for Justice)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Kirk, Judge.

S Y L L A B U S

When an uninsured-motorist policy provision does not define "hit-and-run vehicle," a vehicle is a "hit-and-run vehicle" if the vehicle does not stop and leaves the accident

scene and the insured does not have an opportunity to obtain the unidentified driver's information.

O P I N I O N

HALBROOKS, Judge

Appellant-insured challenges the district court's grant of summary judgment to respondent-insurance company on the insured's breach-of-insurance-contract claim seeking uninsured-motorist benefits. Appellant argues that (1) the district court erred by concluding as a matter of law that the vehicle involved in the accident was not a hit-and-run vehicle and (2) a genuine issue of material fact exists as to whether the unidentified driver was negligent. We reverse and remand.

FACTS

The facts in this case are largely undisputed. One morning during rush hour in July 2013, appellant Bernadette Russell and two coworkers were power washing the second level of a downtown Minneapolis parking ramp. At or around 8:30 a.m., a small SUV drove over one of the power-washing hoses, caught the hose on a tire, and continued driving, dragging the hose about "half the distance of the ramp." The hose tightened and struck Russell, who had her back turned. Russell fell to the ground. The SUV did not stop and continued driving up the ramp, and its driver was never identified. Russell left the scene in an ambulance. She does not remember being struck and has little to no memory of the incident.

Russell made a claim for uninsured-motorist benefits from her insurer, respondent Sentinel Insurance Company, asserting that the SUV is an uninsured motor vehicle because

it is a hit-and-run vehicle. Sentinel denied coverage, and Russell sued. Sentinel moved for summary judgment, arguing that Russell could not prove that the SUV is a hit-and-run vehicle under the terms of her policy and failed to produce evidence that would support a determination that the driver was negligent.

The district court granted Sentinel summary judgment, concluding as a matter of law that the SUV is not a hit-and-run vehicle because Russell could not show that the driver fled the scene to avoid liability. The district court determined that the SUV would qualify as a hit-and-run vehicle "only if it [were] found that this driver drove away intentionally escaping liability for injuring Ms. Russell with her vehicle" and that Russell had no way of proving that the driver knew that she hit Russell and left the accident scene to escape liability. The district court did not reach the negligence issue. This appeal follows.

ISSUES

I. Did the district court err as a matter of law in concluding that the SUV is not a hit-and-run vehicle under the terms of Russell's policy?

II. Do genuine issues of material fact exist as to whether the unidentified driver was negligent?

ANALYSIS

On an appeal from summary judgment, we review de novo if any genuine issues of material fact exist and if the district court erred in applying the law. *Riverview Muir Doran, LLC v. JADT Dev. Grp.*, 790 N.W.2d 167, 170 (Minn. 2010). We view the evidence in the light most favorable to the party against whom judgment was granted. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 72 (Minn. 1997).

I.

Russell argues that the SUV is a hit-and-run vehicle under the terms of her insurance policy, reasoning that the SUV's driver did not stop and she could not obtain the driver's information. Sentinel maintains there is no hit-and-run coverage when, as here, Russell cannot establish that the unidentified driver fled the scene.

The "interpretation of insurance contract language is a question of law as applied to the facts presented." *Meister v. W. Nat'l Mut. Ins. Co.*, 479 N.W.2d 372, 376 (Minn. 1992); *Lhotka v. Ill. Farmers Ins. Co.*, 572 N.W.2d 772, 774 (Minn. App. 1998), *review denied* (Minn. Mar. 19, 1998).

Russell's automobile insurance policy provides in relevant part that "[Sentinel] will pay compensatory damages which [Russell] is legally entitled to recover from the owner or operator of an uninsured motor vehicle . . . because of bodily injury . . . [c]aused by an accident." The policy defines an uninsured motor vehicle to include "a land motor vehicle or trailer of any type . . . [w]hich is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or causes an accident resulting in bodily injury without hitting [the insured] or any family member." Therefore, to trigger uninsured-motorist coverage under this provision, Russell must establish that the SUV is (1) a hit-and-run vehicle, (2) whose operator or owner cannot be identified, and (3) that hit her or caused an accident resulting in bodily injury without hitting her. The policy does not define "hit-and-run vehicle." Neither does the Minnesota No-Fault Automobile Insurance Act. *See* Minn. Stat. §§ 65B.41-.71 (2016).

We apply "the ordinary meaning of terms not defined in an insurance policy, 'as well as the interpretations adopted in prior cases.'" *Lhotka*, 572 N.W.2d at 774 (quoting *Boedigheimer v. Taylor*, 287 Minn. 323, 327, 178 N.W.2d 610, 613 (1970)). And we may rely on dictionary definitions in determining the ordinary meaning of insurance-policy terms. *Hubred v. Control Data Corp.*, 442 N.W.2d 308, 311 (Minn. 1989).

"Hit-and-run" is defined as "involving the driver of a motor vehicle who leaves the scene of an accident, especially one in which a pedestrian or another vehicle has been struck." *The American Heritage Dictionary* 834 (5th ed. 2011). Hit-and-run is also defined as an "accident, especially a motor-vehicle accident, in which one or more of the drivers involved, [usually] those at fault, leave the scene before law-enforcement officials arrive." *Black's Law Dictionary* 848 (10th ed. 2014).

Sentinel contends that the SUV is not a hit-and-run vehicle based on *Halseth v. State Farm Mut. Auto. Ins. Co.*, 268 N.W.2d 730, 733 (Minn. 1978). In *Halseth*, the supreme court held that requiring physical contact as a pre-condition of uninsured-motorist coverage contravened the intent of Minnesota's uninsured-motorist statute. In doing so, the supreme court observed that a hit-and-run involves a driver who "flees from the scene." *Id.* Sentinel asserts we are bound by *Halseth*'s use of the term "flee." We disagree.

The sole issue in *Halseth* turned on the validity of an uninsured-motorist policy provision "making physical contact of a hit-and-run motor vehicle with the insured or his vehicle a precondition of coverage." *Id.* at 731. In deciding whether "to interpret the phrase 'hit-and-run' as a statutory requirement of physical contact," the supreme court consulted caselaw from other jurisdictions and adopted the analysis from *Soule v.*

Stuyvesant Ins. Co., 364 A.2d 883, 885 (N.H. 1976). *Id.* at 732. In *Soule*, the New Hampshire Supreme Court invalidated a physical-contact requirement for uninsured-motorist coverage, explaining that the "fallacy in interpreting the phrase from the literal meaning of the word 'hit' lies in the fact that it ignores the commonly accepted meaning of the entire phrase." 364 A.2d at 885. In so determining, *Soule* quoted the Washington Supreme Court: "'The use of the term "hit-and-run" . . . is synonymous with a car involved in an accident causing damages where the driver flees from the scene.'" *Id.* (quoting *Hartford Accident & Indem. Co. v. Novak*, 520 P.2d 1368, 1373-74 (Wash. 1974)).

Echoing *Soule* and *Novak*, the supreme court explained in *Halseth* that the term hit-and-run "is synonymous with a vehicle involved in an accident causing damages where the driver flees from the scene, regardless of whether or not physical contact between that vehicle and the insured's automobile occurs." 268 N.W.2d at 733. The supreme court concluded the "physical-contact requirement [wa]s unreasonable" and "contravene[d] the intent of our uninsured-motorist statute." *Id.* Otherwise stated, the supreme court announced that for hit-and-run uninsured-motorist coverage, the phrase hit-and-run is more expansive than the literal meaning of "hit." *Id.*

Here, we must decide if the phrase hit-and-run is also more expansive than the literal meaning of "run." As defined above, the plain, ordinary meaning of hit-and-run involves a driver who leaves the scene of an accident. *The American Heritage Dictionary* 834 (5th ed. 2011); *Black's Law Dictionary* 848 (10th ed. 2014). Moreover, the supreme court's statement in *Halseth* that a hit-and-run involves a driver who "flees" from the scene is not essential to *Halseth*'s holding invalidating a physical-contact requirement. Therefore, the

statement referencing fleeing is dictum and not binding. *See State ex rel. Foster v. Naftalin*, 246 Minn. 181, 208, 74 N.W.2d 249, 266 (1956) ("'Dicta,' or more properly 'obiter dicta,' generally is considered to be expressions in a court's opinion which go beyond the facts before the court and therefore are the individual views of the author of the opinion and not binding in subsequent cases.").

We acknowledge that we have cited *Halseth*'s expression on fleeing in two cases in which we concluded that a hit-and-run did not occur. First, in *Lhotka*, we concluded that a driver did not commit a hit-and-run when "the driver stop[ped] after the accident, [spoke] directly to the other party and inquire[d] about injury, [made] no attempt to conceal her identity . . . , and [left] only after the party who was struck assure[d] the driver she [was] okay." 572 N.W.2d at 775. Second, in *Kasid v. Country Mut. Ins. Co.*, we concluded that an accident was not a hit-and-run accident for purposes of uninsured-motorist coverage when "an individual [was] not denied an opportunity to obtain information following an accident, but fail[ed] to obtain such information." 776 N.W.2d 181, 187 (Minn. App. 2009). Russell argues that both cases are distinguishable. We agree.

In both *Lhotka* and *Kasid*, the unidentified drivers stopped and exited their vehicles; the insureds nevertheless failed to obtain the other drivers' information. *Kasid*, 776 N.W.2d at 187; *Lhotka*, 572 N.W.2d at 775. Here, Russell left the scene in an ambulance. And even if Russell had not left the accident scene in an ambulance, she could not have obtained the driver's information because the driver did not stop. Unlike the insureds in *Lhotka* and *Kasid*, Russell did not forgo an opportunity to obtain the unidentified driver's

information. Not only did the drivers in *Lhotka* and *Kasid* not "flee," they did not leave without stopping and providing the insured an opportunity to exchange information.

Here, the district court reasoned that, under *Halseth* and the plain meaning of "flee," the incident qualified as a hit-and-run only if it were established that the unidentified driver left the scene, intending to escape liability for injuring Russell. We conclude that the ordinary meaning of hit-and-run and its interpretation in our caselaw do not require a showing that an unidentified driver fled, or left, with the intent to escape liability. Requiring an insured to prove the intent of an unidentified driver "is unreasonable and . . . contravenes the intent of [Minnesota's] uninsured motorist statute." *See Halseth*, 268 N.W.2d at 733 (interpreting hit-and-run as more expansive than the literal meaning of "hit"); *see also Commerce Ins. Co. v. Mendonca*, 784 N.E.2d 43, 45 (Mass. App. Ct. 2003) (adopting an interpretation that "focuses on the failure to give identifying information and does not treat flight as an indispensable element of 'run'"); *Zarder v. Humana Ins. Co.*, 782 N.W.2d 682, 689 (Wis. 2010) ("[A] definition that focuses on the unidentified driver's intentions in leaving the scene of an accident is antithetical to the purpose of [uninsured-motorist] coverage."). Further, New Hampshire caselaw, which our supreme court cited in *Halseth*, later rejected an interpretation of hit-and-run post-*Soule* "[f]ocusing simply on whether the [vehicle's] driver fled the scene." *See Wilson v. Progressive N. Ins. Co.*, 868 A.2d 268, 274 (N.H. 2005) (citing *Soule*, 364 A.2d at 885) (reasoning that such an "approach is inconsistent with the purpose of uninsured motorist coverage" and that the "[New Hampshire Supreme Court] previously rejected a literal interpretation of this phrase [in *Soule*] when [it] held that a vehicle need not make physical contact with the insured in

order to qualify as a hit-and-run vehicle"). Based on our supreme court's holding in *Halseth* that hit-and-run is more expansive than the literal meaning of "hit," 268 N.W.2d at 733, we conclude that hit-and-run is also more expansive than the literal meaning of "run."

Here, the unidentified driver did not stop and, due to her injuries, Russell was unable to obtain the driver's information. Applying the ordinary meaning of hit-and-run and prior court interpretations, the SUV is a hit-and-run vehicle. Because the SUV is a hit-and-run vehicle under Russell's policy, the district court erred when it granted Sentinel summary judgment on Russell's uninsured-motorist coverage claim.

II.

Russell next argues that summary judgment in Sentinel's favor on the issue of the unidentified driver's negligence is improper because a genuine issue of material fact exists. Sentinel maintains that no genuine issue of material fact exists and that Russell has not produced evidence sufficient to establish that the driver was negligent. Having granted summary judgment based on the meaning of hit-and-run vehicle under Russell's policy, the district court did not reach this issue.

Russell's insurance policy provides damages for which Russell is "legally entitled to recover . . . caused by an accident." "'Legally entitled to recover damages' . . . mean[s] that an insured must establish fault and damages to be entitled to uninsured motorist benefits." *Miklas v. Parrott*, 684 N.W.2d 458, 463 (Minn. 2004). Fault includes "acts or omissions that are in any measure negligent." *See* Minn. Stat. § 604.01, subd. 1a (2016) (providing the definition for "fault" in comparative fault statute). "Negligence is the failure

to exercise the level of care that a person of ordinary prudence would exercise under the same or similar circumstances." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014).

"The question of negligence is ordinarily a question of fact and not susceptible to summary adjudication." *Canada By & Through Landy v. McCarthy*, 567 N.W.2d 496, 505 (Minn. 1997). Russell argues there is sufficient record evidence from which a jury could reasonably conclude that the "unidentified driver had reason to know (1) that her vehicle had become tangled in hoses being used by the work crew and (2) that her failure to stop might put members of that crew at risk of injury." Russell points to evidence that she and her coworkers placed warning signs and orange cones around the area where they were working; the hose was in plain sight; the SUV's tires squealed; the tires spun until becoming entangled in the hose; the hose disrupted the SUV's forward movement; and the SUV dragged the hose half the distance of the ramp. Sentinel contends that this evidence does not support a finding that the driver was negligent because "[n]o one stopped her from entering the ramp" or "directed her around the hoses." Sentinel argues that the unidentified driver "was merely following a line of cars."

Viewing the record evidence in the light most favorable to Russell, there is a genuine issue of material fact as to whether the unidentified driver was negligent. Therefore, summary judgment on negligence is inappropriate at this stage.

D E C I S I O N

To obtain coverage under Russell's hit-and-run uninsured-motorist policy provision, Russell is not required to prove the unidentified driver left with the intent to escape liability. The policy requires only that Russell prove the vehicle is a hit-and-run

vehicle whose owner or operator cannot be identified and which caused an accident resulting in bodily injury to Russell. The SUV is a hit-and-run vehicle because its driver did not stop and Russell did not have an opportunity to obtain the driver's information. Therefore, the district court erred when it granted Sentinel summary judgment on Russell's breach-of-insurance-contract claim for uninsured-motorist benefits. Further, there is a genuine issue of material fact as to whether the unidentified driver was negligent.

Reversed and remanded.