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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0908**

Krista Frieese,
Appellant,

vs.

American Family Mutual Insurance Company,
Respondent.

**Filed January 29, 2018
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-16-791

Charles D. Slane, Jennifer E. Olson, TSR Injury Law, Bloomington, Minnesota (for appellant)

Nathan Cariveau, Eden Prairie, Minnesota (for respondent)

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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant Krista Frieese challenges the district court's decision that granted summary judgment to respondent American Family Mutual Insurance Company and

enforced a policy provision reducing the amount of underinsured-motorist (UIM) coverage under a nonresident's policy based on the amount recovered from other available liability insurance. For two reasons, Frieze argues that Minnesota law requires Minnesota-licensed insurers to provide "add-on" UIM coverage for all collisions that occur in Minnesota, therefore, the reducing clause is unenforceable. First, Frieze claims the plain language of Minn. Stat. § 65B.50, subd. 1 (2016), supports her position, along with the Minnesota Supreme Court's recent decision in *Founders v. Yates*, 888 N.W.2d 134 (Minn. 2016). Second, Frieze argues that American Family's policy has a conformity clause that requires it to provide add-on coverage consistent with Minnesota law. Based on long-standing precedent interpreting Minn. Stat. § 65B.50, we affirm.

FACTS

This declaratory judgment action was decided based on stipulated facts. On January 4, 2010, David Diede was driving on a Minnesota highway when he hit a vehicle that Frieze occupied, but did not own. The vehicle she occupied was owned by a Wisconsin resident, garaged in Wisconsin, and insured under a policy issued in Wisconsin by American Family. Frieze is a Wisconsin resident. American Family is licensed to do business in Minnesota. Diede's negligence caused the accident and, as a direct result, Frieze was injured and sustained damages in excess of \$100,000. Frieze sued Diede and settled her claim against him for his auto liability policy limits of \$50,000.

Diede is an underinsured motorist, as defined by the American Family policy (the policy). The policy's limit for UIM coverage is \$100,000, but the policy contains a "reducing clause." It states:

The limits of liability of the coverage will be reduced by: 1. A payment made or amount payable by or on behalf of any person or organization which may be legally liable, or under any collectible auto liability insurance, for loss caused by an accident with an underinsured motor vehicle.

The parties agree that, if the reducing clause is enforced, Friese's UIM recovery would be reduced by \$50,000, the amount that she received from Diede's policy.

Friese sued American Family seeking a declaratory judgment that the reducing clause is not enforceable because the Minnesota No-Fault Automobile Insurance Act requires American Family to provide add-on coverage. Minn. Stat. §§ 65B.41-.71 (2016). American Family contends that add-on coverage under the No-Fault Act does not apply to auto policies held by nonresidents.

In March and June 2017, the district court granted summary judgment in favor of American Family and held that the reducing clause was enforceable against Friese, therefore, she is entitled to recover \$50,000 in UIM coverage from American Family.¹ This appeal follows.

DECISION

I. Minnesota law does not require American Family to provide add-on UIM coverage to Friese under a nonresident's auto policy.

Summary judgment is appropriate when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. Here, there

¹ In its March order, the district court described the proceedings as a "court trial," because the parties had submitted stipulated facts, briefing, and the only question before the court was whether American Family's reducing clause was enforceable against Friese. In June 2017, the district court approved the parties' stipulation that the March order was "properly construed" as one for summary judgment.

are no material facts in dispute; American Family and Friese stipulated to the underlying facts. Based on the undisputed facts, policy language, and Minnesota law, Friese contends the district court misinterpreted the No-Fault Act and erred in enforcing the reducing clause. Interpretation of a statute and an insurance policy based on undisputed facts raise questions of law subject to de novo review. *Jensen v. United Fire & Cas. Co.*, 524 N.W.2d 536, 538 (Minn. App. 1994), *review denied* (Minn. Feb. 3, 1995).

A. Add-on UIM coverage under the No-Fault Act and the nonresident policyholder exception

If the terms of an insurance policy conflict with or omit coverage required by the No-Fault Act, those policy terms will be held invalid. *Kwong v. Depositors Ins. Co.*, 627 N.W.2d 52, 55 (Minn. 2001). The No-Fault Act's UIM coverage requirement has been interpreted as requiring add-on UIM coverage for Minnesota motor vehicles. *Mitsch v. Am. Nat. Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007) (holding "Minnesota law mandates that all UIM coverage issued in the state be add-on coverage") (quoting Minn. Stat. § 65B.49, subd. 4a (2006)), *review denied* (Minn. Oct. 24, 2007).² Briefly, add-on coverage means that the amount of UIM coverage purchased is available to the insured/claimant in addition to any applicable liability insurance coverage. See Minn. Stat.

² *Johnson v. Cummiskey*, 765 N.W.2d 652, 661 (Minn. App. 2009), distinguished *Mitsch*, stating that its broad declaration about add-on coverage included dicta because *Mitsch* did not consider whether the No-Fault Act required UIM coverage for motorcycles. *Johnson* went on to hold that the No-Fault Act does not require UIM coverage in motorcycle policies, therefore, the applicable policy would not be reformed by statutory requirements for add-on coverage. 765 N.W.2d at 662. *Johnson* did not suggest or imply that *Mitsch* incorrectly analyzed the No-Fault Act's requirement that Minnesota motor vehicles must have add-on UIM coverage.

§ 65B.49, subd. 4a (2016) (providing that “[w]ith respect to underinsured motorist coverage, the maximum liability of an insurer is the amount of damages sustained but not recovered from the insurance policy of the driver or owner of any underinsured at fault vehicle”). Based on the statutory mandate, this court has held that a reducing clause is unenforceable in a Minnesota automobile policy. *Mitsch*, 736 N.W.2d at 363.

Friese is seeking UIM coverage under a nonresident’s policy and contends that, because American Family is licensed to do business in Minnesota, the policy’s reducing clause violates the No-Fault Act. She relies on the plain language of Minn. Stat. § 65B.50, which states:

Subdivision 1. **Filing.** Every insurer licensed to write motor vehicle accident reparation and liability insurance in this state shall, on or before January 1, 1975, or as a condition to such licensing, file with the commissioner and thereafter maintain a written certification that it will afford at least the minimum security provided by section 65B.49 to all policy holders, except that in the case of nonresident policyholders it need only certify that security is provided with respect to accidents occurring in this state.

Subd. 2. **Contacts of liability insurance as security covering the vehicle.** Notwithstanding any contrary provision in it, every contract of liability insurance for injury, wherever issued, covering obligations arising from ownership, maintenance, or use of a motor vehicle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverages, includes basic economic loss benefit coverages and residual liability coverages required by sections 65B.41 to 65B.71, while the vehicle is in this state, and qualifies as security covering the vehicle.

Minn. Stat. § 65B.50. The parties agree that subdivision 1 requires that insurers licensed in Minnesota must certify that they provide basic coverage, which the statute refers to as “minimum security.” *Id.* But the parties disagree what coverage is required.

American Family contends that subdivision 1 contains a specific exception for nonresident policyholders that narrows the required coverage. The relevant language provides, “except that in the case of nonresident policyholders it need only certify that security is provided with respect to accidents occurring in this state.” Minn. Stat. § 65B.50, subd. 1. Relying on precedent, American Family argues that “security” in the nonresident exception to subdivision 1 must be read by referring to subdivision 2, which provides that “every contract of liability insurance for injury, wherever issued . . . includes basic economic loss benefit coverages and residual liability coverages.” Minn. Stat. § 65B.50, subd. 2. Subdivision 2 coverage includes basic no-fault benefits but does not include UIM insurance.

Friese argues “that security” in the exception refers to “minimum security,” which is referenced earlier in the same sentence. Friese contends that minimum security is defined in subdivision 1, which states that licensed insurers must certify that they provide “at least the minimum security provided by section 65B.49 to all policyholders.” Minn. Stat. § 65B.50, subd. 1. Based on *Mitsch* and the language in section 65B.49, subd. 4a, which mandates add-on coverage for UIM benefits, Friese argues that the policy’s reducing clause is unenforceable.

Although Friese’s reading of the plain language of subdivision 1 has some merit, this court is bound to follow relevant precedent that has interpreted these exact provisions

of the No-Fault Act. Since 1980, appellate courts have read both subdivisions of section 65B.50 together, and held that the “security” referenced in subdivision 1 for nonresident policyholders refers only to the required coverage in subdivision 2, which expressly refers to “every contract of liability insurance . . . wherever issued.” See *Petty v. Allstate Ins. Co.*, 290 N.W.2d 764, 765-66 (Minn. 1980) (referring to subdivision 1 exception and holding “we look to Minn. Stat. § 65B.50, subd. 2, in order to determine what ‘security’ must be afforded to nonresident insureds operating an insured vehicle in Minnesota”); *Hedin v. State Farm Mut. Auto. Ins. Co.*, 351 N.W.2d 407, 408-09 (Minn. App. 1984) (holding “that the word ‘security’ as used in [subdivision 1 of section 65B.50] with respect to nonresident policyholders only refers to basic economic loss benefits required to be included under subdivision 2 of 65B.50.”); see also *Aguilar v. Texas Farmers Ins. Co.*, 504 N.W.2d 791, 793-94 (Minn. App. 1993) (explaining that *Hedin*’s analysis applies to underinsured motorist benefits provided by an insurer, unlicensed in Minnesota, and holding the “No-Fault Act only requires basic economic loss benefits and residual liability coverage for nonresidents’ policies”).

In fact, this court previously has decided whether a Minnesota-licensed insurer may enforce a reducing clause in a nonresident’s policy under section 65B.50. In *Warthan v. Am. Family Mut. Ins. Co.*, nonresident policyholders were injured in an accident in Minnesota, the parties agreed that a third party was at fault, and the nonresident policyholders received the policy limits from the third party’s insurer. 592 N.W.2d 136, 137-38 (Minn. App. 1999), review denied (Minn. July 28, 1999). The policyholders sought UIM coverage under their American Family policy, which was issued in Wisconsin and

had a reducing clause similar to the one in Frieese's policy. *Id.* The policyholders argued the reducing clause was unenforceable in light of the add-on coverage required by Minnesota law. *Id.* at 138.

This court affirmed the district court's decision to enforce the reducing clause and rejected the policyholders' argument. *Id.* Relying on *Petty*, this court held that the "security" referenced in the nonresident policyholder exception in subdivision 1, "is the same security referenced in subdivision 2," which only requires "basic economic loss and residual liability coverage." *Id.* at 139. After referencing *Hedin* and *Aguilar*, this court summarized "the rule in Minnesota is that uninsured and underinsured motorist coverage are not required for nonresidents, and therefore if nonresidents have such coverage it need not comply with Minnesota law." *Id.*

Frieese concedes that *Warthan* would be dispositive, but argues that a recent decision by the Minnesota Supreme Court is incompatible with *Warthan* because the court implicitly rejected and therefore limited precedent upon which *Warthan* relied. We disagree.

B. *Founders Ins. Co. v. Yates* did not decide, much less mandate, a different interpretation of the nonresident policyholder exception.

In *Founders Inc. Co. v. Yates*, an Illinois resident with an Illinois insurance policy was in a car accident in Minnesota. 888 N.W.2d 134, 135 (Minn. 2016). Founders provided Yates's automobile insurance and was not licensed to sell insurance in Minnesota. *Id.* Founders denied Yates's claim seeking no-fault benefits under Minnesota law, arguing that section 65B.50 only applied to Minnesota-licensed insurers. *Id.* Analyzing the "plain

language” of section 65B.50, the supreme court held that subdivision 2 “applies to all contracts of liability insurance for injury, wherever issued, including whether they were issued in Minnesota, Illinois, or some other place.” *Id.* at 136. Founders argued that subdivisions 1 and 2 should be read together, and because subdivision 1 only applied to Minnesota-licensed insurers, subdivision 2 was similarly limited to Minnesota-licensed insurers. *Id.* The supreme court disagreed and concluded that, “Minn. Stat. § 65B.50, subd. 2, applies to an out-of-state insurer when its insured is in an accident in Minnesota and the insured vehicle is in Minnesota, even though the insurer is not licensed by the State of Minnesota to issue motor vehicle insurance.” *Id.* at 137.

Friese argues that, after *Founders*, Minn. Stat. § 65B.50’s subdivisions can no longer be read together, and must be read independently, with subdivision 1 applying to Minnesota-licensed insurers and subdivision 2 applying to insurers that are not licensed in Minnesota. Accordingly, Friese argues that “security” in subdivision 1, cannot “be defined by looking to subdivision 2,” and must be defined by reference to subdivision 1, as “the minimum security provided by section 65B.49.”

We agree with the district court that *Warthan* and *Petty* remain binding precedent. *Founders* predicated its decision on subdivision 2 of section 65B.50, not subdivision 1. *Id.* *Founders* clarified that subdivision 2 applies to all insurers if an insured is in an accident in Minnesota, but *Founders* does not address previous caselaw on the nonresident policyholder exception for Minnesota-licensed insurers. In reaching its conclusion in *Founders*, the supreme court did not analyze or even mention *Petty*, *Warthan*, or any other pre-*Founders* decision setting out no-fault coverage requirements for Minnesota-licensed

insurers. We are bound by existing precedent that has not been overruled. *Jackson ex rel. Sorenson v. Options Residential, Inc.*, 896 N.W.2d 549, 553 (Minn. App. 2017).

Finally, “the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.” *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Even if we would reach a different conclusion were we writing on a blank slate, it is not our role to extend *Founders* and overrule caselaw. *Petty* and *Warthan* held that Minnesota-licensed insurers need only provide basic economic loss benefits coverage and residual liability coverage under nonresident policies; this holding is unaffected by *Founders*’ holding that subdivision 2 applies to insurers that are not licensed in Minnesota.

Accordingly, we conclude that American Family was not required to provide add-on UIM coverage in this policy, the reducing clause may be enforced, and American Family was entitled to summary judgment as a matter of law.

II. The reducing clause is not in direct conflict with the No-Fault Act, and therefore, the conformity clause does not operate to rewrite the reducing clause.

Finally, Friese argues that the conformity clause in the American Family policy requires the entire policy to conform to Minnesota law, and consequently, the UIM endorsement should be rewritten to provide add-on coverage. A conformity clause in an insurance policy operates to substitute a statutory provision for a policy provision only where the two provisions are in direct conflict. *Atwater Creamery Co. v. W. Nat. Mut. Ins. Co.*, 366 N.W.2d 271, 275 (Minn. 1985). Here, we have determined that the policy

complies with *Petty*, *Warthan*, and Minn. Stat. § 65B.50, and, therefore, does not conflict with Minnesota law.

We conclude, based on the relevant statutes and long-standing caselaw, that the district court correctly determined that Minnesota law does not require reformation of the UIM coverage in the American Family policy with regard to Friese's claim.

Affirmed.