

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1068**

Charlotte Copiskey,
Appellant,

vs.

IMT Insurance Company,
Respondent.

**Filed March 6, 2023
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69DU-CV-22-161

Jeffrey M. Montpetit, Marcia K. Miller, SiebenCarey, PA, Minneapolis, Minnesota (for appellant)

Kevin J. Kennedy, Borgelt, Powell, Peterson & Frauen, S.C., Oakdale, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Charlotte Copiskey was a passenger in a car driven by her husband, Stanley Copiskey.¹ Their car collided with another vehicle, and Charlotte was injured. In

¹ We refer to Charlotte and Stanley by their first names throughout the rest of the opinion to avoid confusion.

the insurance-coverage dispute that followed, the district court granted summary judgment for respondent Wadena Insurance Company, determining that coverage was limited to \$30,000 under a drop-down provision in the Copiskeys' automobile insurance policy. Charlotte appeals. Because the drop-down provision is enforceable and the policy unambiguously limits coverage to \$30,000, we affirm.

FACTS

The parties agree that there are no relevant disputed facts. Beginning in 2016, Charlotte and Stanley were both named insureds under a "NEW BUSINESS" "Personal Vehicle" auto policy (2016-17 policy) issued by Wadena. They renewed the policy under substantively the same terms in 2017 under a "RENEWAL" "Personal Vehicle" auto policy (2017-18 policy). The collision causing Charlotte's injuries occurred while the Copiskeys were insured under the 2017-18 policy. The collision was due, in part, to Stanley's negligence, and Charlotte sought liability coverage under the Copiskeys' 2017-18 policy.

The 2017-18 policy contained three relevant sections affecting the applicable liability limit: (1) the policy's base form, which specified the insured and the insurer's rights and obligations; (2) the declarations, which summarized the insured's liability limits and premiums; and (3) the endorsement containing a drop-down provision.

The 2017-18 policy's base form provided that Wadena "will pay for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident." The base form referred the insured to the declarations for the maximum liability coverage for bodily injury, which was \$100,000 per person. The base form also contained several exclusions from coverage.

The endorsement at issue here added another exclusion—specifically, a drop-down provision that excluded liability coverage for the insureds and their family members beyond the minimum coverage required by Minnesota law. It stated:

D. The following Exclusion (A.10.) is added:
We do not provide Liability Coverage for any “insured”:
10. For “bodily injury” to you or any “family member” to the extent that the limits of liability for this coverage exceed the minimum limits of liability required by the financial responsibility law of Minnesota.

The endorsement defined “minimum limits” as follows:

3. Throughout the Policy, “minimum limits” refers to the following limits of liability, as required by Minnesota law, to be provided under a policy of automobile liability insurance:
a. \$30,000 for each person, subject to \$60,000 for each accident, with respect to “bodily injury[.]”

The parties agree that \$30,000 per person is the required minimum coverage under Minnesota law. *See* Minn. Stat. § 65B.49 (2022).

Charlotte sued Wadena, seeking a declaration that the endorsement containing the drop-down provision limiting coverage to \$30,000 was unenforceable and, in turn, that she was entitled to the \$100,000 maximum coverage specified in the declarations. On the parties’ cross-motions for summary judgment, the district court ruled for Wadena. It concluded that, contrary to the arguments advanced by Charlotte, the drop-down provision was enforceable and unambiguously limited liability coverage to \$30,000.

Charlotte appeals.

DECISION

On review of summary judgment, appellate courts analyze whether there are genuine disputes of material fact and whether the district court erred in its application of law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). Here, the sole issue involves the district court’s interpretation of an insurance policy, a question of law that we review de novo. *Com. Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). In general, “[a]n insurance policy must be read as a whole, and unambiguous language must be given its plain and ordinary meaning. Provisions in a policy must be read in context with all other relevant provisions.” *Id.* (citations omitted).

Charlotte asserts two arguments. First, she argues that the drop-down provision in the 2017-18 policy’s endorsement is void because Wadena did not provide written notice of the endorsement as required by *Canadian Universal Insurance Co. v. Fire Watch, Inc.*, 258 N.W.2d 570, 575 (Minn. 1977). Second, Charlotte argues in the alternative that the 2017-18 policy was ambiguous and must be construed in her favor. Wadena counters that it did not need to provide written notice of the endorsement and that the endorsement’s drop-down provision unambiguously limited coverage to \$30,000. We address each of the arguments in turn.

I. Notice

Charlotte contends that, under *Canadian Universal*, Wadena was required to provide written notice, apart from the policy itself, that the 2017-18 policy contained the endorsement with the drop-down provision. Because Wadena did not provide such notice, Charlotte argues, the endorsement is unenforceable and the liability limit of \$100,000

applies. Wadena responds that the *Canadian Universal* rule does not apply. We agree with Wadena.

In *Canadian Universal*, the Minnesota Supreme Court adopted the following rule:

[W]hen an insurer by renewal of a policy or by an endorsement to an existing policy *substantially reduces the prior insurance coverage provided the insured*, the insurer has an affirmative duty to notify the insured in writing of the *change in coverage*. Failure to do so shall render the purported reduction in coverage void. Any question of an individual's insurance coverage shall then be determined in accordance with the terms of the original policy *prior to the renewal or endorsement*.

Id. (emphasis added). Thus, if an insurer substantially reduces the insured's existing coverage through a subsequent endorsement or renewal, the insurer must provide the insured with a written explanation notifying the insured of the change in coverage. *Id.*

Here, the drop-down provision at issue was part of the 2016-17 policy—the Copiskeys' first policy with Wadena—and an identical drop-down provision was part of the 2017-18 policy. Thus, because the Copiskeys' policies contained the drop-down provision from the beginning of coverage through Wadena, the liability limit was always \$30,000 for bodily injury to the insureds or their family members. As a result, the drop-down provision did not “substantially reduce[] the *prior* insurance coverage.” *See id.* at 575 (emphasis added).

Charlotte argues that the drop-down provision in the endorsement substantially reduces coverage because it “reduces” coverage from \$100,000 to \$30,000 and that a written notice was therefore required. We disagree. Framing the \$30,000 liability limit in the endorsement as a reduction from the \$100,000 liability limit in the declarations

mischaracterizes the policy. The declarations summarize the maximum coverage under the policy. That coverage is subject to the exclusions and limitations specified in the policy's base form and endorsements. The \$30,000 liability limit in the endorsement is only a reduction if the declarations are read in isolation from the rest of the policy. Because policies must be "read as a whole" and "provisions in a policy must be read in context with all other relevant provisions," we reject such a reading. *Com. Bank*, 870 N.W.2d at 773. Instead, when the base form, the declarations, and the endorsement are read together, the liability limit was always \$30,000 for injuries to the insureds or to their family members. That the 2017-18 policy provided a liability limit of \$100,000 under other circumstances is not relevant.

We are sympathetic to Charlotte's argument that requirement of a written notice—separate from the policy itself—would better protect insureds because policies are complex and many insureds may be surprised by the type of drop-down provision here. But insureds are not excused from reading their policies. *See Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 48 (Minn. 2008). And, given the clear rule in *Canadian Universal*—requiring written notice only when the insurer reduces an insured's existing coverage—imposing such a requirement as a matter of public policy would exceed our role. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *rev. denied* (Minn. Dec. 18, 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.").

Because the Copiskeys' coverage was always subject to the drop-down provision, the rule in *Canadian Universal* does not apply. The district court properly determined that

Wadena was not obligated to provide the Copiskeys with separate written notice for the drop-down provision to be enforceable.

II. Ambiguity

Charlotte also contends that the drop-down provision's liability limit of \$30,000 for the insureds and their family members, when read with the declarations' liability limit of \$100,000, creates an ambiguity and that the policy should therefore be construed against Wadena to provide a \$100,000 liability limit. We are not persuaded.

Whether a policy is ambiguous is a question of law that appellate courts review *de novo*. *Carlson*, 749 N.W.2d at 45. A policy is ambiguous only “if it is susceptible to two or more reasonable interpretations.” *Id.* at 45. Exclusions in a policy “must be given the same consideration in determining what is the coverage” and are similarly ambiguous only if “reasonably subject to more than one interpretation.” *Pepper v. State Farm Mut. Auto. Ins. Co.*, 813 N.W.2d 921, 927 (Minn. 2012) (quotations omitted).

Under the policy's base form, the liability limit in the declarations—\$100,000 for bodily injury—is the “maximum limit of liability.” The base form provides certain exclusions from coverage, and the endorsement adds another exclusion—the drop-down provision—limiting coverage for the insureds and the insureds' family members to the Minnesota statutory minimum. Although the endorsement does not specify in the drop-down provision that the limit is \$30,000, the endorsement defines “minimum limits” as “\$30,000 for each person” for bodily injury. Charlotte acknowledges that \$30,000 is the minimum liability coverage required by Minnesota law. *See* Minn. Stat. § 65B.49, subd. 3. And she does not offer an alternative reading based on the policy as a whole. Thus, the

policy unambiguously provides that the maximum liability limit is \$100,000 but that the limit is \$30,000 when an insured is liable to another insured or an insured's family member.

Charlotte asserts that this policy is analogous to the policy in *Rusthoven v. Commercial Standard Insurance Co.*, 387 N.W.2d 642, 644 (Minn. 1986). We disagree. That case involved “irreconcilably inconsistent” endorsements that, when considered within the policy as a whole, could be read to provide coverage of either \$25,000 or \$1,675,000. *Rusthoven*, 387 N.W.2d at 644. But there is nothing inconsistent between a \$100,000 maximum liability limit and, under the circumstances here, a \$30,000 liability limit. Charlotte's analogy to *Rusthoven* relies on reading the declarations and endorsement in isolation. We are unpersuaded that such a reading can render the policy ambiguous. *See Com. Bank*, 870 N.W.2d at 773 (“An insurance policy must be read as a whole. . . . Provisions in a policy must be read in context with all other relevant provisions.”).

In fact, this court has already found a similar drop-down provision to be unambiguous. *See Frey v. United Servs. Auto. Ass'n*, 743 N.W.2d 337, 340-42 (Minn. App. 2008) (holding that a drop-down provision setting a \$30,000 liability limit for resident family members, despite a \$300,000 liability limit, was unambiguous and enforceable). And we are not persuaded by Charlotte's argument that the drop-down provision here is ambiguous solely because it specifies coverage in terms of the minimum required by state law, as opposed to a dollar amount. *See Agency Rent-A-Car, Inc. v. Am. Fam. Mut. Auto. Ins. Co.*, 519 N.W.2d 483, 485, 487 (Minn. App. 1994) (holding that policy language limiting liability coverage to the “MINIMUM dollar amount . . . in accordance with applicable motor vehicle financial responsibility laws of the state in which this agreement

of rental was executed,” without specifying that amount, was not ambiguous). This is especially true since the same endorsement that contained the drop-down provision also defined “minimum limits” as \$30,000 per person.

In sum, the district court properly determined that the drop-down provision’s \$30,000 liability limit applies to Charlotte’s claim.

Affirmed.