IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES DAVIS, INDIVIDUALLY, AND LISA OSORIO, INDIVIDUALLY,
Appellants,
vs.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Respondent.

No. 36986

FILED

MAY 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants Charles Davis and Lisa Osorio, plaintiffs below, appeal the district court's grant of summary judgment in favor of State Farm Mutual Automobile Insurance Company.

First, appellants assert that the district court erred when it granted summary judgment because there were unresolved factual issues before the district court and because State Farm was not, as a matter of law, entitled to summary judgment. Appellants contend that courts in other jurisdictions have permitted recovery under uninsured motorist policies even when there is no contact between the claimant's vehicle and an unidentified "hit-and-run" vehicle.[1] Additionally, appellants assert

[1]See, e.g., Clark v. Regent Ins. Co., 270 N.W.2d 26, 29-31 (S.D. 1978) (reversing the lower court's grant of declaratory judgment against the claimant because the court interpreted the term "hit-and-run" in South Dakota's uninsured motorist statute as not requiring actual physical contact); Hartford Accident and Indem. Co. v. Novak, 520 P.2d 1368, 1371-74 (Wash. 1974) (reversing lower court's grant of declaratory judgment against the claimants because the court interpreted Washington's uninsured motorist statute as not requiring actual physical contact).

that there was still a factual dispute as to whether Davis' truck came into physical contact with the unidentified maroon car.[2]

Under NRCP 56(c), the district court may grant summary judgment in a party's favor when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the evidence would permit a reasonable jury to return a verdict in favor of the non-moving party.[3] When examining the evidence, the court must view all of the pleadings and proof in the light most favorable to the non-moving party.[4] Nonetheless, the non-moving party may not merely rest on his pleadings, but must set forth specific facts indicating the existence of a genuine issue of material fact.[5] When reviewing grants of summary judgment, this court will review the entire record anew without deference to the findings of the district court.[6]

As recognized by this court in Kern v. Nevada Insurance Guaranty, NRS 690B.020(3)(f)(1) unequivocally states that actual physical contact is required before a claimant can recover under his uninsured

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[2]In support of this contention, appellants point out that Osorio testified that "I don't think there was contact, but I'm not sure" and "I don't know if we hit the car, but I know that car did not stop."

[3]Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

[4]Id. at 452, 851 P.2d at 442.

[5]Id.

[6]Estate of Delmue v. Allstate Ins. Co., 113 Nev. 414, 416, 936 P.2d 326, 328 (1997).

motorist coverage for an accident that was caused by an unidentified vehicle.[7] In contrast to the foreign cases relied upon by appellants, actual physical contact remains a strict requirement under our statute.[8] When it is undisputed that no physical contact occurred between the vehicles, uninsured motorist coverage is precluded as a matter of law. Here, there was no genuine issue of material fact regarding whether Davis' truck came into contact with the unidentified maroon car. Even when the evidence is viewed in the light most favorable to appellants and taken as true, Osorio's testimony merely establishes that she did not know whether there was any contact between Davis' truck and the unidentified maroon car.[9] This court has held that a party opposing summary judgment must advance more than speculation and conjecture in order to avoid summary judgment.[10] We conclude that attempting to glean a genuine issue of material fact from Osorio's testimony would be conjecture because she did nothing more than express uncertainty about her own recollection of whether there may have been contact between the two vehicles. Therefore, the district court did not err when it granted summary judgment in favor of State Farm.

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[7]109 Nev. 752, 758, 856 P.2d 1390, 1394 (1993) (stating, "[w]e conclude that the language of NRS 690B.020(3)(f)(1) clearly requires 'physical contact' as a prerequisite for recovery under an insured's UM coverage").

[8]See id.

[9]In contrast, the only witness claiming to know whether the two vehicles came into contact stated that there was no contact.

[10]See Posadas, 109 Nev. at 452, 851 P.2d at 442.

Second, appellants assert that the exclusion in the uninsured motorist policy provided by State Farm is more restrictive than the minimum level of protection guaranteed by Nevada's uninsured motorist statute. State Farm's policy provided uninsured motorist coverage against damages caused by an unknown driver when:

> 2. a "hit-and-run" land motor vehicle whose owner or driver remains unknown and which strikes:
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> a. the insured; or
>
> b. the vehicle the insured is occupying and causes bodily injury to the insured.

(Emphasis added.) NRS 690B.020(3) provides:

> For the purposes of this section the term "uninsured motor vehicle" means a motor vehicle:
>
> . . . .
>
> (f) The owner or operator of which is unknown or after reasonable diligence cannot be found if:
>
> (1) The bodily injury or death has resulted from physical contact of the automobile with the named insured or the person claiming under him or with an automobile which the named insured or such a person is occupying; and
>
> (2) The named insured or someone on his behalf has reported the accident within the time required . . . .

(Emphasis added.) Appellants contend that unlike NRS 690B.020(3), the word "strikes" requires an actual collision between the two vehicles. Accordingly, appellants assert that State Farm's policy is void and unenforceable because it is more restrictive than NRS 690B.020(3).

This court has held that insurers may not limit uninsured motorist policies in contravention of the public policy expressed in

Nevada's uninsured motorist statute.[11] An insurance policy that contains uninsured motorist exclusions that are more restrictive than those permitted by the uninsured motorist statute is void to the extent that it would defeat the minimum security provided by the statute.[12] The interpretation of a contract presents a question of law subject to de novo review when the facts are undisputed.[13]

The policy provision in question is not more restrictive than the applicable statute. Although appellants argue that the insurance provision requires a physical collision while NRS 690B.020 does not, this contention is not supported by our interpretation of NRS 690B.020 in Kern. In Kern, we concluded that the insured vehicle and the unknown vehicle must come into actual physical contact.[14] The plain and ordinary definition of the word "strike" is "[t]o collide with or crash into."[15] Since

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[11]Gardner v. American Ins. Co., 95 Nev. 271, 273, 593 P.2d 465, 466 (1979).

[12]Nelson v. CSAA, 114 Nev. 345, 348, 956 P.2d 803, 805 (1998).

[13]Grand Hotel Gift Shop v. Granite St. Ins., 108 Nev. 811, 815, 839 P.2d 599, 602 (1992); see also Ippolito v. Liberty Mutual, 101 Nev. 376, 378-79, 705 P.2d 134, 136 (1985) (holding that this court will strictly construe provisions of an uninsured motorist statute in favor of recovery by the insured).

[14]109 Nev. at 756-57, 856 P.2d at 1393-94.

[15]The American Heritage Dictionary defines the word strike as meaning, "[t]o collide with or crash into: *struck the desk with her knee.*" American Heritage Dictionary 1276 (1980); see also Siggelkow v. Phoenix Ins. Co., 109 Nev. 42, 44, 846 P.2d 303, 304 (1993) (holding that "[a]n insurance policy is to be judged from the perspective of one not trained in

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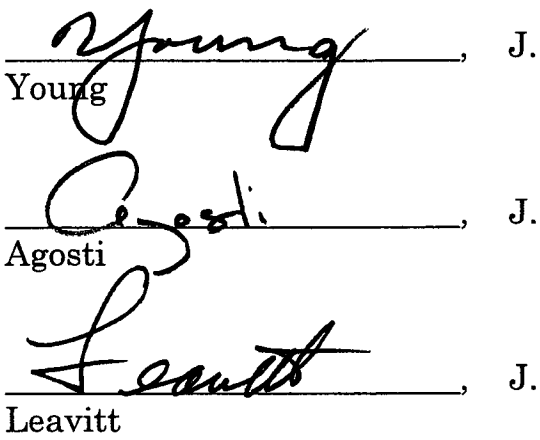
both the common definition of "strike" and the definition of "physical contact" used in Kern require a collision, we conclude that State Farm's policy is not more restrictive than NRS 690B.020. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Joseph S. Pavlikowski, Senior Judge
Albert D. Massi, Ltd.
Dennett & Winspear, LLP
Clark County Clerk

. . . *continued*
law or in insurance, with the terms of the contract viewed in their plain, ordinary and popular sense").