IN THE SUPREME COURT OF THE STATE OF NEVADA

KIM OURA,
Appellant,
vs.
ALLSTATE INSURANCE COMPANY,
Respondent.

No. 42277

FILED

MAY 12 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant, Kim Oura, was involved in an automobile accident for which Drew Murphy admitted liability. Oura filed suit in district court to recover for the injuries she sustained as a result of the accident. Murphy was listed as an insured driver, along with Daniel Lee, under a policy issued by respondent, Allstate Insurance Company (Allstate). The named insured under the policy was Lee Mangiapani, who also owned the vehicle involved in the accident. The same policy provided coverage for two other vehicles that were not involved in the accident. The liability limits under the policy were $100,000 per person and $300,000 per occurrence.

Oura filed a motion for summary judgment contending that she was entitled to separate insurance indemnity provisions within the policy, which allegedly provide primary coverage for the owner of the vehicle (Mangiapani) and excess coverage for the non-owner tortfeasor (Murphy). Oura further claimed that the liability provision was ambiguous and that such ambiguities should be construed against the drafter.

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Allstate filed a Complaint in Intervention, seeking declaratory relief and noticed the parties of its intent to file a cross-motion to Oura's motion for summary judgment, which it subsequently filed. Allstate contended that Oura was impermissibly attempting to stack liability coverage from the separate vehicle's liability provisions. Further, Allstate contended that Nevada law prohibits such stacking and that the contract was unambiguous.

The district court granted Allstate's motion to intervene and its motion for summary judgment. Oura filed this appeal and now argues that the district court improperly granted Allstate's motion for summary judgment because the policy provides separate liability limits as to Mangiapani and Murphy and because, at the very least, the contract was ambiguous as to its limitations on liability. We disagree with both of Oura's contentions.

We review a district court's grant of summary judgment de novo.[1] Summary judgment is appropriate only when no genuine issues of fact remain, and the moving party is entitled to judgment as a matter of law.[2] To ascertain whether summary judgment is appropriate, the pleadings and evidence are viewed in the light most favorable to the non-moving party.[3] When the parties do not dispute the facts, the

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[1]Nelson v. CSAA, 114 Nev. 345, 347, 956 P.2d 803, 804 (1998).

[2]Insurance Corp. of America v. Rubin, 107 Nev. 610, 612, 810 P.2d 389, 390 (1991).

[3]Sprague v. Lucky Stores, Inc., 109 Nev. 247, 250, 849 P.2d 320, 322 (1993).

interpretation of a contract is a question of law.[4] Furthermore, we review the interpretation of a contract de novo.[5]

Here, Oura argues that there is ambiguity in the policy, which must be construed broadly to give coverage to both Mangiapani and Murphy. Specifically, Oura argues that because Murphy was "an insured" under the policy, using a non-owned vehicle, his coverage constituted liability in excess of other collectible insurance, which in this case would be Mangiapani's coverage, and that the contract provides separate liability protection for both ownership and use of the covered vehicle.

Initially, we note that ambiguous policy provisions are resolved in favor of the insured; however, this court will not rewrite provisions to obtain this result.[6] In interpreting a policy we consider not merely the language of the agreement, but also the intent of the parties, the subject matter of the policy, and the surrounding circumstances of the agreement.[7] We attempt to construe the policy to effectuate the reasonable expectations of the insured.[8] Further, this court has stated,

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[4]See Washoe County v. Transcontinental Ins., 110 Nev. 798, 787 P.2d 306 (1994).

[5]Farmers Ins. Exch. v. Neal, 119 Nev. 62, 65, 64 P.3d 472, 473 (2003).

[6]Id.; Neumann v. Standard Fire Ins., 101 Nev. 206, 209, 699 P.2d 101, 104 (1985); Farmers Insurance Group v. Stonik, 110 Nev. 64, 867 P.2d 389 (1994).

[7]National Union Fire Ins. v. Caesars Palace, 106 Nev. 330, 332-33, 792 P.2d 1129, 1131 (1990).

[8]Id.

"we will not increase an obligation to the insured where such was intentionally and unambiguously limited by the parties."[9]

In the instant case, we have determined that the policy contains an unambiguous and clear statement limiting liability. The policy clearly provides that the liability limits apply to each insured auto on the policy and that the insuring of more than one person or auto will not increase liability beyond the amount available on that auto. The policy statement clearly reflects that the amount of coverage provided for bodily injury on the Camaro is $100,000 for each person. Therefore, we conclude that Oura's argument that she is entitled to $200,000 is meritless.

We also reject Oura's argument that she is entitled to coverage for Murphy because he was an insured using a non-owned vehicle and thus, his liability is in excess of other collectible insurance. We reject this contention because to construe the contract in such a manner would lead to the illogical result whereby a person involved in an accident with an insured owner would be entitled to less coverage than a person injured in an accident with an insured non-owner.[10]

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[9]Stonik, 110 Nev. at 67, 867 P.2d at 391.

[10]Oura also contends that the question of whether Murphy had regular access to the vehicle is a question of fact in dispute, which makes summary judgment inappropriate. Unfortunately, Oura failed to present any evidence that Murphy did not have access to the Camaro. Therefore, because evidence is lacking on this issue, even viewing the facts in the light most favorable to the non-moving party, Allstate is still entitled to summary judgment. See Rando v. Calif. St. Auto. Ass'n, 100 Nev. 310, 684 P.2d 501 (1984).

Oura further argues that the language of the contract "under these coverages, your policy protects an insured person from liability for damages arising out of the ownership, maintenance or use, or loading or unloading of an insured auto" provides for separate liability limits for both Mangiapani and Murphy. Oura argues that Mangiapani is covered under ownership and Murphy is covered under use. We conclude that this argument is without merit. First, it would be impossible to construe this clause of the contract against Allstate because this type of coverage is required by statute.[11] Second, the clause clearly uses the term "or" which connotes that coverage is provided disjunctively not conjunctively. As a result, we conclude that this provision does not create ambiguity in the contract leading to coverage for both Mangiapani and Murphy.

On appeal, Oura argues, unpersuasively, that she is not attempting to "stack" various separate vehicle liability coverage, but is merely attempting to seek insurance proceeds from separate insurance indemnity provisions in the policy as they relate to the Camaro. In Rando v. California State Automobile Ass'n, this court considered a similar factual situation.[12] In that case, a minor was involved in an accident while driving a non-owned vehicle. Because her parent owned three cars

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[11]NRS 485.3091. Oura also argues that because NRS 485.185 requires Mangiapani to insure the Camaro as an owner, with minimum coverage, and Mangiapani then added Murphy as a driver, coverage was purchased for both. This assertion is not consistent with a plain reading of the statute, which merely addresses the fact that an owner must carry minimum coverage on a vehicle. The statute does not state that an owner must purchase separate coverage on a vehicle for both an owner and an operator.

[12]100 Nev. 310, 684 P.2d 501 (1984).

insured under one policy, the insured sought to "stack" the coverage and recover three times the bodily injury liability benefits.[13]

In Rando, we recognized our previous decisions permitting stacking in the areas of uninsured motorist coverage and basic reparation benefits under the repealed no-fault insurance statutes, but distinguished those cases as involving first party protection for the insured and designated household members.[14] We noted that since separate premiums were paid for this type of first party protection in connection with each insured vehicle, the insured had a reasonable expectancy of an increase in personal coverage akin to that occurring when multiple life or medical policies are acquired.[15]

In contrast, we noted in Rando that no additional premium is paid for third-party bodily injury liability insurance, which is written to protect an insured's assets from third-party claims resulting from the insured's operation or maintenance of an owned or non-owned vehicle.[16] The insured pays an agreed premium, which entitles the insured to the specified amount of protection only with respect to the specific vehicle(s) identified in the policy.[17] The specified coverage typically extends, without payment of any additional premium, to the insured's use of a non-owned vehicle, thereby assuring the insured the constant liability coverage while

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[13]Id. at 311-12, 684 P.2d at 502.

[14]Id. at 312-15, 684 P.2d at 502-505.

[15]Id. at 315, 684 P.2d at 504.

[16]Id.

[17]Id. at 316, 684 P.2d at 505.

operating any vehicle (excluding an owned vehicle which is uninsured or a non-owned vehicle used without the owner's permission).[18] We recognized that in transferring liability protection to a non-owned vehicle, the insurer is without advance knowledge of the type or condition of such vehicle and may be exposed to an increased risk.[19] It made no sense to us to permit an insured driving a non-owned vehicle to stack coverages and expand liability protection beyond that enjoyed while using an owned vehicle. We also refused to force insurers by judicial fiat to increase premium costs commensurate with stacked coverages on multiple vehicles. [20] Therefore, we refused in Rando to permit the stacking of coverages for motor vehicle bodily injury liability insurance for owned or non-owned vehicles.

In the present case, appellant argues that she is entitled to stack the third-party bodily injury liability coverages for Mangiapani as an insured owner and Murphy as a non-owner. Having already rejected the distinction between owned and non-owned vehicles and the stacking of third party bodily injury liability insurance coverages in Rando, we reject Oura's arguments as meritless.

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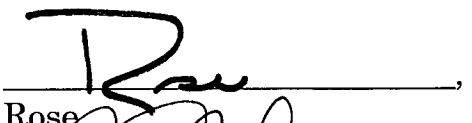
[18]Id.

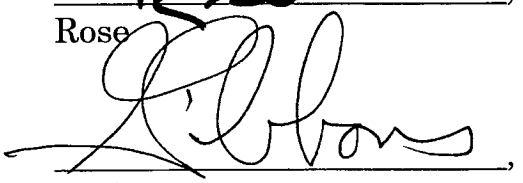
[19]Id. at 317, 684 P.2d at 505.

[20]Id. at 316, 684 P.2d at 505.

Accordingly, we ORDER the decision of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Gibbons

_____, J.
Hardesty

cc: Hon. Michelle Leavitt, District Judge
Albert D. Massi, Ltd.
Pyatt Silvestri & Hanlon
Clark County Clerk