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SUMMARY
October 5, 2023

2023COA94

No. 22CA1804, *Farmers Ins. Exch. v. Kretzer* — Insurance — Motor Vehicles — Automobile Insurance Policies — Uninsured/Underinsured — Exclusion of Named Driver

In this insurance coverage dispute, an insurance company sought a declaration that it wasn't required to provide uninsured and underinsured (UM/UIM) and Medpay benefits to a member of the insured's household who was subject to a "Named Driver Exclusion Endorsement" and was identified as "Excluded" on the declaration page of the insured's policy when that household member was injured while using a vehicle not listed on the policy. A division of the court of appeals holds that the insurance policy at issue unambiguously excludes the injured household member from coverage under these circumstances.

The division also rejects the defendants' statutory argument that interpreting an exclusion to apply when a purportedly excluded household member is using a vehicle *not* listed on a policy violates section 10-4-630(2), C.R.S. 2023. In reaching this conclusion, the division relies on and extends the rationale of *Massingill v. State Farm Mutual Automobile Insurance Co.*, 176 P.3d 816 (Colo. App. 2007).

Court of Appeals No. 22CA1804
Larimer County District Court No. 22CV30268
Honorable Gregory M. Lammons, Judge

Farmers Insurance Exchange,

Plaintiff-Appellee,

v.

Alicia Royce Kretzer and Nathan Kretzer,

Defendants-Appellants.

JUDGMENT AFFIRMED

Division VI
Opinion by JUDGE WELLING
Lipinsky and Gomez, JJ., concur

Announced October 5, 2023

Lambdin & Chaney LLP, Elaine Stafford, John Jennings, Denver, Colorado, for
Plaintiff-Appellee

Ramos Law, Brian Hugen, Northglenn, Colorado, for Defendants-Appellants

¶ 1 In this insurance coverage dispute, defendants, Alicia Royce Kretzer and Nathan Kretzer, appeal the district court’s entry of summary judgment in favor of plaintiff, Farmers Insurance Exchange (Farmers). Because we agree with the district court that the insurance policy at issue unambiguously excludes one of the defendants from coverage and that the exclusion isn’t prohibited by statute, we affirm.

I. Relevant Facts and Procedural History

¶ 2 Farmers issued an auto insurance policy for Alicia and Nathan Kretzer, a married couple. After underwriting issues arose, Nathan opted to modify the policy.¹ He maintained coverage for himself but signed a “Named Driver Exclusion Endorsement” that excluded Alicia from all coverage. (We will refer to this as the “exclusion endorsement.”) The exclusion endorsement by its terms was made “a part of the [modified] policy.” Nathan renewed the policy about four months later. (We will refer to this as the “renewed policy.”) The “Declaration Page” of the renewed policy expressly identifies

¹ For the sake of ease and clarity, when we refer to Alicia and Nathan Kretzer individually, we only use their first names. We intend no disrespect by doing so. We refer to them jointly as “the Kretzers.”

Alicia as an “excluded” driver. The parties agree that the exclusion endorsement is part of the renewed policy.

¶ 3 The renewed policy lists two insured vehicles: a 2012 Jeep Wrangler and a 2015 Subaru Forester. In pertinent part, the renewed policy provides Nathan with liability coverage, uninsured and underinsured (UM/UIM) coverage, and Medpay coverage.

¶ 4 After Nathan signed the exclusion endorsement and purchased the renewed policy, Alicia was involved in a car crash. Alicia was driving her separately insured 2016 Jeep Patriot when it collided with a vehicle driven by a tortfeasor on the wrong side of the highway. Alicia sustained serious injuries and substantial medical bills. She received the policy limit from the tortfeasor’s liability insurer. The tortfeasor, however, was underinsured; his policy covered only a small portion of Alicia’s total damages.

¶ 5 The Kretzers made a claim against Farmers under Nathan’s policy for UM/UIM and Medpay benefits for Alicia. Farmers denied the request. It maintained that the exclusion endorsement precluded Alicia from all coverage.

¶ 6 Farmers filed a complaint for a declaratory judgment to this effect. The Kretzers filed counterclaims, including one seeking a

declaratory judgment that Farmers owed Alicia UM/UIM and Medpay benefits. Farmers moved, and the Kretzers cross-moved, for summary judgment.

¶ 7 In a written order, the district court concluded that no facts were in dispute; it granted summary judgment in favor of Farmers and denied the Kretzers' cross-motion. As relevant here, the district court said that "without running afoul of public policy and consistent with the bargained-for exchange entered into by the Parties, [Farmers] does not need to provide UIM and Medpay coverage to [Alicia], a person expressly excluded from coverage under [Nathan's] policy." Further, the district court rejected the Kretzers' assertion that, pursuant to section 10-4-630(2), C.R.S. 2023, the General Assembly intended named driver exclusions to apply only "to claims arising out of the operation or use of an insured motor vehicle listed on the policy."

II. Analysis

¶ 8 We review a district court's decision to grant a motion for summary judgment de novo. *Poudre Sch. Dist. R-1 v. Stanczyk*, 2021 CO 57, ¶ 12. A court may grant a motion for summary

judgment when the pleadings and supporting documents establish that there's no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See C.R.C.P. 56(c); *Gibbons v. Ludlow*, 2013 CO 49, ¶ 11.

¶ 9 The Kretzers contend that the district court erred by granting summary judgment in favor of Farmers for two reasons. First, they argue that the insurance policy, when taken as a whole, is ambiguous as to the scope of the exclusion endorsement. Second, they assert that section 10-4-630(2) limits insurers by permitting them to deny UM/UIM and Medpay benefits only when a named excluded driver operates a vehicle listed in the insurance policy. We disagree with both contentions.

A. Scope of Exclusion Endorsement

¶ 10 The Kretzers maintain that the renewed policy is ambiguous because it's susceptible to more than one reasonable interpretation: (1) the exclusion endorsement barred Alicia from just liability coverage; or (2) it barred her from all coverage, including liability, UM/UIM, and Medpay. We aren't persuaded that the policy is ambiguous.

1. Standard of Review and Legal Principles

¶ 11 An insurance policy is a contract, the interpretation of which is a matter of law that we review de novo. *Cary v. United of Omaha Life Ins. Co.*, 108 P.3d 288, 290 (Colo. 2005). The goal of contract interpretation is “to determine and give effect to the intent of the parties.” *Ad Two, Inc. v. City & Cnty. of Denver*, 9 P.3d 373, 376 (Colo. 2000). The language of an insurance contract is determinative of the parties’ intent. *Lopez v. Dairyland Ins. Co.*, 890 P.2d 192, 194 (Colo. App. 1994). In construing this language, we evaluate the policy as a whole. *Id.* at 195. Further, we “accord contract terms their plain and ordinary meanings.” *Bohrer v. Church Mut. Ins. Co.*, 965 P.2d 1258, 1261 (Colo. 1998).

¶ 12 When “the language of an insurance contract is clear and unambiguous on its face, it must be upheld as written.” *Spaur v. Allstate Ins. Co.*, 942 P.2d 1261, 1263 (Colo. App. 1996). We “may neither rewrite an unambiguous policy nor force a strained construction in order to resolve it against the insurer.” *Id.* “A contractual term is ambiguous ‘if it is susceptible on its face to more than one reasonable interpretation.’” *Am. Fam. Mut. Ins. Co. v. Hansen*, 2016 CO 46, ¶ 24 (quoting *USAA Cas. Ins. Co. v.*

Anglum, 119 P.3d 1058, 1059-60 (Colo. 2005)). Whether an insurance policy is ambiguous is a question of law. *Tynan's Nissan, Inc. v. Am. Hardware Mut. Ins. Co.*, 917 P.2d 321, 322 (Colo. App. 1995).

¶ 13 When “an insurer seeks to restrict coverage, the limitation must be clearly expressed.” *Ryder Truck Rental, Inc. v. Guar. Nat’l Ins. Co.*, 770 P.2d 1380, 1382 (Colo. App. 1989). If the limitation is “ambiguous, then the contract must be construed in favor of coverage and against” the limitation. *Id.*

2. Relevant Policy Provisions

¶ 14 The policy’s “Declaration Page” contains a “Household Drivers” section, which provides that Nathan is “Covered” and Alicia is “Excluded.” The Declaration Page then defines the limits of liability coverage, UM/UIM coverage, and medical coverage available under the policy.

¶ 15 Parts I, II, and III of the insurance policy address liability, UM/UIM, and Medpay coverage, respectively. Each of these parts contains a section titled “Additional Definitions Used in This Part Only.” In all three parts, the “Additional Definitions” section specifies that an “[i]nsured person . . . means . . . any family

member” of the named insured — Nathan. The policy’s definition of “family member” — “Family member means a person who resides with [Nathan] and who is related to [him] by blood, marriage or adoption” — applies to all its parts.

¶ 16 In “Part I – Liability Coverage,” the policy provides: “We will pay damages for bodily injury or property damage that any insured person is legally liable to pay as a result of an accident to which this coverage applies.” The policy then defines who is and isn’t an “insured person” for purposes of Part I. As relevant here, Part I expressly states that an “[i]nsured person does *not* mean . . . [a]ny named excluded driver.” (Emphasis added.)

¶ 17 In “Part II – Uninsured Motorist Coverage (including underinsured motorist coverage),” the policy provides, in pertinent part, as follows:

If a limit for this coverage is shown on your Declaration[] Page, we will pay damages an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured person, caused by an accident, and arising out of the ownership, maintenance or use of an uninsured motor vehicle.

Unlike Part I, Part II doesn't have a section stating what "[i]nsured person does not mean." Thus, Part II, read in isolation, contains no express restriction of coverage for named excluded drivers.

¶ 18 In "Part III – Medical Expense Coverage," the policy provides:

"Subject to the limits of liability shown on your Declaration[] Page, . . . we will pay the reasonable expenses incurred for necessary medical services . . . [b]ecause of bodily injury; . . . [c]aused by an accident; . . . [s]ustained by an insured person."

Like Part II, Part III has no section specifying what an "[i]nsured person does not mean."

¶ 19 In sum, while all three parts specify that Nathan's family members are insured, only Part I expressly states that any named excluded driver isn't covered by the policy.

¶ 20 Nathan signed the exclusion endorsement, and it became effective, before Alicia's crash. The document includes the following statement: "This endorsement is a part of the policy. It *changes* the policy so please read it carefully. All other terms and conditions of the policy continue to apply." (Emphasis added.) Under "Person(s) Restricted," the endorsement names "Alicia Kretzer." The endorsement then states, as follows:

In consideration of the premium, it is agreed that *all coverage* for bodily injury, loss or damages afforded by this policy and *all liability or obligation of any kind* shall not, at any time on or after the effective date shown, apply to the operation or use of *any vehicle* by the person(s) named above

(Emphases added.)

3. Analysis

¶ 21 In the Kretzers’ view, the broad language of the exclusion endorsement conflicts with the specific definitions of an “insured person” under Parts I through III. They acknowledge that the exclusion endorsement purports to exclude Alicia from “all coverage” — including liability, UM/UIM, and Medpay. They emphasize, however, that only Part I, dealing with liability coverage, specifies that named excluded drivers aren’t insured. In light of that express reference to the exclusion endorsement, the Kretzers maintain that the policy can be reasonably interpreted as excluding Alicia from only liability coverage (and not from UM/UIM or Medpay coverage). Thus, they assert, the policy is ambiguous as to the scope of the exclusion endorsement. We aren’t persuaded.

¶ 22 As a threshold matter, we conclude that the exclusion endorsement, which unambiguously excludes Alicia from all

coverage, modifies the entire policy. Then, viewing the modified policy as a whole (including the Declaration Page), we conclude that nothing in the instrument can be interpreted as limiting this exclusion.

¶ 23 Colorado law permits an insurer “to exclude from coverage, by name, [any] person whose claim experience or driving record would have justified the cancellation or nonrenewal” of an automobile liability insurance policy under which more than one person is insured. § 10-4-630(1). Under this statute, insurance providers are authorized to exclude *all* coverage, including UM/UIM and Medpay coverage, when a vehicle is operated by an excluded driver. *See Lopez*, 890 P.2d at 195.

¶ 24 Farmers did precisely that here. Colorado case law addressing similar facts buttresses our determination that the exclusion endorsement, along with the Declaration Page, unambiguously restricted Alicia from all coverage.

¶ 25 In *Massingill v. State Farm Mutual Automobile Insurance Co.*, 176 P.3d 816, 819 (Colo. App. 2007), the insurance policy at issue contained a “driver exclusion endorsement” stating as follows:

In consideration of the premium charged for . . . your . . . policy it is agreed we [insurance provider] shall not be liable and *no liability or obligation of any kind* shall attach to [us] *for . . . bodily injury, loss . . . or damage under any of the coverages of the policy while any motor vehicle is operated* by [the policyholder's son].

(Emphases added.) The division in *Massingill* held that this language “operates to exclude” the policyholder’s son and his passenger “as ‘insureds’ from all coverage under the policy” because the policyholder’s son, as the named excluded driver, was operating the vehicle at the time of the collision. *Id.* at 820. Specifically, the division pointed to the above italicized passages — emphasizing the repeated use of the word “any” — in concluding that the exclusion endorsement “operates broadly” to preclude all coverage for the named excluded driver. *Id.* at 821.

¶ 26 Similarly, in *Lopez*, the policyholder signed an excluded driver endorsement that stated, “This policy won’t provide *any* insurance when the motor vehicle is being driven by [the policyholder’s husband].” 890 P.2d at 194-95 (emphasis added). The *Lopez* division first noted that “[i]nsurance contract terms are to be construed as they would be understood by a person of ordinary

intelligence.” *Id.* at 195. It then concluded that “[t]he plain meaning of the [excluded driver endorsement] is that no insurance of any kind will be available if [the husband] is the operator,” and thus the exclusion encompassed UM/UIM coverage for incidents that occurred when the husband was driving. *Id.*

¶ 27 Here, just like the exclusionary clauses in *Massingill* and *Lopez*, the exclusion endorsement, along with the Declaration Page, is sufficiently clear that a person of ordinary intelligence would understand that Alicia is broadly excluded from *all* coverage, including UM/UIM and Medpay coverage. Indeed, the endorsement’s language to this effect is unequivocal: “[A]ll coverage for bodily injury, loss or damages afforded by this policy and *all liability or obligation of any kind* shall not . . . apply to the operation or use of *any vehicle* by [Alicia].” (Emphasis added.) Thus, plenary exclusion from all coverage is the only reasonable interpretation of the endorsement.

¶ 28 The crucial issue remains whether other portions of the policy introduce any ambiguity. In essence, the Kretzers argue that, by affirmatively providing that a named excluded driver isn’t an insured person in Part I, and not doing so elsewhere, the policy

could be interpreted as funneling the exclusionary effect of the exclusion endorsement and the Declaration Page to Part I alone. That strained construction, however, would force us to ignore the clear mandate of the exclusion endorsement, which, as we've already determined, precludes Alicia from *all coverage* in absolute terms, as well as the exclusion of Alicia in the "Household Drivers" section of the Declaration Page, *see Hansen*, ¶ 23 (the declaration page is part of the insurance contract); *Finch v. Farmers Ins. Exch.*, 656 N.W.2d 262, 267 (Neb. 2003) (relying on a declaration page exclusion, which "is part of the insurance policy and is incorporated by reference into the policy," to conclude that excluded driver on that page is "unambiguously" excluded from coverage).

¶ 29 In our view, the breadth of the exclusion endorsement — including its proviso that it "changes the policy" — and the "Household Drivers" language of the Declaration Page definitively dispel any ambiguity. Put differently, the absolute nature of the endorsement's and the Declaration Page's exclusionary language defies the implied limitation the Kretzers urge us to find.

¶ 30 Therefore, we conclude that the policy unambiguously excludes Alicia from all coverage; indeed, this was part of the

bargained-for exchange between Nathan and Farmers pursuant to section 10-4-630(1).

B. Applicability of Section 10-4-630(2)

¶ 31 Next, the Kretzers contend that, pursuant to section 10-4-630(2), named driver exclusions apply only when a claim arises out of the operation or use of an insured motor vehicle listed on the policy. Because Alicia wasn't driving one of the two vehicles listed on the Declaration Page at the time of the collision, the Kretzers maintain that Farmers wasn't permitted to exclude her from the policy's UM/UIM and Medpay coverage. Accordingly, they assert that the exclusion endorsement — restricting Alicia from coverage when she uses or operates “any vehicle” — violates the statute.

¶ 32 In *Massingill*, the division rejected a contention almost identical to the one that the Kretzers now advance. See 176 P.3d at 824-25. True enough, in that case, the plaintiffs didn't expressly rely on section 10-4-630(2); their arguments were based on the language of the insurance policy. True as well, the division didn't directly address the statute in disposing of those arguments. But, for our purposes, these distinctions are of no moment.

¶ 33 The contractual interpretation squarely rejected by the *Massingill* division is inextricably linked to the statutory interpretation the Kretzers urge us to adopt. The exclusionary language of the policy at issue in *Massingill* mirrors the operative language of section 10-4-630(2) at issue. Indeed, the policy simply effectuated the statutory mandate. *Compare Massingill*, 176 P.3d at 825 (“If a driver exclusion is added, we would not be liable for damages, losses, or claims arising out of the operation or use of an insured motor vehicle by the excluded person(s)”), *with* § 10-4-630(2) (“With respect to any person excluded from coverage under this section, the policy may provide that the insurer shall not be liable for damages, losses, or claims arising out of this operation or use of the insured motor vehicle”).

¶ 34 In *Massingill*, as here, the policy listed two vehicles. 176 P.3d at 819. And, like the Kretzers, the plaintiffs there urged the division to read the exclusionary language of the policy “only to preclude coverage while the driver was operating an ‘insured motor vehicle’” — that is, one of the two vehicles listed on the policy. *Id.* at 825.

¶ 35 Rejecting this argument, the division in *Massingill* held that “[i]t would be illogical to allow [the insurer] to exclude a certain

driver from uninsured motorist coverage when he is operating an *insured* vehicle, and at the same time require it to cover that person while operating an *uninsured* vehicle.” *Id.* (quoting *Moore v. State Farm Mut. Auto. Ins. Co.*, 888 P.2d 1004, 1007 (N.M. Ct. App. 1994)).

¶ 36 The *Massingill* division continued,

We agree with the New Mexico court that it is unreasonable for an insured to expect UM/UIM coverage for an excluded driver . . . while he is driving another vehicle, even though the insured concedes the excluded driver would not have such coverage while driving a vehicle that is expressly insured under the terms of the policy.

Id.

¶ 37 Then, in disposing of the plaintiffs’ related assertion — and citing to a previous version of section 10-4-630(2), which is identical in all relevant respects to the current version — the division stated,

For the same reasons, we reject plaintiffs’ similar contention that former § 10-4-721(2)[, C.R.S. 2002,] does not permit an insurer to exclude UM/UIM coverage because the language only refers to claims arising out of the “operation or use of the insured motor vehicle.” *Plaintiffs’ interpretation would lead to an absurd result because it would allow an insurer to deny coverage if the driver were operating an insured vehicle, but would require*

coverage if he or she were operating any other vehicle.

Id. (emphasis added).

¶ 38 The rationale underpinning *Massingill* applies with equal force here. Indeed, we read that opinion to include a tacit rejection of the statutory argument that the Kretzers now advance. And because we agree with the *Massingill* division’s reasoning, we make that tacit rejection explicit. Accordingly, because the Kretzers’ construction of section 10-4-630(2) produces the same “illogical,” “unreasonable,” and “absurd” results as the *Massingill* plaintiffs’ contractual construction, we decline to adopt it. *See Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962, 964 (Colo. App. 2006) (“Any interpretation that creates an unreasonable or absurd result should be avoided.”).

¶ 39 Finally, the Kretzers argue that the driver exclusion is void because it impermissibly avoids statutorily mandated UM/UIM and Medpay coverage. *See* § 10-4-609(1)(a)(I), C.R.S. 2023; *see also* § 10-4-635(1)(a), C.R.S. 2023. This contention also fails.

¶ 40 “[I]t is well settled that the driver exclusion can only be voided if it dilutes, conditions, or limits statutorily mandated coverage, and

this occurs only when a policy ‘limits UM/UIM benefits under circumstances where the General Assembly intended for UM/UIM benefits to be recovered.’” *Massingill*, 176 P.3d at 824 (quoting *DeHerrera v. Sentry Ins. Co.*, 30 P.3d 167, 173 (Colo. 2001)). “The driver exclusion statute demonstrates the General Assembly’s intent that UM/UIM benefits,” and, by extension, Medpay benefits, “are not recoverable when an excluded driver is operating the vehicle.” *Id.*

¶ 41 As previously established, Alicia was intentionally excluded from all coverage under the policy; section 10-4-630(1) permits this. And we’ve already held, in line with *Massingill*, that it was permissible for this exclusion to apply to her operation of *any* vehicle — even one that wasn’t listed as insured under the policy. Therefore, the policy didn’t violate any statutory mandate or public policy.

III. Disposition

¶ 42 The judgment is affirmed.

JUDGE LIPINSKY and JUDGE GOMEZ concur.