United States Court of Appeals
For the Eighth Circuit

No. 23-1497

Heather Bratcher

Plaintiff - Appellant

v.

Farmers Insurance Company, Inc.

Defendant - Appellee

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: January 9, 2024
Filed: February 29, 2024

Before BENTON, ERICKSON, and KOBES, Circuit Judges.

BENTON, Circuit Judge.

After an accident, Heather J. Bratcher tried to collect $500,000 on her parents' policy with Farmers Insurance Company. Farmers said the policy limited coverage to $25,000—the limits in the Motor Vehicle Financial Responsibility Law. *See* **§ 303.190.2(2), RSMo 2016**. After the case was removed from state court, the district

court[1] granted summary judgment to Farmers on Bratcher's claims for breach of contract and vexatious refusal. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

I.

In November 2014, Bratcher, driving her parents' vehicle, was injured in an accident. The other driver was insured subject to limits of $100,000 for personal injury liability. That driver settled with Bratcher for $100,000 (with Farmers' permission). Because she claimed personal injury damages in excess of $100,000, that driver's vehicle was an "underinsured motor vehicle" under the parents' policy. The declarations page of the parents' policy listed the underinsured motorist ("UIM") limits at "$500,000 Each Person/$500,000 Each Occurrence."

Bratcher was not a "named insured" on the policy—only her parents were. She was an "insured person." The policy's UIM provision says:

> We will provide insurance for an insured person, other than you or a family member, up to the limits of the Financial Responsibility Law only.

Under the policy, Bratcher—who was not living with her parents—did not qualify as a "family member."

After the accident, Farmers' claims representative initially told Bratcher's counsel that "the policy . . . provides Underinsured Motorist Coverage with limits of $500,000 per person." Almost two years later, the representative said that the UIM limits were $25,000—the limit in the Financial Responsibility law for bodily injury

[1]The Honorable David Gregory Kays, United States District Judge for the Western District of Missouri.

to one person—because she was an "insured person," not a "named insured" or a "family member."

Bratcher sued for breach of contract and vexatious refusal. The district court granted summary judgment to Farmers. Bratcher appeals.

This court "review[s] both the district court's grant of summary judgment and its interpretation of the insurance policies de novo." ***Johnson v. Safeco Ins. Co.***, 983 F.3d 323, 329 (8th Cir. 2020) (internal citations and quotations omitted). "Interpretation of an insurance policy is a matter of state law" that is also reviewed de novo. ***Id.***

II.

Bratcher argues that the district court erred in ruling she is limited to the $25,000 limit in Missouri's Motor Vehicle Financial Responsibility Law ("MVFRL").

Missouri courts approve "step-down" provisions that reference the MVFRL. "Missouri public policy does not preclude 'step down' provisions in insurance policies which contain lesser liability limits for permissive drivers so long as the lesser limits comply with the minimum limits provided in the Missouri Financial Responsibility Law." ***Windsor Ins. Co. v. Lucas***, 24 S.W.3d 151,154 (Mo. App. 2000). *See* ***Farmers Ins. Co. v. Pierrousakos***, 255 F.3d 639, 643 (8th Cir. 2001) (applying Missouri law and following *Windsor*). A "step-down clause does not violate the MVFRL" even when a "policy define[s] the lower limit only by the financial responsibility law." ***Shelter Mut. Ins. Co. v. Am. Fam. Mut. Ins. Co.***, 210 S.W.3d 338, 344 (Mo. App. 2007) (holding limits set forth in the step-down provision applied to the permissive driver of an insured vehicle).

Bratcher emphasizes the truism that the MVFRL "contains no limits or requirements for underinsured motorist coverage." ***Shields v. Farmers Ins. Co.***, 948 S.W.2d 247, 245 n.1 (Mo. App. 1997). Because the "existence of underinsured motorist coverage" is "ordinarily determined by the contract," the issue is what the policy says. ***Krombach v. Mayflower Ins. Co., Ltd.***, 827 S.W.2d 208, 212 (Mo. banc 1992), *following* ***Rodriguez v. Gen. Acc. Ins. Co. of Am.***, 808 S.W.2d 379, 383 (Mo. banc 1991).

Bratcher also emphasizes *Maxam v. American Family Mutual Insurance Co.*, 504 S.W.3d 124, 130 (Mo. App. 2016), quoting its statement that "the minimum limits stated in the MVFRL are not for UIM coverage but for bodily injury *liability* and *uninsured* coverage, thus no amount must be paid." ***Id.*** (emphasis in original). Bratcher takes this sentence out of context. The policy there excluded UIM coverage for a bodily injury sustained in a vehicle owned by the insured but not covered by the policy. *Maxam* does not address incorporating the MVFRL limits where there is UIM coverage.

On point is *Mendelson v. McLaughlin*, 660 S.W.3d 386, 390 (Mo. App. 2022). The policy there said:

> We do not provide liability coverage for any person for bodily injury to you or any family member to the extent that the limits of liability for this coverage exceed the limits of liability required by the Missouri Financial Responsibility Law.

Id. Reducing the coverage from $500,000 to $25,000, the court held that "insurance policies that reduce coverage through a household exclusion to the minimum required by the MVFRL, which is what occurred here, are valid and consistent with public policy." ***Id.*** at 391, *citing* ***Floyd-Tunnell v. Shelter Mut. Ins. Co.***, 439 S.W.3d 215, 220 (Mo. banc 2014); ***Halpin v. Am. Family Mut. Ins. Co.***, 823 S.W.2d 479, 482 (Mo. banc 1992).

III.

Bratcher argues that the policy here is ambiguous. The policy's UIM provision says: "We will provide insurance for an insured person, other than you or a family member, up to the limits of the Financial Responsibility Law only." Missouri's MVFRL requires, as applicable here, coverage limits of $25,000 for one person sustaining bodily injury. This limit has not changed for decades in Missouri. *Compare* **1981 Mo. Laws 431**, *with* **§ 303.190.2(2), RSMo Supp. 2023.**

"An ambiguity exists when there is duplicity, indistinctness, or uncertainty in the meaning of the language in the policy." ***Seeck v. Geico Gen. Ins. Co.***, 212 S.W.3d 129, 132 (Mo. banc 2007). "Language is ambiguous if it is reasonably open to different constructions." ***Id.***, *quoting* ***Gulf Ins. Co. v. Noble Broadcast***, 936 S.W.2d 810, 814 (Mo. banc 1997). "Absent an ambiguity, an insurance policy must be enforced according to its terms." ***Id.***, *citing* ***Rodriguez***, 808 S.W.2d at 382.

"In construing the terms of an insurance policy, this court applies the meaning which would be attached by an ordinary person of average understanding if purchasing insurance, and resolves ambiguities in favor of the insured." ***Jones v. Mid-Century Ins. Co.***, 287 S.W.3d 687, 690 (Mo. banc 2009) (internal quotations omitted).

There is only one Financial Responsibility law in Missouri. *See* **§ 303.010, RSMo 2016** (naming the MVFRL). Ordinary persons would understand the reference to this "mandatory insurance" law because they must sign annually (or for some, biennially) an affidavit that the motorist will maintain "financial responsibility with respect to each motor vehicle" owned. *See* **§ 303.026.2, RSMo 2016**; **Dep't of Revenue**, **Form 184**, https://dor.mo.gov/forms/184.pdf (last visited Feb. 23, 2024). Failing to maintain financial responsibility is a misdemeanor, and authorizes administrative suspension of a driver's license. *See* **§§ 303.025.3, 303.026.8, RSMo 2016**.

Bratcher focuses her ambiguity argument on the first letter from Farmers' claim representative, which said the policy provided coverage of $500,000 per person for her bodily injury. She deduces that if the representative was confused, an ordinary person would be as well. Statements by a claims representative do not necessarily bind the insurance company—the policy controls. *See* ***Motley v. Metro. Life Ins. Co.***, 178 S.W.2d 791, 795 (Mo. App. 1944) ("She also contends that [the insurance company's representatives] . . . led her to believe that her claim would be recognized and paid. In the first place, such a statement or promise would not be binding on the company.") The representative's initial misstatement of the policy does not mean it was ambiguous.

Bratcher repeatedly quotes the $500,000 coverage limits on the declarations page. However, the "declarations 'do not grant any coverage.'" ***Owners Ins. Co. v. Craig***, 514 S.W.3d 614, 617 (Mo. banc 2017). "The declarations state the policy's essential terms in an abbreviated form, and when the policy is read as a whole, it is clear that a reader must look elsewhere to determine the scope of coverage." ***Id.*** *citing* ***Floyd-Tunnell***, 439 S.W.3d at 221.

According to Bratcher, the three "differing dollar amounts" in the MVFRL make the policy ambiguous.[2] She alleged bodily injury to one person—herself. For bodily injury to one person, the first MVFRL limit clearly applies—$25,000.

[2]Section 303.190.2(2), RSMo 2016 required coverage of "*twenty-five thousand dollars* because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, *fifty thousand dollars* because of bodily injury to or death of two or more persons in any one accident, and *ten thousand dollars* because of injury to or destruction of property of others in any one accident" (emphasis added).

The district court properly ruled that the policy limits Bracher to $25,000 in UIM coverage.[3] *See* ***Naeger v. Farmers Ins. Co., Inc.***, 436 S.W.3d 654, 662 (Mo. App. 2014) ("[T]he contract between the insured and the insurer defines and limits coverage.").

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The judgment is affirmed.

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[3]Because there was no breach of contract, Bratcher cannot "show that the insurance company's refusal to pay the loss was willful and without reasonable cause or excuse," and thus her vexatious refusal claim need not be addressed. *See* ***Watters v. Travel Guard Int'l***, 136 S.W.3d 100, 108 (Mo. App. 2004) (listing elements for vexatious refusal).