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May 7, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2012AP2615

Dominic H. Lenci v. State Farm Mutual Automobile Insurance Company, Jasmin A. Utterback and General Casualty Company of Wisconsin (L.C. #2011CV2501)

Before Fine, Kessler and Brennan, JJ.

Dominic H. Lenci appeals a summary judgment in favor of State Farm Mutual Automobile Insurance Company. The circuit court held that car insurance policies that State Farm issued to Lenci did not provide uninsured motorist coverage for an accident he had while driving his motorcycle. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We reverse.

Lenci was driving his motorcycle on September 13, 2011, when he was injured in an accident with an uninsured motorist. He received uninsured motorist benefits pursuant to his motorcycle insurance policies with Dairyland Insurance Company. He then filed suit seeking to recover uninsured motorist benefits under his car insurance policies with State Farm. State Farm moved for summary judgment, relying on an exclusion in each car insurance policy that barred coverage for an accident involving a vehicle that the insured owned, that was not newly acquired, and that was not listed on the policy. The circuit court agreed with State Farm, granted it summary judgment, and dismissed Lenci's complaint. He appeals.

While briefing was underway in this case, we released our decision in *Belding v. Demoulin*, 2013 WI App 26, 346 Wis. 2d 160, 828 N.W.2d 890 (*Belding I*), *aff'd*, 2014 WI 8, 352 Wis. 2d 359, 843 N.W.2d 373 (*Belding II*). In *Belding I*, we concluded that, under the law in place from November 1, 2009, until November 1, 2011, insurers could not prevent insureds from adding together their uninsured motorist coverage limits “for up to three vehicles owned and insured by the same insured.” *Id.*, 2013 WI App 26, ¶21, 346 Wis. 2d at 172, 828 N.W.2d at 896.

We held Lenci's appeal in abeyance when the supreme court accepted review of our decision in *Belding I*. The supreme court affirmed. *See Belding II*, 2014 WI 8, ¶5, 352 Wis. 2d at 363, 843 N.W.2d at 375. *Belding II* controls the outcome here.

Summary judgment is appropriate only when no genuine dispute exists as to any material fact, and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Whether the circuit court properly granted summary judgment is a question of law for our *de novo* review. *Belding II*, 2014 WI 8, ¶13, 352 Wis. 2d at 366, 843 N.W.2d at 376.

The parties agree that the material facts are undisputed. On September 13, 2011, Lenci had four car insurance policies in effect from State Farm. Language in each of those policies excludes coverage for an accident arising out Lenci's use of a vehicle that Lenci owned, that was not newly acquired, and that was not described on the declarations page of his policy. On September 13, 2011, Lenci was injured in an accident with an uninsured motorist while Lenci was driving a motorcycle that he owned, that he had not newly acquired, and that was not described on the declarations page of any of his car insurance policies. The only question is whether these facts entitle State Farm to summary judgment on the ground that its car insurance policies do not provide Lenci with uninsured motorist coverage for damages resulting from the accident.

The undisputed facts do not earn State Farm summary judgment because, at the time of the accident in this case, Wisconsin law provided:

[n]o policy may provide that, regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits for any uninsured motorist coverage or underinsured motorist coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine the limit of insurance coverage available for bodily injury or death suffered by a person in any one accident, except that a policy may limit the number of motor vehicles for which the limits for coverage may be added to 3 vehicles.

WIS. STAT. § 632.32(6)(d) (2009–10).¹

¹ The parties do not dispute that the State Farm car insurance policies at issue here are governed by WIS. STAT. § 632.32(6)(d) (2009–10). The statute went into effect on November 1, 2009. *See* 2009 Wis. Act 28, §§ 3168, 9426(2). Lenci had his accident on September 13, 2011, while the statute and his car insurance policies were all in effect. The legislature has amended and renumbered § 632.32(6)(d), but the changes did not take effect until November 1, 2011. *See* 2011 Wis. Act 14, §§ 23, 29.

In *Belding II*, the supreme court considered WIS. STAT. § 632.32(6)(d) (2009–10), in relation to facts markedly similar to those here. The insured parties in *Belding II* had two insurance policies, each providing coverage for one of the insureds' cars.² See *id.*, 2014 WI 8, ¶41, 352 Wis. 2d at 377, 843 N.W.2d at 381. After the insureds suffered damages arising out of a car accident with an uninsured motorist, the insurance company paid the insureds the maximum amount permitted under the policy covering the car used in the accident. *Id.*, 2014 WI 8, ¶¶6–7, 352 Wis. 2d at 363–364, 843 N.W.2d at 375. The insureds then sought to collect their excess damages through the uninsured motorist coverage provided in the policy covering the insureds' other car. *Id.*, 2014 WI 8, ¶7, 352 Wis. 2d at 364, 843 N.W.2d at 375. The insurance company denied coverage under the second policy, relying on an exclusion for an accident arising out of an insured's use of a vehicle that the insureds owned, that was not newly acquired, and that was not described on the declarations page of that policy. *Id.*, 2014 WI 8, ¶9, 352 Wis. 2d at 364–365, 843 N.W.2d at 375. The supreme court rejected the insurance company's position.

To determine whether the insurer could enforce the policy exclusion at issue in *Belding II*, the supreme court applied the long-standing two-part test for determining the validity of insurance policy exclusions, a test set forth in WIS. STAT. § 632.32(5)(e). See *Belding II*, 2014

² The supreme court noted that the insureds had a third car with a separate insurance policy that the parties agreed was inapplicable to the damages sought. See *Belding v. Demoulin*, 2014 WI 8, ¶7 n.4, 352 Wis. 2d 359, 364 n.4, 843 N.W.2d 373, 375 n.4 (*Belding II*).

WI 8, ¶¶29, 42–43, 352 Wis. 2d at 372, 377–378, 843 N.W.2d at 379, 381–382. The court explained:

[f]irst, we look to see if the exclusion is prohibited under [Wis. STAT. § 632.32] subsection (6). If a prohibition applies, the exclusion is barred. Second, if no prohibition in subsection (6) applies, then we look to see if any other law bars the exclusion. If neither prevents the exclusion, it is permissible.

Belding II, 2014 WI 8, ¶42, 352 Wis. 2d at 377, 843 N.W.2d at 381–382. In light of Wis. STAT. § 632.32(6)(d) (2009–10), the supreme court concluded that it need not proceed past the first step of the test. *Belding II*, 2014 WI 8, ¶43, 352 Wis. 2d at 377, 843 N.W.2d at 382. The court determined that § 632.32(6)(d) “expressly prohibits insurers from using policy exclusions that would limit an insured’s ability to add the uninsured or underinsured motorist coverage of up to three vehicles.” *Belding II*, 2014 WI 8, ¶26, 352 Wis. 2d at 371, 843 N.W.2d at 379. Therefore, the insurer could not rely on an exclusion in its policy to prevent an insured from adding the uninsured motorist coverage provided under one of the insured’s policies to the uninsured motorist coverage provided under another of the insured’s policies. *Id.*, 2014 WI 8, ¶43, 352 Wis. 2d at 377–378, 843 N.W.2d at 382. That analysis governs here.³

Because State Farm seeks to enforce an exclusion barred under governing Wisconsin law, we conclude that the circuit court improperly granted summary judgment to State Farm. Therefore,

³ The parties do not discuss, and we do not consider, whether the language in the four State Farm car insurance policies at issue is effective to “limit the number of motor vehicles for which the limits for coverage may be added to 3 vehicles.” *Cf.* Wis. STAT. § 632.32(6)(d) (2009–10).

IT IS ORDERED that the judgment of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21, and this matter is remanded for further proceedings consistent with this opinion and order.

Diane M. Fremgen
Clerk of Court of Appeals