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DISTRICT II

November 17, 2021

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

2020AP770

Michelle Held v. Auto Club Insurance Association
(L.C. #2018CV1627)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Michelle Held appeals from an order granting summary judgment to Auto Club Insurance Association. She contends that she is entitled to underinsured motorist coverage under her policy with it. 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 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version.

This case arises from an accident that occurred on October 10, 2015, when an automobile operated by Jared Schritz rear-ended a motorcycle operated by Joseph Held. Joseph's wife, Michelle Held (Held), was a passenger on the motorcycle.

At the time of the accident, the Helds maintained automobile insurance through Auto Club. Their policy covered three automobiles; however, it did not cover the motorcycle, which the Helds had owned and regularly used since December 2013.²

Held filed suit against Schritz and his insurer, State Farm Mutual Automobile Insurance Company, to recover for the injuries she sustained in the accident. After State Farm paid out its policy limit, Held made a claim against Auto Club for underinsured motorist coverage.

Auto Club subsequently moved for summary judgment, arguing that the "drive other car" exclusion of its policy precluded underinsured motorist coverage to Held. The circuit court agreed and granted the motion. This appeal follows.

We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Estate of Sheppard ex rel. McMorrow v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d 41, 782 N.W.2d 85. Summary judgment is proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *Id.*; WIS. STAT. § 802.08(2). Additionally, the interpretation of an insurance policy is a question of law that we review de novo. *Everson v. Lorenz*, 2005 WI 51, ¶10, 280 Wis. 2d 1, 695 N.W.2d 298.

² The Helds obtained motorcycle insurance through a different insurer. Through inadvertence, they allowed their motorcycle insurance to lapse as of the date of the accident.

In this case, there is no dispute that the Auto Club policy provides an initial grant of underinsured motorist coverage to Held. The question presented is whether that coverage is removed by the “drive other car” exclusion.

Traditionally, the “drive other car” exclusion was meant to address the “free rider” problem by excluding coverage of a vehicle that the insured owns or frequently uses but for which no premium has been paid. *Belding v. Demoulin*, 2014 WI 8, ¶36, 352 Wis. 2d 359, 843 N.W.2d 373 (citing *Westphal v. Farmers Ins. Exch.*, 2003 WI App 170, ¶11, 266 Wis. 2d 569, 669 N.W.2d 166).

The language of the “drive other car” exclusion at issue here provides:

2. Coverages under this Part shall not apply:

...

d. to **bodily injury** of an **insured person** while **occupying** a motor vehicle owned by or furnished or available for the regular use of **you** or a **resident relative** if that motor vehicle is not **your car**.

Reviewing this language in conjunction with definitions provided in the policy, the exclusion removes an initial grant of coverage if an insured is: (1) occupying a motor vehicle; (2) the motor vehicle is owned by or furnished or available for the regular use of the insured or a resident relative; and (3) the motor vehicle is not listed in the policy declarations.

We are satisfied that these elements are met. First, Held was occupying a motor vehicle, as she was a passenger on the motorcycle.³ Second, Held, along with her husband, owned and regularly used the motorcycle. Finally, the motorcycle is not listed in the policy declarations. Because we conclude that the elements of the “drive other car” exclusion are met, Held is not entitled to underinsured motorist coverage under her policy. Accordingly, the circuit court properly granted summary judgment to Auto Club.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

³ Held insists that one cannot “occupy” a motorcycle. Whatever minimal confusion may be caused by the application of the definition of “occupying” in the context of a motorcycle, we are not persuaded that it is enough to render the exclusion ambiguous. After all, a motorcycle is plainly a motor vehicle. Moreover, one can “occupy” the saddle of a motorcycle, which Held did in this case.

