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DISTRICT I/IV

April 5, 2013

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

2012AP1407

Kemper Independence Insurance Company v. Jamie L. Filtz
(L.C. # 2011CV13622)

Before Higginbotham, Blanchard and Kloppenburg, JJ.

Jamie Filtz and the Estate of Adam Filtz appeal a declaratory judgment that determined the Filtzes' automobile insurance policy with Kemper Independence Insurance Company did not provide them with uninsured motorist coverage for a fatal accident involving a moped that the Filtzes had insured under a separate policy. After reviewing the briefs and record, we conclude at conference that this case is controlled by the recent decision in *Belding v. Demoulin*, 2013 WI App 26, ___ Wis. 2d ___, ___ N.W.2d ___, Appeal No. 2012AP829 (Jan. 16, 2013). We therefore summarily reverse pursuant to WIS. STAT. RULE 809.21 (2011-12).¹

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

There is no dispute as to the relevant facts. Adam and Jamie Filtz owned two automobiles, which they insured with Kemper, and a moped, which they insured with another company. Both policies contained uninsured motorist provisions. After Adam was killed in an accident by an uninsured motorist while driving the moped, his widow and estate filed claims under both policies, seeking to stack their coverage.

In response, Kemper filed this lawsuit seeking a declaration that it was not obligated to provide any coverage for the accident due to an antistacking clause in the Filtzes' automobile policy commonly known as a "drive-other-car" exclusion. The drive-other-car exclusion provided that Kemper would not provide uninsured motorist coverage for any bodily injury sustained by an insured (in this case, Adam Filtz) while occupying any motor vehicle owned by that insured (i.e., the moped), if the vehicle (i.e., the moped) was not "insured for this coverage under this policy."

The sole issue on this appeal is the same issue presented in *Belding*: whether the prohibition on antistacking provisions contained in the version of WIS. STAT. § 632.32(6)(d) that was in effect when the policy was issued renders a "drive-other-cars" exclusion that would otherwise be permissible under WIS. STAT. § 632.32(5)(j) unenforceable. The answer provided by *Belding* is yes. Because the drive-other-cars exclusion was prohibited by law at the time the policy was issued, it cannot be used as a basis to deny the Filtzes coverage in this case. Accordingly, the circuit court's decision must be reversed.

IT IS ORDERED that the declaratory judgment order is summarily reversed under WIS. STAT. RULE 809.21(1), and the matter is remanded to the circuit court for entry of a new judgment consistent with this opinion and *Belding*.

Diane M. Fremgen
Clerk of Court of Appeals