



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

April 17, 2013

To:

Hon. Donald J. Hassin Jr.
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Jason Abraham
Hupy & Abraham, S.C.
111 E. Kilbourn Ave., Ste. 1100
Milwaukee, WI 53202-6675

Michael J. Cerjak
John M. Swietlik Jr.
Kasdorf, Lewis & Swietlik, S.C.
11270 W. Park Place #500
Milwaukee, WI 53224-3639

Amanda L. Wieckowicz
Wieckowicz Law Office LLC
P.O. Box 720
Chetek, WI 54728-0720

Jesse Blocher
Robert L. Jaskulski
Habush Habush & Rottier S.C.
777 E. Wisconsin Ave., Ste. 2300
Milwaukee, WI 53202-5318

Daniel D. Gerick
400 Main St.
Mukwonago, WI 53149

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

2012AP1913

Chad E. Coomer v. Allstate Property and Casualty Insurance
Company (L.C. # 2011CV3722)

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

Chad E. Coomer appeals from the circuit court's grant of summary judgment in favor of Allstate Property and Casualty Insurance Company (Allstate), wherein the circuit court determined that Coomer's insurance policy prevented him from stacking his uninsured motorist coverage from a second vehicle. 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

(2011-12). Pursuant to our decision in *Belding v. Demoulin*, 2013 WI App 26, ___ Wis. 2d ___, ___ N.W.2d ___, which was released after the briefing in this case, we conclude that the antistacking provision in Coomer’s policy was unenforceable due to the law in effect at the time of his accident. We reverse and remand.

In July of 2011, Coomer sustained injuries in a motorcycle accident involving an uninsured motorist. At the time, Coomer owned Allstate insurance policies on two separate vehicles. One policy covered the motorcycle he was riding at the time of the accident, and the other covered Coomer’s Chevrolet truck. Each policy provided uninsured motorist (UM) coverage with a \$100,000-per-person limit. Coomer’s motorcycle accident claim exceeded \$100,000 and he invoked the UM coverage on his truck, seeking to stack it with the motorcycle policy coverage. Allstate paid the \$100,000 limit under the motorcycle policy, but denied coverage under the truck policy, citing an exclusion within the insurance agreement for vehicles “cover[ed] under another policy,” also known as a “drive other car” exclusion.¹ The circuit court granted Allstate’s summary judgment motion based on the “drive other car” exclusion.

Coomer’s accident occurred during the two-year effective period for WIS. STAT. § 632.32(6)(d) (2009-10),² which stated in pertinent part that “[n]o policy may provide that ... the limits for any uninsured motorist coverage ... under the policy may not be added to the limits for similar coverage ... except that a policy may limit the number of motor vehicles for which

¹ The policy provided as follows: “EXCLUSIONS—What is not covered. We will not pay any damages an insured person is legally entitled to recover because of ... bodily injury to any person while in, on, getting into or out of, or when struck by a vehicle you own which is insured for this coverage under another policy.”

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the limits of coverage may be added to 3 vehicles.” Coomer contends that under this statute, the “drive other car” exclusion is unenforceable and cannot be invoked to prevent him from stacking the UM coverage in his two policies.

Also in effect during this period was WIS. STAT. § 632.32(5)(j), which provides in part that an insurance policy may exclude from coverage “a loss resulting from the use of a motor vehicle that ... [i]s owned by the named insured ... [and] [i]s not described in the policy under which the claim is made.” Allstate maintains that subsection (5)(j) permits antistacking provisions and renders enforceable the “drive other car” exclusion in Coomer’s policy.

The material facts in this case are undisputed and our review is de novo. *Estate of Genrich v. OHIC Ins. Co.*, 2009 WI 67, ¶10, 318 Wis. 2d 553, 769 N.W.2d 481 (the interpretation and application of a statute to a set of undisputed facts is a question of law). We determine that this case is controlled by *Belding*, and pursuant to its holding, we conclude that under the short-lived law in effect at the time of Coomer’s accident, the policy’s “drive other car” exclusions were unenforceable and Coomer was entitled to stack the UM coverage limits for his two insured vehicles. *Belding*, ___ Wis. 2d ___, ¶¶1, 21.

In *Belding*, we addressed the interplay of the statutes cited by the parties in this appeal. Our analysis pointed to the directive in WIS. STAT. § 632.32(5)(e) that “[a] policy may provide for exclusions not prohibited by sub. (6) or other applicable law.” Thus, under the plain language of § 632.32(5)(e), if a prohibition enumerated in § 632.32(6) applies, then the exclusion is barred. *Belding*, ___ Wis. 2d ___, ¶¶15, 18. During the period of 2009-11, § 632.32(6)(d) prohibited antistacking provisions applicable to multiple UM coverages. *Belding*, ___ Wis. 2d ___, ¶¶16, 21. Therefore, the “drive other car” exclusion under § 632.32(5)(j) is barred and

cannot operate to prevent Coomer from adding together the two separate UM coverages purchased for his two separate vehicles. *Belding*, ___ Wis. 2d ___, ¶¶19-21.

Allstate contends that when read in context, WIS. STAT. § 632.32(5)(j) is more specific than § 632.32(6)(d), and should therefore control. As stated in *Belding*:

[The] claim that the “drive other car” exclusion controls disregards the admonition in WIS. STAT. § 632.32(6)(d) that “[n]o policy may provide that ... the limits for any uninsured motorist coverage ... under the policy may not be added to the limits for similar coverage” regardless of the number of policies involved or vehicles shown on the policy. More fundamentally, [this] interpretation wholly ignores § 632.32(5)(e), which was enacted in 1975 and left in force by the 1995 amendments, and has continuously directed that *only exclusions not prohibited by subsection (6) or other applicable law are enforceable*.

Belding, ___ Wis. 2d ___, ¶17. Pursuant to § 632.32(6)(d), Coomer may add together the UM coverage limits on both of his insured vehicles to determine the amount of coverage available for his motorcycle accident claim.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21 (2011-12), and the cause remanded.

Diane M. Fremgen
Clerk of Court of Appeals