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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2249-23

SZYMON WOLYNIEC,

Plaintiff-Appellant,

v.

YAZMIN GIRALDO, ALLSTATE NEW JERSEY PROPERTY & CASUALTY INSURANCE COMPANY a corporation doing business in the STATE OF NEW JERSEY, individually and as subrogee of SZYMON WOLYNIEC,

Defendants-Respondents.

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Submitted December 17, 2024 – Decided January 2, 2025

Before Judges Susswein and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-4354-21.

Kris Nejat (Gropper & Nejat, PLLC), attorney for appellant (Kris Nejat and Paul DePetris, on the briefs).

Regenye Lipstein, LLC, attorneys for respondent (Frederic J. Regenye, of counsel and on the brief).

PER CURIAM

In this insurance coverage dispute, plaintiff Szymon Wolyniec appeals from the March 4, 2024 Law Division order denying reconsideration of a May 16, 2023 order, which granted defendant Allstate Corporation summary judgment and dismissed plaintiff's claim for underinsured motorist (UIM) coverage with prejudice. Following our review of the record, parties' arguments, and applicable legal principles, we affirm.

I.

On July 6, 2020, plaintiff was operating a motor vehicle in Brooklyn, New York, when codefendant Yazmin Giraldo struck his vehicle. Plaintiff allegedly sustained severe and permanent injuries from the accident. Lukasz Wolyniec, plaintiff's brother, owned the vehicle plaintiff was operating. Plaintiff's driver's license listed a Staten Island residential address.

At the time of the accident, plaintiff had separated from his wife and no longer resided at the Staten Island address. In January 2020, he began living with his brother in Linden, New Jersey, but he admitted to not "planning on living with [his] brother forever." In February, he rented an apartment in Brooklyn for several months, where he received mail. Thereafter, plaintiff filed his 2020 income tax returns and listed the Linden Street address as his residence.

Allstate had issued an automobile insurance policy to Lukasz and his wife, Karolina Wolyniec,[1] at their Linden address. The policy only listed Lukasz and Karolina as named insureds and drivers, and it identified their respective vehicles.

The policy provided UIM bodily injury coverage of $250,000 for each person and $500,000 for each accident. The declaration page delineated a separate UIM premium of $56.17 for the coverage of each driver. The policy's premium changes section provided that "[t]he premium for each auto is based on information [Allstate] ha[d] received from [the insureds]." It also listed specific changes in information that would "result in a premium adjustment," including the disclosure of "drivers residing in [the insureds'] household." Further, one of the policy's insuring agreement provisions stated that "[b]y acceptance of this policy [the insureds] agree: a. that the statements in the [p]olicy [d]eclarations are [the insureds'] representations; b. that this policy is issued in reliance upon the truth of those representations; and c. that this policy embodies all agreements existing between [the insureds] and [Allstate]."

[1] Because the insureds share the same surname, intending no disrespect, we use first names for clarity in this opinion.

After the accident, plaintiff claimed UIM coverage, maintaining he was a resident relative under the policy at the time of the accident. The policy defines a "[r]esident" as "a person who physically resides in [the insureds'] household with the intention to continue residence there" and requires that Allstate "must be notified whenever an operator becomes a resident of [the insureds'] household."

The Allstate policy endorsement addressed a policyholder's "Duty to Report Policy Changes" as follows:

> Duty to Report Policy Changes
> Your policy was issued in reliance on the information you provided concerning autos, persons insured by the policy and your place of residence. To properly insure your auto, you must promptly notify us:
>
> . . .
>
> b. whenever any resident operators insured by your policy are added or deleted.

The policy's "Misrepresentation, Fraud[,] or Concealment" provision states, "No coverage will be provided if . . . any insured person has made false statements or concealed any material fact or circumstance in connection with any claim for which payment is sought under this policy."

On December 30, 2021, plaintiff filed a complaint against Giraldo for negligence and against Allstate for declaratory judgment and various insurance-

related coverage claims. Plaintiff settled with Giraldo for her policy limit of $25,000. Allstate declined plaintiff's UIM claim under Lukasz and Karolina's policy for coverage above the tortfeasor's "limits of liability" to the $250,000 UIM limit. Allstate concluded he was not a resident relative. Alternatively, Allstate disclaimed coverage because if plaintiff became a resident relative, then its insureds had failed to amend their coverage to insure plaintiff as an additional resident household operator pursuant to the policy, which would have increased the policy premium cost.

Allstate moved for summary judgment and to dismiss plaintiff's complaint, arguing he was precluded from UIM coverage, which plaintiff opposed. The court granted Allstate's motion, finding plaintiff was not entitled to UIM coverage "under his brother's Allstate insurance policy because he [wa]s not a resident relative." Further, it determined coverage was not available "if [plaintiff] was a resident relative, [as his] brother failed to notify Allstate of the addition of [p]laintiff as an [additional] operator of the insured vehicle." Plaintiff moved for reconsideration, which the court denied. The court stated, "If [it] accept[ed] the argument that [plaintiff is] a resident relative it follows that [Lukasz and Karolina] had a responsibility" to disclose he "[w]as an operator [in] the insured's household if he[was] going to be living there and

using the vehicle." The court found Lukasz and Karolina's failure to make the "disclosure [wa]s dispositive."

On appeal, plaintiff contends the court committed reversible error by granting Allstate summary judgment, dismissing his complaint, and thereafter denying reconsideration.

II.

Our review of a trial court's summary judgment decision is de novo. DeSimone v. Springpoint Senior Living, Inc., 256 N.J. 172, 180 (2024); see also R. 4:46-2(c). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "To decide whether a genuine issue of material fact exists, the trial court must draw[] all legitimate inferences from the facts in favor of the non-moving party." Ibid. (alteration in original) (quoting Friedman v. Martinez, 242 N.J. 449, 472 (2020)) (internal quotation marks omitted); see also R. 4:46-1 to -6. "Summary judgment should be granted 'if the discovery and any affidavits show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" DeSimone, 256 N.J. at 180-81 (quoting

Perez v. Professionally Green, LLC, 215 N.J. 388, 405 (2013)) (internal quotation marks omitted).

We review orders denying reconsideration for abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). A court abuses its discretion "when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Mims v. City of Gloucester, 479 N.J. Super. 1, 5 (App. Div. 2024) (quoting Kornbleuth v. Westover, 241 N.J. 289, 302 (2020)).

"A contract arises from offer and acceptance and must be sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty." Goldfarb v. Solimine, 245 N.J. 326, 339 (2021) (quoting Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992)) (internal quotation marks omitted). "[C]ourts enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract." Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 615-16 (2020) (quoting In re County of Atlantic, 230 N.J. 237, 254 (2017)) (internal quotation marks omitted).

"It is well-settled that we review a court's interpretation of an insurance contract de novo." Motil v. Wausau Underwriters Ins. Co., 478 N.J. Super. 328,

336 (App. Div. 2024). "Thus, we afford no special deference to a 'trial court's interpretation of the law and the legal consequences that flow from established facts.'" Ibid. (quoting Sealed Air Corp. v. Royal Indem. Co., 404 N.J. Super. 363, 374 (App. Div. 2008)).

"In interpreting insurance contracts, we first examine the plain language of the policy and, if the terms are clear, they are to be given their plain, ordinary meaning." Mac Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div. 2022) (quoting Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 270 (2008)) (internal quotation marks omitted). "In a dispute over the interpretation of an insurance contract, it is the insured's burden 'to bring the claim within the basic terms of the policy.'" Rosario v. Haywood, 351 N.J. Super. 521, 529 (App. Div. 2002) (quoting Reliance Ins. Co. v. Armstrong World Indus., Inc., 292 N.J. Super. 365, 377 (App. Div. 1996)).

The Supreme Court has stated that "an insurance contract is not per se ambiguous because its declarations sheet, definition section, and exclusion provisions are separately presented." Zacarias v. Allstate Ins. Co., 168 N.J. 590, 603 (2001) (italicization omitted). Further, "[a] rule that would require exclusions to appear on the declaration page would result in even more fine print and 'run the risk of making insurance policies more difficult for the average

insured to understand.'" Katchen v. Gov't Emps. Ins. Co, 457 N.J. Super. 600, 609 (App. Div. 2019) (quoting Morrison v. Am. Int'l Ins. Co. of Am., 381 N.J. Super. 532, 541 (App. Div. 2005)).

We afford "special scrutiny to insurance contracts because of the stark imbalance between insurance companies and insureds in their respective understanding of the terms and conditions of insurance policies." Motil, 478 N.J. Super. at 337 (quoting Zacarias, 168 N.J. at 594). Any ambiguities must be "resolved in favor of the insured." Mem'l Props. v. Zurich Am. Ins. Co., 210 N.J. 512, 525 (2012). "Insurance policy exclusions must be construed narrowly." Merck & Co. v. Ace Am. Ins. Co., 475 N.J. Super. 420, 434 (App. Div. 2023).

III.

Plaintiff contends reversal of the court's orders granting summary judgment and denying reconsideration is warranted because he was an insured relative under the Allstate policy, and "there was no duty . . . for the named insured to notify [Allstate] that plaintiff was an additional operator." He further argues that material issues of fact exist, which precludes summary judgment on the issue of plaintiff's residency with his brother at the time of the accident. Regarding the duty to report plaintiff as an additional household operator,

plaintiff argues he had no personal obligation to advise Allstate he was a resident operator and that the insureds were "prevent[ed] . . . from clearly understanding the significant limitations . . . particular [to] UIM coverage purchased via the policy," because the policy was ambiguous. We are unpersuaded.

In addressing plaintiff's contention that material issues of fact exist regarding his resident relative status, we note plaintiff conceded at his deposition that at the time of the accident, he was renting an apartment in Brooklyn. He received his mail at the Brooklyn address and never changed his driver's license to include his brother's home address. Further, while he was living with his brother at the time of the accident, plaintiff admitted he did not intend to reside with his brother forever and was "not think[ing] about" or "plan[ning]" how long he would stay there. Undisputedly, the policy provided that a resident must have "the intention to continue residence" at a named insured's address. While we question whether sufficient competent evidence exists to create a material issue of fact regarding plaintiff's resident relative status, we agree with the court that if plaintiff was a resident relative, he was precluded from UIM insurance coverage because the insureds, Lukasz and Karolina, failed to notify Allstate pursuant to the policy of his status. The failure

of the insureds to abide by the required disclosure is dispositive and precludes UIM coverage.

Our Supreme Court has long recognized "insurers can modify policy language in an effort to address issues of UIM coverage and liability." Magnifico v. Rutgers Cas. Ins. Co., 153 N.J. 406, 418 (1998). "UIM coverage . . . is 'personal' to the insured. Coverage is linked to the injured person, not the covered vehicle." Aubrey v. Harleysville Ins. Cos., 140 N.J. 397, 403 (1995). "UIM coverage provides 'as much coverage as the insured is willing to purchase, for his or her protection[,] subject only to the owner's policy liability limits for personal injury and property damages to others.'" Ibid. (quoting Prudential Prop. & Cas. Ins. Co v. Travelers Ins. Co., 264 N.J. Super. 251, 259-60 (App. Div. 1993)).

Pursuant to Allstate's policy issued to Lukasz and Karolina, as the named insureds, they had a duty to report policy changes to Allstate, which included notifying "whenever any resident operators insured by your policy are added." Lukasz and Karolina had knowledge that UIM coverage was an additional cost per driver, as the declaration page separately delineated the UIM premium amounts for each named insured. The policy further provided that no coverage would be provided if a material fact was concealed or misrepresented.

A misrepresentation by an insured is considered "material if, when made, 'a reasonable insurer would have considered the misrepresented fact relevant to its concerns and important in determining its course of action. In effect, materiality [is] judged according to a test of prospective reasonable relevancy.'" Palisades Safety & Ins. Ass'n v. Bastien, 175 N.J. 144, 148 (2003) (alteration in original) (quoting Longobardi v. Chubb Ins. Co. of N.J., 121 N.J. 530, 542 (1990)). A misrepresentation is "material to the insurer's risk if it 'naturally and reasonably influence[d] the judgment of the underwriter in making the contract at all, or in estimating the degree or character of the risk, or in fixing the rate of premium.'" Mass. Mut. Life Ins. Co. v. Manzo, 122 N.J. 104, 115 (1991) (alteration in original) (quoting Kerpchak v. John Hancock Mut. Life Ins. Co., 97 N.J.L. 196, 198 (E. & A. 1922)).

Plaintiff alleged he became a resident relative when he moved in with his brother in January 2020 and that he resided at the Linden residence on the day of the accident in June. He admitted that throughout that time he drove his brother's vehicle "once or twice a week," including out of state, and whenever Lukasz "needed [him] to pick up something." The policy addressed an insured's obligation to disclose to Allstate all resident operators, stating that "[Allstate] must be notified whenever an operator becomes a resident of your household."

The policy specifically required Lukasz and Karolina to report plaintiff as a resident household operator. It is axiomatic that automobile insurance purchasers are aware they must pay for the insurance and that coverage for additional household drivers using an insured vehicle increases the premium. The policy required the insureds to notify Allstate of plaintiff's household residency and operation of an insured vehicle to secure UIM coverage.

Affording the policy provisions their plain meaning, we find no merit to plaintiff's argument of ambiguity in the policy. "If the plain language of the policy is unambiguous, we will 'not "engage in a strained construction to support the imposition of liability" or write a better policy for the insured than the one purchased.'" Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 200 (2016) (quoting Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008)). Therefore, we conclude the insureds' failure to disclose to Allstate that plaintiff was a resident relative operator precluded his entitlement to UIM coverage.

To the extent not addressed, plaintiff's remaining contentions lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION