

NOTICE
Decision filed 09/10/21. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2021 IL App (5th) 200376-U

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-20-0376

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

SHERRI ELLSWORTH and DAVID)	Appeal from the
ELLSWORTH,)	Circuit Court of
)	Marion County.
Plaintiffs-Appellants,)	
)	
v.)	No. 20-L-14
)	
ALLSTATE FIRE AND CASUALTY)	
INSURANCE COMPANY,)	Honorable
)	Jeffrey A. DeLong,
Defendant-Appellee.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Cates and Wharton concurred in the judgment.

ORDER

¶ 1 *Held:* The order of the circuit court of Marion County granting summary judgment in favor of the defendant insurance company, Allstate Fire and Casualty Insurance Company, and against the plaintiff, Sherri Ellsworth, is affirmed where the plaintiff’s insurance policy was not ambiguous with regards to underinsured motorist coverage, and where the trial court properly interpreted the available limits of coverage for underinsured motorists under the policy.

¶ 2 This appeal arises from the order of the circuit court of Marion County on cross-motions for summary judgment finding in favor of the defendant insurance company, Allstate Fire and Casualty Insurance Company (Allstate), and against the plaintiff, Sherri

Ellsworth. The trial court found as a matter of law that the terms of the plaintiff's insurance policy were unambiguous in providing \$100,000 in underinsured motorist protection for each person and \$300,000 total coverage per accident and could not be stacked. The plaintiff argues on appeal that the trial court erred in its interpretation of the policy where the provisions contained therein were ambiguous as to whether underinsured motorist coverage could be stacked. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On June 29, 2018, the plaintiff was involved in a motor vehicle accident when she was struck by another driver, Laurie Ward, who negligently failed to yield the right-of-way. The plaintiff was seriously injured as a result of the collision. She was issued \$100,000 in damages from Country Financial through Ward's insurance policy. At the time, the plaintiff owned two vehicles, both of which were insured through Allstate; the policy was effective from May 6, 2018, through and including November 6, 2018. The plaintiff contacted Allstate after the accident to attempt and collect additional coverage under the underinsured motorist coverage provision. She was told by an authorized Allstate representative that the coverage limit in Ward's policy was the same amount provided in her policy with Allstate, and underinsured motorist coverage was therefore not available under the antistacking terms of the contract.

¶ 5 On February 25, 2020, the plaintiff filed a complaint in the Marion County circuit court against Allstate arguing, *inter alia*, that the policy declarations were silent as to whether underinsured motorist coverage could be stacked or aggregated. Therefore, the plaintiff asserted that, pursuant to the principles iterated in *Cherry v. Elephant Insurance*

Co., 2018 IL App (5th) 170072, the court should enter a declaratory judgment finding that the contract provided \$200,000 in underinsured motorist benefits.

¶ 6 In response to the complaint, Allstate filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2020)) arguing that the complaint failed, as a matter of law, to state a valid cause of action where the policy clearly and unambiguously prohibited stacking of the underinsured motorist coverage. Therefore, according to Allstate, the plaintiff was not entitled to the recovery sought in count I of the complaint. The plaintiff filed a response to the motion, arguing that Allstate failed to cite any defect in the pleading, and dismissal under section 2-615 was therefore inapplicable.

¶ 7 On June 3, 2020, the plaintiff filed a motion for summary judgment pursuant to section 2-1005 of the Code (*id.* § 2-1005) requesting the trial court construe the policy and declare the rights of the parties and the amount of the underinsured motorist benefits and coverage applicable to the June 29, 2018, accident to be \$200,000. On June 4, 2020, Allstate filed a cross-motion for summary judgment arguing there was no genuine issue as to any material fact, and Allstate was entitled to judgment as a matter of law where the language of the policy clearly and unambiguously prohibited the underinsured motorist coverage stacking sought by the plaintiff in count I of the complaint.

¶ 8 On October 19, 2020, following a hearing on the cross-motions for summary judgment, the trial court entered an order finding in favor of Allstate and granting the motion for summary judgment against the plaintiff. The court's finding was based on its consideration of the insurance policy as a whole and in accordance with contract law. The

court noted that according to the policy provision regarding coverage details, a premium is paid for uninsured motorist coverage and there is no separate premium or coverage detail for underinsured motorist coverage. The uninsured coverage detail “includes underinsured motorist protection.” Below this language, the policy states that uninsured motorist insurance limits of insured vehicles cannot be stacked or aggregated. There is also other antistacking language contained throughout the policy. Page three of the policy contained an antistacking clause titled “combining limits of two or more autos prohibited.” The policy defines underinsured coverage as a form of uninsured coverage. Lastly, there is a section of the policy limiting liability that clearly prohibits the stacking of uninsured coverage. The court ruled that any construction of the policy distinguishing between uninsured coverage and underinsured coverage would be unreasonable. Based on the clear language of the policy, the court determined that uninsured coverage could not be stacked. Therefore, the court declared that the policy provided underinsured motorist protection of \$100,000 per person and \$300,000 per accident. The plaintiff appeals.

¶ 9

II. ANALYSIS


¶ 10 The issue on appeal is whether the underinsured motorist coverage on the two vehicles insured by Allstate can be stacked despite antistacking language throughout the contract, and specifically pertaining to uninsured motorist coverage. Allstate asserts that the limit of liability for underinsured motorist coverage is \$100,000 per person and \$300,000 per accident. Furthermore, this coverage cannot be stacked because the antistacking provisions are clear and unambiguous. The plaintiff argues that the antistacking provision that applies to uninsured motorist coverage does not likewise apply

to underinsured motorist coverage as the use of two distinct terms creates an ambiguity in the contract. For the reasons that follow, we agree with Allstate's interpretation and adopt the reasoning of the trial court.

¶ 11 On appeal, the granting of a summary judgment is reviewed *de novo*. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 390 (1993). The construction of an insurance policy is a question of law, and therefore disposition by way of summary judgment is appropriate. *Johnson v. Davis*, 377 Ill. App. 3d 602, 606 (2007). An insurance policy is a contract, and the general rules governing the interpretation of other types of contracts also govern the interpretation of insurance policies. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). Antistacking clauses do not generally contravene public policy. *Grzeszczak v. Illinois Farmers Insurance Co.*, 168 Ill. 2d 216, 229 (1995).

¶ 12 If the language of an insurance policy is clear and unambiguous, it will be given its plain meaning. *Murphy v. State Farm Mutual Automobile Insurance Co.*, 234 Ill. App. 3d 222, 225 (1992). A provision is ambiguous where it is subject to more than one reasonable interpretation and should be construed against the insurer and in favor of the insured. *Id.* In determining whether an ambiguity exists, we must consider all provisions of the policy together. *Glidden v. Farmers Automobile Insurance Ass'n*, 57 Ill. 2d 330, 336 (1974). "Reasonableness is the key, and the touchstone is whether the provision is subject to more than one reasonable interpretation, not whether creative possibilities can be suggested." *Cherry*, 2018 IL App (5th) 170072, ¶ 13 (citing *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 193 (1993); *Johnson*, 377 Ill. App. 3d at 607).

¶ 13 Here, based on our review of the insurance policy as a whole, we find the language regarding antistacking to be clear and unambiguous. Furthermore, we adopt the reasoning of the trial court. The policy clearly defines underinsured coverage as a subset of uninsured coverage, and there is no dispute that the policy clearly states that uninsured coverage cannot be stacked. Not only is the language of the policy clear, but the formatting likewise indicates that underinsured coverage is included within uninsured coverage and that neither type of coverage may be stacked. The coverage detail for both vehicles contains the following provision:

Uninsured Motorists Insurance	Not applicable	\$19.50
 Bodily Injury	\$100,000 each person \$300,000 each accident	
(Includes Underinsured Motorists Protection)		
Uninsured Motorists Insurance limits of insured vehicles cannot be stacked or aggregated.		

It would be unreasonable to read any kind of ambiguity into the provisions of the policy regarding antistacking. Therefore, based on the clear and unambiguous language of the policy, and considering the policy in its entirety, we find that the policy provides \$100,000 per person and \$300,000 per accident of underinsured motorist protection, and these limits may not be stacked.

¶ 14 **III. CONCLUSION**

¶ 15 Therefore, based on the foregoing, we affirm the order of the circuit court of Marion County granting summary judgment in favor of Allstate where, as a matter of law, stacking of underinsured motorist coverage is prohibited by the clear and unambiguous language of the insurance policy.

¶ 16 Affirmed.