



12/13/94 MICHAEL NERUD v. NATIONAL FAMILY INSURANCE

1994 | Cited 0 times | Court of Appeals of Minnesota | December 13, 1994

SCHUMACHER, Judge

National Family Insurance Corporation (National Family) appeals from summary judgment declaring respondent Michael Nerud eligible for \$100,000 in uninsured motorist coverage arguing that Nerud is not legally entitled to recover under his parents' policy because he has his own policy. We affirm as modified.

FACTS

Nineteen-year-old Nerud suffered a broken neck when the car in which he was a passenger was involved in a one car accident. The driver of the car was Theodore Gaul. His negligence was the sole cause of the accident. He was uninsured at the time of the accident. Nerud lived with his parents, who carried a National Family insurance policy providing \$100,000 in uninsured motorist coverage. At the same time, Nerud carried his own National Family insurance policy with \$30,000 in uninsured motorist coverage. After the accident, Nerud sought coverage under his parents' policy, but National Family refused, claiming he was not entitled to recover under his parents' policy because he was insured under his own policy. Nerud brought an action in the district court seeking a declaration that he was entitled to uninsured motorist coverage under his parents' policy. The district court granted summary judgment in favor of Nerud and this appeal followed.

DECISION

1. This court reviews de novo a question of whether the trial court erred in its interpretation and application of the law. *Dohman v. Housely*, 478 N.W.2d 221, 224 (Minn. App. 1991) (citing *A.J. Chromy Constr. Co. v. Commercial Mechanical Servs., Inc.* 260 N.W.2d 579, 581 (Minn. 1977)), pet. for rev. denied (Minn. Feb. 11, 1992). The parties have agreed on the facts and dispute only whether Nerud is entitled to uninsured motorist coverage under his parents' insurance policy.

An insurance policy is a contract, the terms of which establish the rights and obligations of insurer and insured. *Bobich v. Oja*, 258 Minn. 287, 293-94, 104 N.W.2d 19, 24 (1960). In interpreting an insurance policy, the language "must be construed according to the terms the parties have used." *Dairyland Ins. Co. v. Implement Dealers Ins. Co.*, 294 Minn. 236, 244, 199 N.W.2d 806, 811 (1972). The disputed National Family insurance policy reads:

We will pay damages which a covered person is legally entitled to recover from the owner or operator



12/13/94 MICHAEL NERUD v. NATIONAL FAMILY INSURANCE

1994 | Cited 0 times | Court of Appeals of Minnesota | December 13, 1994

of an uninsured motor vehicle because of bodily injury sustained by a covered person and caused by an accident.

"Covered person" under the policy includes the policy holder plus any family member "related to you by blood, marriage or adoption who is a resident of your household." It is undisputed that Nerud was a family member living at home at the time of the accident and that Gaul negligently operated the car. By the clear terms of the insurance contract, therefore, Nerud is a "covered person" who is "legally entitled to recover" from the tortfeasor and is thus, entitled to uninsured motorist coverage.

National Family argues that Nerud is not entitled to coverage because he is not "legally entitled to recover." National Family relies on the statutory definition of "insured" which precludes from coverage a person insured under another policy. Minn. Stat. § 65B.43, subd. 5 (1992). But, "for whatever reason, [National Family] elected to use language in its policy * * * which does not track the statute." *Burgraff v. Aetna Life & Cas. Co.*, 346 N.W.2d 627, 632 (Minn. 1984). Nowhere does National Family limit uninsured motorist coverage to mirror the statutory definition of "insured." Rather, National Family is free to, and did, grant broader uninsured motorist coverage than the minimum required by statute. Minn. Stat. § 65B.49, subd. 7 (1992).

Furthermore, National Family distorts the policy's plain language regarding whether Nerud is "legally entitled to recover." His entitlement is measured by whether he can recover against the tortfeasor, not whether he can recover under the statutory definition of insured. As a result, this court will not rewrite the insurance contract to provide an exclusion that the insurer could have, but did not, include.

2. Nerud requests attorney fees on appeal, claiming that National Family denied coverage and litigated this matter in bad faith with no legitimate reason for denying coverage. Generally, attorney fees may not be awarded absent a specific contractual or statutory authority. *Cherne Indus. Inc. v. Grounds & Assoc.*, 278 N.W.2d 81, 96 (Minn. 1979). Disputes over an insured's right to recover benefits under a policy have been held insufficient grounds to award attorney fees except for an insurer's breach of its contractual duty to defend. *Garrick v. Northland Ins. Co.*, 469 N.W.2d 709, 714 (Minn. 1991). As a result, Nerud's request for attorney fees is denied.

Finally, both parties agree that the issue before the trial court was whether Nerud was entitled to uninsured motorist coverage. They also agree the trial court erred when it declared in its memorandum that "plaintiff is entitled to receive \$100,000 in uninsured motorist benefits." As a result, the quoted sentence is hereby modified to replace the word "benefits" with the word "coverage."

Affirmed as modified.

ROBERT H. SCHUMACHER



12/13/94 MICHAEL NERUD v. NATIONAL FAMILY INSURANCE

1994 | Cited 0 times | Court of Appeals of Minnesota | December 13, 1994

12/7/94

