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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Court of Appeals of New Mexico
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No. A-1-CA-38005



Mark Reynolds

LINDA GARCIA,

Plaintiff-Appellant,

v.

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY,**

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Fred Van Soelen, District Court Judge

Mark S. Sweetman

Clovis, NM

for Appellant

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

Jennifer A. Noya

Mia K. Lardy

Albuquerque, NM

for Appellee

1 **OPINION**

2 **DUFFY, Judge.**

3 {1} This case requires us to determine whether Defendant Allstate Insurance
4 Company’s premium structure for uninsured/underinsured motorist (UM/UIM)
5 coverage on a multi-vehicle policy is ambiguous, entitling Plaintiff Linda Garcia to
6 stack her UM/UIM coverages. Plaintiff had selected “non-stacked” UM/UIM
7 coverage on an Allstate selection/rejection form that offered such coverage for a
8 single premium charge, but when Allstate sent Plaintiff the declarations page for her
9 policy, that document listed UM/UIM coverage and premium charges on a vehicle-
10 by-vehicle basis. Plaintiff argues that she is entitled to stack her coverages because
11 she paid multiple premiums and, under well-established law, when multiple
12 premiums are paid, stacked coverage must be provided. The district court resolved
13 the matter in favor of Allstate and entered summary judgment on the basis that
14 Allstate had obtained a valid rejection of stacked UM/UIM coverage as a matter of
15 law. We conclude the insurance contract at issue is ambiguous as to whether multiple
16 premiums were charged and hold that Plaintiff is entitled to stack her coverages. In
17 light of this conclusion, it is unnecessary to address the parties’ remaining arguments
18 pertaining to whether there was a valid written offer of UM/UIM coverage, and
19 whether Plaintiff’s rejection was properly incorporated into the policy. We reverse
20 and remand for further proceedings.

1 **BACKGROUND**

2 {2} Plaintiff originally insured a single vehicle with Allstate in March 2016. She
3 added a second vehicle to her policy later that year. At that time, Plaintiff’s agent
4 had her execute a UM/UIM selection/rejection form. The document included an
5 “Important Notice” that stated, “The coverage limits you select here will apply to
6 each vehicle . . . listed on your Policy Declarations.” The notice went on to state that










7 [i]f you elect to purchase stacked Uninsured Motorists Insurance for
8 Bodily Injury, the applicable limits for each motor vehicle shown on
9 your Policy Declarations for this policy are added together (stacked) to
10 determine the total amount of available coverage. If you elect to
11 purchase non-stacked Uninsured Motorists Insurance for Bodily Injury,
12 the total amount of available coverage is limited to the amount shown
13 on your Policy Declarations for the vehicle involved in the loss. If the
14 loss occurs while occupying someone else’s vehicle, or if you are struck
15 as a pedestrian, the highest limit of Uninsured Motorists Insurance for
16 Bodily Injury available for any one vehicle on the policy will apply.

17 The selection/rejection form gave Plaintiff two options with respect to UM/UIM
18 bodily injury coverage: she could select either (1) *stacked* coverage with limits of
19 \$25,000/\$50,000 “for all vehicles on the policy, for \$168.05,” or (2) *non-stacked*
20 coverage with limits of \$25,000/\$50,000 “for all vehicles on the policy, for \$89.13.”
21 Plaintiff selected “non-stacked” UM/UIM coverage.










22 {3} Allstate sent an amended automobile policy declarations to Plaintiff, which
23 listed each vehicle as having UM/UIM bodily injury coverage with limits of \$25,000
24 per person, \$50,000 per accident. The declarations page also showed a premium
25 charge associated with the UM/UIM coverage on each vehicle. For the policy period

1 at issue in this case, the declarations page showed a UM/UIM premium charge in
 2 the amount \$47.05 for the first vehicle and \$55.55 for the second vehicle. The
 3 declarations page also stated, "Uninsured Motorists Insurance Bodily Injury limits
 4 of insured vehicles may not be stacked." A portion of the declarations page is
 5 reproduced in relevant part below.

Coverage detail for 2002 Chevy Trk Tahoe

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance		Not applicable	\$344.92
 Bodily Injury	\$25,000 each person \$50,000 each occurrence		
 Property Damage	\$25,000 each occurrence		
Coverage	Limits	Deductible	Premium
 Auto Collision Insurance	Not purchased*		
 Auto Comprehensive Insurance	Not purchased*		
 Rental Reimbursement	Not purchased*		
Roadside Help	\$100 each disablement	Not applicable	\$8.00
Uninsured Motorists Insurance			\$47.05
 Bodily Injury	\$25,000 each person \$50,000 each accident	Not applicable	
 Property Damage	\$25,000 each accident	\$250	
Uninsured Motorists Insurance Bodily Injury limits of insured vehicles may not be stacked.			
 Automobile Medical Payments	\$5,000 each person	Not applicable	\$25.30
 Sound System	Not purchased*		
Tape	Not purchased*		
Total premium for 2002 Chevy Trk Tahoe			\$425.27

Coverage detail for 2004 Dodge Neon

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance		Not applicable	\$226.50
 Bodily Injury	\$25,000 each person \$50,000 each occurrence		
 Property Damage	\$25,000 each occurrence		
 Auto Collision Insurance	Not purchased*		
 Auto Comprehensive Insurance	Not purchased*		
 Rental Reimbursement	Not purchased*		
Roadside Help	\$100 each disablement	Not applicable	\$8.00
Uninsured Motorists Insurance			\$55.55
 Bodily Injury	\$25,000 each person \$50,000 each accident	Not applicable	
 Property Damage	\$25,000 each accident	\$250	
Uninsured Motorists Insurance Bodily Injury limits of insured vehicles may not be stacked.			
 Automobile Medical Payments	\$5,000 each person	Not applicable	\$34.62
 Sound System	Not purchased*		
Coverage	Limits	Deductible	Premium
Tape	Not purchased*		
Total premium for 2004 Dodge Neon			\$324.67

1 {4} In December 2016, Plaintiff was hit by a car while walking on a crosswalk.
 2 Following the accident, Plaintiff submitted a claim for UM/UIM benefits to Allstate
 3 and sought stacked coverage with a combined limit of \$50,000. Allstate declined
 4 Plaintiff's request to stack, and she filed suit.

5 {5} The parties filed cross motions for summary judgment. Plaintiff sought a
 6 declaration that she is entitled to \$50,000 in stacked UM/UIM bodily injury
 7 coverage, while Allstate argued that Plaintiff was not entitled to stacked coverage
 8 because she had executed a valid rejection. As part of this summary judgment
 9 briefing, Plaintiff included the following undisputed material fact: "[Plaintiff] paid
 10 a premium of \$47.05 for UM/UIM coverage on one vehicle and a premium of \$55.55
 11 for UM/UIM coverage on her other vehicle." Allstate did not contest this fact. The

1 district court granted Allstate’s motion, concluding that Plaintiff had selected “non-
2 stacked” UM/UIM coverage and Allstate “complied with all requirements for a valid
3 rejection of uninsured motorist coverage.” Plaintiff timely appealed to this Court.

4 **DISCUSSION**

5 **I. Standard of Review**

6 {6} We review the grant or denial of summary judgment de novo. *Headley v.*
7 *Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 5, 137 N.M. 339, 110 P.3d 1076.
8 “Summary judgment is appropriate when there are no genuine issues of material fact
9 and the movant is entitled to judgment as a matter of law.” *Id.* In reviewing the grant
10 of summary judgment, this Court must “examine the whole record, considering the
11 facts and drawing all reasonable inferences in a light most favorable to the
12 nonmoving party.” *Potter v. Pierce*, 2015-NMSC-002, ¶ 8, 342 P.3d 54.

13 **II. Allstate’s Premium Structure Is Ambiguous**

14 {7} UM/UIM coverage “protects against bodily injury and does not relate to
15 coverage of a particular vehicle.” *Lopez v. Found. Reserve Ins. Co.*, 1982-NMSC-
16 034, ¶ 12, 98 N.M. 166, 646 P.2d 1230; NMSA 1978, § 66-5-301 (1983). As our
17 Supreme Court colorfully noted, “The uninsured motorists protection covers the
18 insured and the family members while riding in uninsured vehicles, while riding in
19 commercial vehicles, while pedestrians or while rocking on the front porch.” *Chavez*
20 *v. State Farm Mut. Auto. Ins. Co.*, 1975-NMSC-011, ¶ 11, 87 N.M. 327, 533 P.2d

1 100 (internal quotation marks and citation omitted). While “each of several vehicles
2 insured under a single policy [can] be covered by one minimum coverage,” *Lopez*,
3 1982-NMSC-034, ¶ 13, nothing precludes insureds from purchasing additional
4 coverage. *See Montano v. Allstate Indem. Co.*, 2004-NMSC-020, ¶ 19, 135 N.M.
5 681, 92 P.3d 1255.

6 {8} Under a line of authority dating back more than forty years, our Supreme
7 Court has consistently held that where an insurance company charges a separate
8 UM/UIM premium for each vehicle under a multi-vehicle policy, “it is only fair that
9 the insured be permitted to stack the coverages for which he has paid.” *Lopez*, 1982-
10 NMSC-034, ¶ 18; *accord Jimenez v. Found. Rsrv. Ins. Co.*, 1988-NMSC-052, ¶ 11,
11 107 N.M. 322, 757 P.2d 792 (noting that “case law in this jurisdiction repeatedly has
12 stated the public policy [that] allows uninsured/underinsured motorist coverage to
13 be stacked when separate premiums are paid for additional coverage”); *Rodriguez v.*
14 *Windsor Ins. Co.*, 1994-NMSC-075, ¶ 11, 118 N.M. 127, 879 P.2d 759 (“We have
15 permitted stacking of uninsured motorist coverages when separate premiums have
16 been paid on the rationale that separate premiums for separate coverages entitle the
17 insured to the benefit of what he or she has paid for.” (internal quotation marks and
18 citation omitted)); *Montano*, 2004-NMSC-020, ¶ 23 (“[W]hen multiple premiums
19 are charged for UM coverage on multiple cars, even in the face of a truly
20 unambiguous limitation-of-liability clause, stacking will be required.”); *see also*

1 *Wilkeson v. State Farm Mut. Auto. Ins. Co.*, 2014-NMCA-077, ¶ 9, 329 P.3d 749
2 (observing that our Supreme Court “has consistently upheld the availability of
3 stacking, as against policy language excluding it, as a matter of public policy when
4 the insured has paid multiple premiums”). Simply put, an insured is entitled to the
5 number of coverages for which he or she pays a premium.

6 {9} As the cases above illustrate, insurance companies have attempted to avoid
7 stacking through a variety of measures. Before *Montano*, these measures included
8 anti-stacking clauses in the insurance policy and premium structures that “purport to
9 avoid a separate charge for the coverage with respect to each car.” 2004-NMSC-020,
10 ¶ 12 (internal quotation marks and citation omitted). The *Montano* Court observed
11 that “[a]lthough we have reviewed several such attempts by the insurance industry
12 in the past, . . . this Court has never upheld an anti-stacking clause in UM policies
13 because in each case we found either an ambiguity in the policy or the payment of
14 multiple premiums.” *Id.* ¶ 1. Concluding that the practice of attempting to draft
15 standard contract language to preclude stacking was insufficient to protect the
16 reasonable expectations of insureds, particularly “[i]n the face of increasingly
17 complex insurance contracts and pricing strategies,” the *Montano* Court charted a
18 new course. *Id.* ¶ 17. It held that “a solution to the seemingly inherent ambiguities
19 in anti-stacking clauses” is to require an insurance company to “obtain written

1 rejections of stacking in order to limit its liability based on an anti-stacking
2 provision.” *Id.* ¶ 19.

3 {10} To explain “the policy language requirements for future stacking cases,” *id.*
4 ¶ 22, the Court offered an example of how insurance companies could obtain a
5 rejection of stacked coverage:

6 As an illustration of our holding, in a multiple-vehicle policy insuring
7 three cars, the insurer shall declare the premium charge for each of the
8 three UM coverages and allow the insured to reject, in writing, all or
9 some of the offered coverages. Thus, hypothetically, in the case of a
10 \$25,000 policy, if the premium for one UM coverage is \$65, two
11 coverages is an additional \$60, and three coverages \$57 more, the
12 insured who paid all three (for a total premium of \$182) would be
13 covered up to \$75,000 in UM bodily injury coverage. However, the
14 insured may reject, in writing, the third available coverage and pay
15 \$125 for \$50,000 of UM coverage; or the insured may reject, in writing,
16 the second and third coverages and pay \$65 for \$25,000 of UM
17 coverage; or the insured may reject all three UM coverages.

18 *Id.* ¶ 20. The Court concluded this example by emphasizing that “[i]n any event, the
19 coverage would not depend on which vehicle, if any, was occupied at the time of the
20 injury. Thus, the insured’s expectations will be clear, and an insured will only
21 receive what he or she has paid for.” *Id.*

22 {11} While the *Montano* Court optimistically believed this change would end
23 litigation in this area of law, *id.* ¶ 1, we are here again determining whether stacking
24 is required. In this case, Allstate offered a higher premium for “stacked” coverage
25 and a lower premium for “non-stacked” coverage with both providing
26 “\$25,000/\$50,000/\$25,000 for all vehicles on the policy.” Plaintiff selected “non-

1 stacked” coverage on the selection/rejection form with the cost for that coverage
2 shown as a single premium. The declarations page for the policy, however, showed
3 a per-vehicle charge for UM/UIM coverage. Plaintiff argues she paid separate
4 premiums for each insured vehicle and, under the line of cases outlined in paragraph
5 eight of this opinion, is entitled to stack her coverages. Allstate does not challenge
6 the legal principle that stacking is required when multiple premiums are charged.
7 Instead, Allstate maintains that it charged only one premium for one coverage, and
8 simply allocated the cost of that premium among the insured vehicles. Our Supreme
9 Court has encountered versions of this issue at least twice before, in *Rodriguez* and
10 in *Montano*; in both cases the Court determined that the policies were ambiguous
11 and, as a result, stacking was required. *See Rodriguez*, 1994-NMSC-075, ¶¶ 2, 22;
12 *Montano*, 2004-NMSC-020, ¶¶ 1, 27. We reach the same conclusion here.

13 {12} In *Rodriguez*, the plaintiff insured three vehicles under a policy that purported
14 to charge a single premium for UM/UIM coverage. 1994-NMSC-075, ¶¶ 3, 5. The
15 declarations page stated that “INSURANCE IS PROVIDED WHERE A PREMIUM
16 IS SHOWN FOR THE COVERAGE,” and “below this statement was a grid or
17 matrix of lines and columns showing the various types and amounts of coverage,
18 with the premium charged for each.” *Id.* ¶ 5. The grid showed a premium of \$131.00
19 on the line for UM/UIM coverage under the first vehicle and the word “INCL” (or
20 included) for the other two vehicles. *Id.* ¶ 5 n.1. The Court determined that the policy

1 documents were ambiguous as to the UM/UIM premium structure, making two
2 observations that are relevant to the case before us.

3 {13} First, the Court noted that the declarations page left certain spaces blank where
4 no premium was charged, and therefore, “it would be natural, or at least reasonable
5 for the typical insured (who presumably would not think she was receiving
6 something for nothing) to assume she had paid consideration (a premium) for each
7 space filled in with “INCL,” especially since the declarations page said,
8 “INSURANCE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE
9 COVERAGE.” *Id.* ¶ 17. The Court found another source of ambiguity in the fact
10 that the UM/UIM coverage was listed on the declarations page on a vehicle-by-
11 vehicle basis. *Id.* ¶ 18. The Court emphasized that UM/UIM coverage follows the
12 insured and is “not linked in any way to whether [the insured is] riding in one of the
13 cars listed on the policy.” *Id.* Given this, the Court reasoned that if the insurer
14 intended to provide only one coverage regardless of the number of vehicles listed on
15 the declarations page, then listing coverage under each vehicle “disingenuously
16 leads the reader of the policy to believe that she is getting more than she paid for.”
17 *Id.* As a result of these ambiguities, the Court held that “the three separate coverages
18 indicated on the uninsured motorist/bodily injury line of the declarations page may
19 be stacked.” *Id.* ¶ 20.

1 {14} In *Montano*, the plaintiff insured four vehicles under a policy that, unlike
2 *Rodriguez*, listed a single premium charge on the declarations page for “additional
3 coverages,” which was explained elsewhere in the policy to be UM bodily injury
4 coverage. *Montano*, 2004-NMSC-020, ¶ 3. The plaintiff argued that even though the
5 insurer purported to charge a single premium for UM coverage, actuarial data
6 showed that the insurer’s premium charge was almost double for multi-vehicle
7 policies than for single vehicle policies. *See id.* ¶ 6. The Court concluded the contract
8 was ambiguous as to whether the amount charged represents a single premium for a
9 single amount of coverage in light of the fact that an endorsement allowed the
10 insured to stack up to two coverages, and the insurer, “in setting its premium, admits
11 that it has factored into its premium calculation the average number of vehicles on
12 all multi-vehicle policies, including those policies insuring three or more vehicles.”
13 *Id.* ¶ 27. Consequently, the Court held that the plaintiff was entitled to stack four
14 coverages. *Id.*

15 {15} While the Court in *Montano* indicated that this sort of ambiguity analysis
16 might become unnecessary in future cases if insurers followed the offering model
17 outlined in the opinion, *see id.* ¶ 20, *Montano* did not purport to overrule the
18 ambiguity line of cases, nor did it purport to alter the line of authority holding that
19 stacking is the appropriate remedy when multiple premiums are paid. *See id.* ¶¶ 1,
20 17 (reevaluating *Rodriguez* to the extent it suggested that “it was possible for an

1 insurer to draft standard contract language that would preclude stacking”); *see also*
2 *Wilkeson*, 2014-NMCA-077, ¶ 17 (explaining that “*Montano*, in which our Supreme
3 Court, in adopting a new approach that requires an insurer to obtain written
4 rejections of stacking in order to limit its liability based on an anti-stacking
5 provision, reiterated the public policy in favor of stacking when an insured has paid
6 separate premiums” (alteration, internal quotation marks, and citation omitted)).
7 That is to say that the ambiguity analysis set forth in *Rodriguez* remains good law
8 for evaluating insurance contracts when a question arises as to whether the amount
9 charged represents a single premium for a single amount of coverage, and we apply
10 it here. *See Montano*, 2004-NMSC-020, ¶ 27.

11 {16} “[W]hen deciding whether more than one premium has been paid, the
12 essential factor is whether a reasonable insured would think that she was paying
13 more than one premium for more than one coverage.” *Id.* ¶ 13 (alteration, internal
14 quotation marks, and citation omitted). In the case before us, the policy is ambiguous
15 as to whether multiple premiums were paid because, like *Rodriguez*, the UM/UIM
16 coverages were listed on the declarations page on a vehicle-by-vehicle basis,
17 indicating there is coverage attached to each vehicle. *See* 1994-NMCA-075, ¶ 18.
18 More importantly, the declarations page listed a premium charge for the UM/UIM
19 coverage on each vehicle, which could lead a reasonable insured to think they are
20 paying multiple premiums. *See id.* ¶ 17. Although Allstate argues that it merely

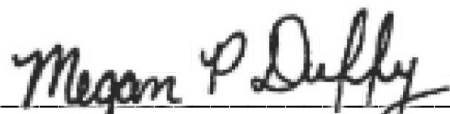
1 allocated a single premium among the vehicles on the declarations page, this
2 purported structure suffers from the same problem identified in *Rodriguez* in that it
3 “disingenuously leads the reader of the policy to believe that she is getting more than
4 she paid for.” *Id.* ¶ 18.

5 {17} To allow us to conclude the insurance contract is unambiguous, *Rodriguez*
6 and *Montano* “require a plain and affirmative declaration that the amount charged
7 represents a single premium for a single amount of coverage.” *Montano*, 2004-
8 NMSC-020, ¶ 27. Like *Montano*, we conclude that unquestionably, this contract has
9 not done so. *See id.* As a result, Plaintiff is entitled to stack her coverages.

10 **CONCLUSION**

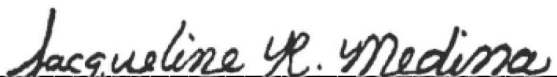
11 {18} We reverse and remand for further proceedings consistent with this opinion.

12 {19} **IT IS SO ORDERED.**

13 
14 _____
MEGAN P. DUFFY, Judge

15 **WE CONCUR:**

16 
17 _____
JENNIFER L. ATTREP, Chief Judge

18 
19 _____
JACQUELINE R. MEDINA, Judge