IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY COOK, AN INDIVIDUAL,
Appellant,
vs.
UNITED SERVICES AUTOMOBILE ASSOCIATION, AN UNINCORPORATED ENTITY AND/OR A RECIPROCAL INSURANCE EXCHANGE WITH MEMBERS RESIDING IN THE STATE OF NEVADA,
Respondent.

No. 85550

FILED

OCT 0 2 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a breach-of-contract insurance action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.[1]

Appellant Anthony Cook was a passenger in Ryan Pratcher's car when Erma Green, who was insured by State Farm, struck Pratcher's car with her car. Pratcher had an insurance policy through respondent United Services Automobile Association (USAA). Cook had an insurance policy through Civil Service Employees Insurance Group (CSE). State Farm paid the bodily injury limit of $25,000 to Cook, and CSE paid Cook the underinsured motorist (UM) limit of $50,000. However, under its "Other Insurance" provision, USAA denied coverage due to the $50,000 UM

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal. We therefore deny the motion for oral argument.

payment Cook received from CSE. Cook sued USAA for breach of contract and related claims. On USAA's motion, the district court granted summary judgment in favor of USAA. Cook appeals.

We review orders granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper where the pleadings and evidence presented pose "no genuine issue of material fact . . . and the moving party is entitled to a judgment as a matter of law." *Mardian v. Greenberg Family Tr.*, 131 Nev. 730, 733, 359 P.3d 109, 111 (2015).

Cook argues the district court erred by concluding USAA did not breach its policy. Specifically, he argues that the district court erred as a matter of law by failing to apply the *Lamb-Weston* rule and by concluding that the provision in the USAA policy is valid and enforceable under NRS 687B.145(1).

"Under Nevada law, 'the plaintiff in a breach of contract action must show (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach.'" *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 899 (9th Cir. 2013) (quoting *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006)). An insurance policy, like any other contract, must be construed and enforced as written, absent any ambiguity. *Farmers Ins. Exch. v. Neal*, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003).

In this case, we conclude that the district court correctly determined that no breach occurred. First, the *Lamb-Weston* rule concerning conflicting "other insurance" provisions does not apply, because the CSE and USAA provisions are not in conflict. *See Travelers Insurance Co. v. Lopez*, 93 Nev. 463, 468, 567 P.2d 471, 474 (1977) (adopting *Lamb-*

Weston, Inc. v. Oregon Auto. Ins. Co., 219 Or. 110, 341 P.2d 110 (1959), and concluding that where the "other insurance" clause in one policy conflicted with a similar clause in another policy, the clause was null and void); *McGrath v. Liberty Mut. Fire Ins. Co.*, 836 F. App'x 551, 552 (9th Cir. 2020) (holding car passenger was not entitled to excess underinsured motorist benefits under her own policy because car owner's insurer already paid its $100,000 limit to passenger, and the passenger's and driver's "other insurance" clauses capped any recovery to the highest applicable limit). Second, USAA's "Other Insurance" provision is valid and enforceable under NRS 687B.145(1) because the provision is clearly expressed and prominently displayed and it is undisputed that Cook did not purchase separate policies to cover the same risk. *See Serret v. Kimber*, 110 Nev. 486, 489-92, 874 P.2d 747, 750-51 (1994) (addressing requirements for an insurance provision to be valid under NRS 687B.145(1)). Because the CSE and USAA policies unambiguously state their coverage may equal but not exceed the highest applicable limit to any one vehicle under any insurance providing coverage on either a primary or excess basis and CSE had already paid Cook the highest applicable limit of $50,000, the district court properly granted USAA summary judgment on Cook's claims. *See Nationwide Mut. Ins. Co. v. Coatney*, 118 Nev. 180, 185, 42 P.3d 265, 268 (2002) (holding that a policy's anti-stacking clause was valid in limiting recovery to the UM coverage limits on the car involved in the accident). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, C.J.

Cadish, J.

Lee, J.

cc: Hon. Jerry A. Wiese, Chief Judge
Department 7, Eighth Judicial District Court
Kristine M. Kuzemka, Settlement Judge
The Schnitzer Law Firm
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