SUPREME COURT OF LOUISIANA

No. 99-C-0942

BILLY BOULLT AND JUDY BOULLT

versus

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF OUCHITA

VICTORY, J., dissenting

I disagree with the conclusion that Louisiana's anti-stacking law does not bar recovery to the divorced parents' wrongful death claims under two separate insurance policies containing uninsured motorist coverage. Recovery under these two separate policies is prohibited by La. R.S. 22:1406(D)(1)(c)(i) which provides, in pertinent part, as follows:

> If the insured has any limits of uninsured motorist coverage in a policy of automobile liability insurance, in accordance with the terms of Subsection D(1), then such limits of liability shall not be increased because of multiple motor vehicles covered under said policy of insurance and such limits of uninsured motorist coverage shall not be increased when the insured has insurance available to him under more than one uninsured motorist coverage provision or policy**; . . .** [Emphasis added.]

In analyzing the statute, the court of appeal held that "[i]f each parent is considered as the 'insured' under the anti-stacking statute, allowing them to recover under their own individual UM policies does no violence to the statute or its underlying premise." ***Boullt v. State Farm Mut. Auto. Ins. Co.***, 31,709 (La. App. 2 Cir. 3/1/99), 728 So. 2d 1064, 1066. Although it was in error, the court of appeal properly focused on the decisive issue in this case: who is considered the "insured" under La. R. S. 22:1406(D)(1(c)(i)? Clearly, the only way the parents can recover under their respective UM policies is for each of them, rather than Andrea, to be the "insured"

under the anti-stacking statute. The majority does not analyze the statute and resolve this critical issue, although it admits that Andrea, as the "injured insured," would have been limited to only one UM policy had she lived. The very reason she would be limited is because she, not her parents, is the "insured" under the anti-stacking statute.[1]

The observation that a wrongful death action is a "separate and independent" cause of action from Andrea's personal injury action, although true, is immaterial. Slip Op. p. 9. The Boullts are not attempting to "stack" their policies covering Andrea's wrongful death on top of policies covering Andrea for personal injury damages. They are attempting to "stack" two UM policies providing coverage for Andrea's wrongful death. However, the anti-stacking statute makes no exception for wrongful death damages.

Further, it is immaterial that "separate premiums had been charged to and paid by different insureds for each of the separate UM policies." Slip Op. at p. 9. Of course, it is frequently the case that there are separate polices, separate premiums and separate insureds under policies providing UM coverage, yet the anti-stacking statute clearly applies anyway.

Further, it is immaterial that the parents are divorced. Slip Op. at p. 9. The anti-stacking statute does not depend on the marital status of the claimants, but focuses

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[1]*See* ***Salter v. State Farm Mut. Auto. Ins. Co.***, 520 So. 2d 877 (La. App. 3 Cir. 1987) (holding that "the party referred to in the clear language of LSA-R.S. 22:1406D(1)(C) is the injured party who has sustained bodily injury while occupying an automobile not owned by that injured party," not the children of the decedent); ***Sheppard v. State Farm Ins. Co.***, 614 So. 2d 208 (La. App. 3 Cir. 1993) (holding that a divorced parent of a deceased child may chose to recover wrongful death damages under either her UM policy or her ex-husband's UM policy, which ever is more favorable, but is prohibited by the anti-stacking statute from recovering under both policies); ***Vincent v. State Farm Mut. Auto Ins. Co.***, 526 So. 2d 818 (La. App. 3 Cir. 1988) (holding that the married parents of their deceased son could not stack two separate UM policies under which they and their son were each insureds because the anti-stacking statute reference "to 'the insured' contemplates the person who suffers the bodily injury or bodily injury resulting in death"); ***Schwankhart v. Louisiana Dept. of Transp. and Development***, 94-0735 (La. App. 4 Cir. 11/30/94), 646 So. 2d 1242 (holding that divorced parent could not stack their separate UM policies for the wrongful death of their son because the "insured" referred to in the anti-stacking statute is the person who suffers bodily injury or bodily injury which results in death).

instead on the UM coverage available to the insured, Andrea. As one commentator has stated:

> Decisions have correctly focused the stacking issue in wrongful death cases on whether the deceased, as the injured person, was occupying an auto that he did not own at the time of the accident. If the deceased was limited to one coverage because he was occupying his own auto, claimants for his wrongful death likewise must share one policy limit.

William Shelby McKenzie and H. Alston Johnson, III, Louisiana Civil Law Treatise, Insurance Law and Practice, 2nd Ed., § 123, p. 303-04. For example, if Andrea had been a passenger in her father's car, under La. R.S. 22:1406(D)(1)(c)(i), the parents would have only been entitled to recover under one uninsured motorist policy. The same result occurs here where Andrea was a passenger in a non-owned vehicle.

Further, it is immaterial that "each parent suffered his and her own injuries although arising from a single occurrence, *i.e.*, Andrea's death." Slip Op. at p. 9. It is only because Andrea was an insured under each of the Boullt's policies that the policies provide coverage for Andrea's wrongful death. The fact that this is a wrongful death action does not transform the parents into the "insured" under the anti-stacking statute. That they were each an insured under their respective policies[2] likewise does not make them the "insured" under the statute.

Because clearly Andrea is the "insured" referred to in La. R.S. 22:1406(D)(1)(c)(i), the parents are prohibited from each recovering under their

[2]The "insured" for purposes of uninsured motor vehicle coverage under each of the State Farm policies is defined as "the person or persons covered by uninsured motor vehicle coverage" which includes "the first person named in the declarations" and "their relatives" and "any person entitled to recover damages because of bodily injury to an insured. . ."

respective UM policies.[3] Therefore, I respectfully dissent.

[3]The majority's reliance on jurisprudence from other states to support their position is misplaced. Slip Op. at p. 11, n. 4. The Colorado statute at issue in ***Kline v. American States Insurance Co.***, 924 P. 2d 1150 (Colo. Ct. App. Div. III 1996) was not an anti-stacking statute, but instead defined whether the automobile involved in the accident was an "underinsured motor vehicle." Likewise, the Florida statute at issue in ***South Carolina Ins. Co. V. Kokay***, 398 So. 2d 1355, 1357 (Fla. 1981) was an anti-stacking statute, but the statute contained an important exception that "[t]his section shall not apply to reduce the coverage available by reason of insurance policies insuring different named insureds" and each parent had a policy in which he or she, respectively, was the named insured.