

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7535
Summary Calendar

DELORIS PRYOR,

Plaintiff-Appellant,

VERSUS

ECONOMY PREMIER ASSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(3:93-CV-46-WN)

(November 24, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Deloris Pryor, a passenger injured in an automobile accident, appeals the summary judgment in favor of Economy Assurance Company ("Economy") holding that her claim for uninsured motorist ("UM") damages was barred by the plain meaning of the insurance contract and Mississippi's recent statement precluding stacking of insurance policies. Concluding that Mississippi's recent case of In re

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

Koestler, 608 So. 2d 1258 (Miss. 1992), controls the issue, her claim is precluded. We affirm.

I.

Pryor resided in the home of Freddy and Copucine White, who had an automobile insurance policy with Economy. Pryor was a passenger in an automobile driven by Freddy White and insured under the policy. The car collided with a vehicle driven by Rosey Myles, apparently caused by Myles's negligence. Myles had an automobile liability insurance coverage maximum of \$25,000, which was paid to Pryor.

The White's Economy policy provided UM limits of \$25,000 for bodily injury per person injured and contained a section entitled "Limit of Liability," which limited the amount of uninsured motorist coverage provided by Economy. Pryor filed a claim with Economy seeking to recover UM for \$25,000 in addition to the \$25,000 she had received from Myles's insurer. Economy denied the claim, asserting that its policy denied coverage of more than \$25,000 and, since Pryor had already received \$25,000 from Myles's insurance company, she was precluded from recovering any further amounts under Mississippi law.

II.

Pryor filed a complaint for declaratory relief in state court, asking that Economy be held liable for her uninsured motorist claim. Economy removed the case to federal court, then filed its answer and defenses denying uninsured liability. Both parties

filed motions for summary judgment. Additionally, Pryor filed a motion for certification to the Mississippi Supreme Court. On August 10, 1993, the district court granted Economy's motion for summary judgment.

III.

Pryor first contends that her motion made pursuant to Miss. S. Ct. R. 20, which allows certification to the Mississippi Supreme Court, should be granted in this case, because it involves questions or propositions of Mississippi law that are determinative of the cause and because there appears to be great division in the state supreme court over which law controls this issue. Rule 20 provides that the United States Supreme Court or any United States court of appeals may certify questions to the Mississippi Supreme Court. Rule 20 allows certification where there is no "clear, controlling precedents in the decisions" of that court.

We conclude that the district court was correct in refusing to certify, as rule 20 does not allow a federal district court to certify questions. Furthermore, rule 20 is inapplicable to this case, as the issues that Pryor claims are unsettled under Mississippi law have been addressed by the Mississippi Supreme Court, recently, in Koestler.

IV.

Mississippi law defines an uninsured motorist at MISS. CODE ANN. § 83-11-103:

(c) The term "uninsured motor vehicle" shall mean:

(i) A motor vehicle as to which there is no bodily injury liability insurance; or . . .

(iii) An insured motor vehicle, when the liability insurer of such vehicle has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist coverage; . . .

The Economy policy's limit of liability for UM bodily injury coverage per person is \$25,000. The policy further provides as follows under the heading "Limit of Liability":

- A. The limit of liability shown in the Declarations per each person for UNINSURED MOTORIST))BODILY INJURY COVERAGE is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of bodily injury sustained by any one person in any one accident
- B. This is the most we will pay regardless of the number of insureds, claims made, vehicles or premiums shown in the Declarations

Accordingly, the limit of liability for UM bodily injury coverage under the Economy policy is \$25,000.

This case is controlled by Koestler, in which the court denied the plaintiff's attempt to recover damages against multiple insurance policies providing coverage that exceeded the minimum amounts of coverage allowed by statute, a practice known as "stacking." Pryor attempts to undermine the validity of Koestler, arguing that it was a close decision and that two of the justices who sided with the majority are no longer on the court.

These arguments are irrelevant. Should this case be certified to the Mississippi Supreme Court, there is no reason why that court would not follow the doctrine of stare decisis and affirm the decision in Koestler. Accordingly, we decline to certify, and we uphold the summary judgment.

AFFIRMED.