Circuit Court for Montgomery County
Case No. 464582V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 811

September Term, 2020

DINORA DOMINQUEZ,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY

Beachley,
Shaw Geter,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: September 13, 2021

Following an automobile accident in March 2016, appellant Dinora Dominquez sought insurance coverage from her insurer, appellee Government Employees Insurance Company ("GEICO"). When GEICO denied Ms. Dominquez's claim for coverage, she filed a complaint in the Circuit Court for Montgomery County alleging breach of contract. GEICO moved for summary judgment, and, following a hearing on September 24, 2020, the circuit court granted GEICO's motion. Ms. Dominquez timely appealed and presents two questions for our review, which we have consolidated and rephrased as follows: Did the circuit court err in granting GEICO's motion for summary judgment?

Although we affirm the grant of summary judgment on a different basis than that relied on by the circuit court, we conclude that GEICO properly denied Ms. Dominquez's claim for coverage, and affirm the circuit court's judgment.

FACTS AND PROCEEDINGS

The facts of this case are undisputed.[1] On the morning of March 22, 2016, Ms. Dominquez was riding as a passenger in her adult daughter Elena Dominquez's car. At approximately 6:05 a.m., an unknown person driving an unidentified vehicle struck the rear of Elena's car. The vehicle then fled the scene before Elena or Ms. Dominquez could identify its driver. Unfortunately, the collision caused Ms. Dominquez to suffer serious injuries.

[1] Were the facts of this case in dispute, we would review the record in the light most favorable to Ms. Dominquez. *See Bednar v. Provident Bank of Md., Inc*., 402 Md. 532, 542 (2007) ("In considering a trial court's grant of a motion for summary judgment, this Court reviews the record in the light most favorable to the non-moving party." (citing *Rhoads v. Sommer*, 401 Md. 131, 148 (2007)).

At the time of the collision, Elena was living in Ms. Dominquez's household, and Elena's vehicle was insured by a GEICO insurance policy which provided uninsured motorist bodily injury coverage limits of $30,000 per individual and $60,000 per occurrence. Ms. Dominquez, however, was insured under a separate GEICO policy—the policy we shall discuss in-depth in this case—which she and her husband had purchased through GEICO to cover their own vehicle (the "GEICO Policy"). The GEICO Policy provided Ms. Dominquez (and her husband) single limits uninsured/underinsured[2] coverage of $300,000 per individual and occurrence. Ms. Dominquez filed claims with GEICO for uninsured motorist coverage under both Elena's policy and her GEICO Policy on the theory that the unidentified vehicle was uninsured. GEICO accepted the claim Ms. Dominquez made under Elena's policy, but it denied Ms. Dominquez's claim under her GEICO Policy.

Consequently, Ms. Dominquez filed a complaint in the Circuit Court for Montgomery County alleging breach of contract based on GEICO's denial of her claim for uninsured motorist coverage under her GEICO Policy. GEICO filed an answer, and then moved for summary judgment, arguing that, as a matter of law, an exclusion contained in the GEICO Policy permitted it to deny Ms. Dominquez's claim. At the conclusion of a

[2] Although the Maryland Insurance Article only refers to "uninsured" motorists and motor vehicles, "an *un*insured motorist or motor vehicle is, for all intents and purposes, the same as an *under*insured motorist or motor vehicle." *Nationwide Mut. Ins. Co. v. Shilling*, 468 Md. 239, 248-49 (2020) (citing *Connors v. Gov't Emps. Ins. Co*., 442 Md. 466, 474 n.4 (2015)). Throughout this opinion, we shall simply refer to "uninsured" motorist coverage.

hearing on September 24, 2020, the circuit court granted summary judgment in favor of GEICO. We shall provide additional facts as necessary.

DISCUSSION

"[T]he standard for appellate review of a trial court's grant of a motion for summary judgment is simply whether the trial court was legally correct . . . and is subject to no deference." *Hamilton v. Kirson*, 439 Md. 501, 522 (2014) (quoting *Tyler v. City of Coll. Park*, 415 Md. 475, 498 (2010)). Generally, appellate courts will only consider the grounds upon which the trial court granted summary judgment. *State v. Rovin*, 472 Md. 317, 373 (2021) (quoting *Bishop v. State Farm Mut. Auto. Ins*., 360 Md. 225, 234 (2000)). There is an exception to this general rule, however, where an appellate court may affirm the trial court on a different ground so long as the trial court would have had no discretion to deny summary judgment on that ground. *Id*. (citing *Wireless One, Inc. v. Mayor & City Council of Balt*., 465 Md. 588, 614 n.6 (2019)). As we shall explain, although we reject the rationale upon which the trial court relied in granting GEICO's motion for summary judgment, we nevertheless conclude that GEICO properly denied Ms. Dominquez's claim for uninsured motorist coverage.

Although this case requires a relatively straightforward application of settled Maryland precedent, in her brief, Ms. Dominquez sets forth a helpful roadmap for understanding this case:

1. A Maryland statute authorizes motor vehicle insurers to insert provisions into their policies that exclude certain claims from the policies' otherwise mandatory uninsured motorist coverage;

2. An insurer [GEICO] attempted to insert such an exclusion into its policy, but the express terms of the exclusion were impermissibly *broader* than what the clear terms of [the] statute allow – thus sweeping into the exclusion's ambit claims that the insurer could not lawfully exclude; and

3. A claim arose that the insurer *could* have excluded from coverage if its policy contained an exclusion that precisely tracked the statutory language.

   The question presented to [this] Court is: What is the remedy, in the circumstances of this case, for the unlawfully broad exclusion?

In her brief, Ms. Dominquez concedes that the language of the GEICO Policy permitted GEICO to deny her claim. And as her roadmap makes clear, Ms. Dominquez also concedes that, if the GEICO Policy had precisely tracked the statutory language that authorizes the exclusion, GEICO could have also lawfully denied her claim. Nevertheless, Ms. Dominquez argues that the GEICO Policy language is impermissibly broad in contravention of the statute, and claims that when an exclusion in an insurance policy is impermissibly broad, "the proper remedy for the Court" is to invalidate the exclusion "in totality." GEICO responds that its exclusion is not impermissibly broad, but that, even if it is, Maryland law would only invalidate the exclusion to the extent it conflicts with the statute.

As we shall explain, we assume, without deciding, that the GEICO Policy is impermissibly broad. Nevertheless, under settled Maryland law, it would only be invalid to the extent it conflicts with the statute. Accordingly, by invalidating the GEICO Policy to the extent it conflicts with the statute would simply leave us with an exclusion that comports with the statute. Because Ms. Dominquez concedes that, if the GEICO Policy language was consistent with the statute, GEICO could properly deny her claim, we

conclude that GEICO is entitled to judgment as a matter of law.

The statute which lies at the heart of this case, Md. Code (1995, 2017 Repl. Vol., 2020 Supp.), § 19-509(f)(1) of the Insurance Article ("Ins."), provides:

> (f) An insurer may exclude from the uninsured motorist coverage required by this section benefits for:
>
> (1) the named insured or a family member of the named insured who resides in the named insured's household for an injury that occurs when the named insured or family member is occupying or is struck as a pedestrian by an uninsured motor vehicle that is owned by the named insured or an immediate family member of the named insured who resides in the named insured's household[.]

The Court of Appeals has explained that the purpose of this statute is

> to prevent a family, owning several motor vehicles, from insuring only one or two of them with an insurer, leaving the other vehicles uninsured, or underinsured under a different policy, and being able to claim uninsured or underinsured motorist benefits from the first insurer even though no premium was paid to the first insurer for coverage of the other vehicles.

Gov't Emps. Ins. Co. v. Comer, 419 Md. 89, 98 (2011).

Regarding uninsured motorist coverage, the GEICO Policy provides, in relevant part: "We [GEICO] will pay damages for ***bodily injury*** and ***property damage*** caused by an accident which the ***insured*** is legally entitled to recover from the owner or operator of an ***uninsured motor vehicle*** arising out of the ownership, maintenance or use of that vehicle." The GEICO Policy then lists several exclusions, or circumstances whereby it will decline to provide coverage. The relevant Exclusion here states that GEICO's uninsured motorist coverage does not apply: "To ***bodily injury*** sustained by an ***insured*** while occupying a motor vehicle owned by an ***insured*** and not described in the Declarations and not covered by the Bodily Injury and Property Damage liability coverages of this policy." For purposes

of this case, the GEICO Policy defines the word "***Insured***" to mean: "(a) ***You*** and ***your*** spouse if a resident of the same household; (b) ***Your relative*** if a resident of ***your*** household[.]" The GEICO Policy defines "***You***" and "***Your***" to mean "the policyholder named in the Declarations or his or her spouse if a resident of the same household." The GEICO Policy defines "***Relative***" as "a person related to ***you*** who resides in ***your*** household."

Ms. Dominquez acknowledges that she, as one of the named policyholders of the GEICO Policy, constitutes an "insured." She further acknowledges that her daughter Elena, who lived in her household at the time of the accident, also qualifies as an "insured" under the GEICO Policy, and that Elena's vehicle was not described in the Declarations of the GEICO Policy. By virtue of the fact that Ms. Dominquez, an insured, sustained injuries while occupying a motor vehicle owned by another insured (her daughter Elena) which was not specifically covered under the GEICO Policy, the GEICO Policy seemingly allows GEICO to deny Ms. Dominquez coverage for the injuries she sustained in Elena's vehicle. Nevertheless, Ms. Dominquez argues that the GEICO Policy is impermissibly broad in that it excludes coverage for circumstances which Ins. § 19-509(f)(1) does not expressly authorize.

For clarity, we shall restate the relevant language of Ins. § 19-509(f)(1) and apply it to Ms. Dominquez and Elena: "An insurer may exclude from the uninsured motorist coverage required by this section benefits for . . . the named insured [Ms. Dominquez] . . . for an injury that occurs when the named insured [Ms. Dominquez] . . . is occupying . . .

an uninsured motor vehicle that is owned by . . . *an immediate family member* of the named insured who resides in the named insured's household [Elena.]" (Emphasis added).

Ms. Dominquez contends that although Ins. § 19-509(f)(1) permits an insurer to exclude coverage when the insured occupies an uninsured vehicle owned by an "immediate family member" who resides in the insured's household, the GEICO Policy is overly broad because it excludes coverage when the insured occupies an uninsured vehicle owned by any "***relative*** if a resident of [the insured's] household." In other words, Ms. Dominquez claims that, whereas the statute allows insurers to exclude coverage only when the injury occurs in an *immediate* family member's uninsured vehicle (assuming the immediate family member resides in the same household as the insured), the GEICO Policy allows GEICO to exclude coverage when the injury occurs in *any* family member's uninsured vehicle (assuming that family member resides in the same household as the insured).[3]

The trial court rejected Ms. Dominquez's argument that the GEICO Policy impermissibly excluded coverage beyond the scope of Ins. § 19-509(f)(1). Rather, the court found that two appellate cases, *Comer*, 419 Md. 89, and *Powell v. State Farm Mut.*

[3] This Court reviewed the legislative history of Ins. § 19-509(f)(1) and found nothing specifically addressing the legislature's use of the word "immediate" to inform our interpretation of the statute. At least one commentator has suggested that the word "immediate" does not carry any particular significance. In *Maryland Motor Vehicle Insurance*, Andrew Janquitto, in the context of comparing Ins. § 19-509(f)(1) with Ins. § 19-505, noted, "A less significant difference [between the two statutes] is that the uninsured motorist exclusion applies to members of the named insured's 'immediate family,' while the [Personal Injury Protection] exclusion [Ins. § 19-505] applies to the named insured's 'family.' *Presumably, there is no difference between 'immediate family' and 'family.'*" Andrew Janquitto, *Md. Motor Vehicle Ins*. § 9.8(A)(7) (3d ed. 2020). As noted, our holding does not require us to resolve this discrepancy in statutory language.

Auto. Ins. Co., 86 Md. App. 98 (1991), dispositively determined that the GEICO Policy comported with Ins. § 19-509(f)(1). We disagree with the trial court that *Comer* and *Powell* are controlling on the issue presented here.

To be sure, *Powell* involved a factual scenario similar to the instant case: a husband, who had an insurance policy with uninsured motorist coverage limits of $100,000 per person, was injured while occupying his wife's vehicle. *Id*. at 100. Powell's wife's vehicle, however, was covered under an insurance policy which only provided $20,000 per person in uninsured motorist benefits. *Id*. Powell sought a declaration that the policy for his vehicle provided him additional coverage to the $100,000 limits set forth in his policy, but the circuit court determined that he was only eligible for coverage under his wife's policy. *Id*.

On appeal, this Court noted that "a clause in an insurance policy, which is contrary to 'the public policy of this State, as set forth in . . . the Insurance Code' or other statute, is invalid and unenforceable." *Id*. at 104 (quoting *Jennings v. Gov't Emps. Ins. Co*., 302 Md. 352, 356 (1985)). Nevertheless, we held that the language of Powell's policy, which, like the GEICO Policy here, excluded uninsured motorist coverage for insureds occupying a vehicle owned by the insured, the insured's spouse, or any relative was not void as being in conflict with the predecessor to Ins. § 19-509(f)(1). *Id*. at 100, 112.

In *Comer*, Comer was seriously injured while riding his motorcycle. 419 Md. at 91-92. At the time of the accident, Comer, who lived in his father's home, had an insurance policy which provided uninsured motorist coverage limits of $50,000 per person. *Id*. at 92. Because Comer's medical expenses alone exceeded the amount he could recover under his

own insurance policy or that of the driver who struck him,[4] Comer filed a claim under his father's insurance policy, which carried single limit uninsured motorist coverage in the amount of $300,000. *Id*. GEICO, Comer's father's insurance carrier, denied Comer's claim based on the following exclusion in the GEICO policy: "***Bodily Injury*** sustained by an ***insured*** while occupying a motor vehicle owned by an ***insured*** and not described in the declarations and not covered by the bodily injury and property damage liability coverages of this policy is not covered." *Id*. at 93. We note that the language in the GEICO exclusion in *Comer* is very similar to the GEICO exclusion in the instant case.

Comer successfully challenged GEICO's denial of his claim in circuit court, but the Court of Appeals ultimately disagreed. *Id*. at 94-95, 100. The Court of Appeals held that the GEICO exclusion was authorized by Ins. § 19-509(f)(1), and that GEICO was permitted to deny coverage: "Comer was a family member of the named insured, resided in the named insured's household, was occupying a motorcycle owned by him when he was injured, and the vehicle was not insured under the GEICO policy." *Id*. at 98. The Court held that the GEICO exclusion was "authorized by [Ins. § 19-509(f)(1)] and [was] applicable under the facts of [the] case." *Id*. at 100.

We understand the trial court's temptation to rely on these cases in upholding the validity of the GEICO Policy exclusion. Both *Powell* and *Comer* involved exclusions

[4] Comer's insurer denied his claim for uninsured benefits as he received $100,000 in coverage from the motorist who struck him. *Comer*, 419 Md. at 92 & n.2. This was so because the $100,000 he received exceeded the $50,000 he was eligible for under his own policy for uninsured motorist coverage. *Id*.

based on Ins. § 19-509(f)(1) that are similar to the GEICO Policy exclusion. Both this Court and the Court of Appeals upheld those exclusions as lawful and consistent with the public policy articulated by Ins. § 19-509(f)(1). Nevertheless, in neither opinion did this Court or the Court of Appeals consider whether the exclusions were impermissibly broad vis-à-vis the "immediate family member" language in Ins. § 19-509(f)(1) that Ms. Dominquez raises here. Accordingly, because those Courts did not address the precise issue raised in this case, we decline to construe *Powell* and *Comer* as dispositively resolving the lawfulness of the language in the GEICO Policy exclusion.

Although we disagree with the trial court's reliance on *Powell* and *Comer*, we shall nevertheless affirm. Maryland law is clear: when the contractual provision of an insurance policy conflicts with a stated public policy, the policy provision is invalid, but "only to the extent of the conflict between the stated public policy and the contractual provision." *State Farm Mut. Auto. Ins. Co. v. Nationwide Mut. Ins. Co*., 307 Md. 631, 643 (1986) (citing *Ins. Comm'r v. Metro. Life Ins. Co*., 296 Md. 334, 340 n.6 (1983)). We explain.

In *State Farm*, the Court of Appeals was tasked with determining whether the "household exclusion" clause in an automobile liability insurance policy was wholly invalid, or whether the invalidity only extended to the amount of minimum liability coverage required by Maryland's compulsory insurance law. *Id*. at 633. There, State Farm issued an automobile insurance policy to Robert Carroll. *Id*. "The policy excluded coverage for injury to 'any insured or any member of an insured's family residing in the insured's household.'" *Id*. Several months after issuance of the policy, Carroll was in an accident while a passenger in his own vehicle. *Id*. The person driving his vehicle was a

friend named Christina Glass; she was insured by Nationwide Mutual Insurance Company and was not a member of Carroll's household. *Id*. at 633-34. Glass's Nationwide policy "insured her, among other things, against liability for any accident involving her use of a motor vehicle belonging to someone who, like Carroll, was not a member of her household." *Id*.

When Carroll sued Glass's estate, Nationwide, hoping to have State Farm designated as the primary insurer, sought a declaration that the "household exclusion" in Carroll's State Farm policy was void as against public policy. *Id*. While the action was still pending in the circuit court, the Court of Appeals issued *Jennings v. Gov't Emps. Ins. Co*., 302 Md. 352 (1985). *State Farm*, 307 Md. at 634. Significantly, the *Jennings* Court held that "the household exclusion is invalid." 302 Md. at 362. In light of the *Jennings* decision, State Farm could no longer respond that the household exclusion was "entirely valid." *State Farm*, 307 Md. at 634. Instead, the issue in the circuit court became "whether the [household] exclusion was valid as to State Farm's coverage above and beyond the statutory minimum personal injury coverage of $20,000/$40,000 prescribed by the compulsory insurance law[.]" *Id*.

The circuit court determined that the entire exclusion was invalid, thereby allowing Carroll to recover the full policy benefits under his State Farm policy. *Id*. State Farm appealed and argued that,

> if a contract provision is to be invalidated on the basis of a conflict with public policy, the invalidation should extend no further than the demands of that policy: in this case, that motorists have liability coverage in the minimum amounts of $20,000/$40,000 with respect to personal injury. Since public

> policy, as statutorily promulgated, requires no more coverage than that, an insurance exclusion should be given effect as to larger sums.

Id. at 634-35. In other words, State Farm argued that, although *Jennings* invalidated its household exclusion, the household exclusion was only invalid to the extent that it excluded the minimum mandatory coverage amounts of $20,000/$40,000. According to State Farm, its exclusion was invalid for failing to provide coverage for the statutory minimum mandates, but was still valid to the extent it excluded coverage for amounts exceeding those mandatory statutory minimums. Nationwide responded that, because *Jennings* held that the household exclusion was invalid, "the entire exclusion should [have been] excised from the insurance contract; the document should be read as if the exclusion were not there." *Id*. at 635.

The Court of Appeals rejected Nationwide's argument and agreed with State Farm that the exclusion was valid to the extent it exceeded the mandatory minimum coverage. The Court began its discussion by noting that, "a clause in an insurance policy, which is contrary to 'the public policy of this State, as set forth in . . . the Insurance Code' or other statute, is invalid and unenforceable." *Id*. at 636 (citing *Jennings*, 302 Md.at 356). The Court noted, however, that "what the legislature has prohibited is liability coverage of less than the minimum amounts required by § 17-103(b)(1) of the Transportation Article. . . . The 'household exclusion' violates public policy *only to the extent it operates to prevent this mandatory minimum coverage*.'" *Id*. at 637 (emphasis added).

The Court reviewed decisions from other jurisdictions regarding whether the household exclusions were completely void, or only void to the extent of the minimum

coverage required by statute. *Id*. at 639-643. Ultimately, the Court aligned with the majority of jurisdictions, holding that the

> "insured" segment of a "household exclusion" clause in an automobile liability insurance policy is invalid to the extent of the minimum statutory liability coverage. So far as the public policy evidenced by the compulsory insurance law is concerned, it is a valid and enforceable contractual provision as to coverage above that minimum.

Id. at 644. In other words, the Court held that the household exclusion, though invalid as to the statutory minimum coverages, was valid and enforceable as to the amounts exceeding those mandatory minimums.

In reaching its holding, the Court of Appeals recognized the generally-accepted principle in contract law that, "A contractual provision that violates public policy is invalid, but only to the extent of the conflict between the stated public policy and the contractual provision." *Id*. at 643. The Court relied on several cases for this proposition: *Ins. Comm'r v. Metro. Life Ins. Co*., 296 Md. 334, 340 n.6 (1983) ("As many of the above-cited cases point out, clauses in insurance policies, which are inconsistent with statutes mandating certain coverages, are void to the extent of the inconsistency." (citing *Nationwide Mut. Ins. v. Webb*, 291 Md. 721, 730 (1981))); *Reese v. State Farm Mut. Auto. Ins. Co*., 285 Md. 548, 552 n.1 (1979) ("However, with regard to insurance coverage required by statute, the provisions of the statute control to the extent of any discrepancy between the statute and a particular policy." (citing *State Farm Mut. Auto. Ins. Co. v. Ins. Comm'r*, 283 Md. 663, 671 n.2 (1978))); and *Am. Weekly v. Patterson*, 179 Md. 109, 115 (1940) (restricting an overly-broad non-competition covenant to its proper scope).

Although *State Farm* concerned the effects of the invalidity of the household exclusion, we note that the *Powell* Court accepted the same principle in construing an uninsured motorist exclusion that was very similar to the GEICO Policy exclusion here. After recognizing the principle articulated in *State Farm*, the *Powell* Court stated, "We further note that even if we were, *arguendo*, to adopt appellant's public policy arguments the outcome would not change. *If the policy exclusion at issue were to be determined to be in conflict with the statute, it would only be in conflict as to the minimum required coverage, i.e., $20,000/$40,000*." *Powell*, 86 Md. App. at 113 (emphasis added). Thus, regardless of the type of exclusion at issue, Maryland appellate courts have consistently invalidated an exclusion only to the extent it contradicts established public policy. We shall do the same here.[5]

In conclusion, assuming *arguendo* that the GEICO Policy exclusion is invalid because it excludes coverage where the injury occurs in *any* family member's vehicle as

[5] Ms. Dominquez urges us not to apply *State Farm* to the instant case. She argues that the Court of Appeals took a "dim view" of *State Farm* in *W. Am. Ins. Co. v. Popa* when the Court stated, "The holding of the *State Farm Mut*. case, however, has not been applied by this Court to any other automobile insurance policy exclusions or provisions. Moreover, we have specifically declined to apply the *State Farm Mut.* holding in a context other than the household exclusion to liability coverage." 352 Md. 455, 477 (1998) (citing *Van Horn v. Atl. Mut. Ins. Co*., 334 Md. 669, 694-96 (1994)).

Our research belies that argument. Not only did we cite to and rely on *State Farm* in *Powell*—an uninsured motorist exclusion case—but so did the Court of Appeals in *Wilson v. Nationwide Mut. Ins. Co*., 395 Md. 524 (2006). *Wilson* concerned a "fellow employee" exclusion, and the Court of Appeals, relying on *State Farm* and distinguishing *Popa*, held that the exclusion was valid as to coverage above the "minimum statutory automobile liability insurance amount." *Id*. at 534. Thus, we are confident that *State Farm* and its progeny remain good law.

opposed to only an *immediate* family member's vehicle as provided by statute, the remedy would be to construe the exclusion to ensure that it complies with the statute. Here, that remedy would limit the exclusion to immediate family members as prescribed in the statute. Because Ms. Dominquez concedes that she could not recover uninsured motorist benefits from the GEICO Policy exclusion if it is construed to conform to the statute, GEICO was entitled to summary judgment on Ms. Dominquez's claim for benefits under the GEICO Policy.[6]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[6] We note that our holding comports with the recognized public policy behind Ins. § 19-509(f)(1):

> to prevent a family, owning several motor vehicles, from insuring only one or two of them with an insurer, leaving the other vehicles uninsured, or underinsured under a different policy, and being able to claim uninsured or underinsured motorist benefits from the first insurer even though no premium was paid to the first insurer for coverage of the other vehicles.

Comer, 419 Md. at 98. This case presents the precise factual scenario the statute was designed to protect against. By affirming the circuit court, Ms. Dominquez will not be able to recover under her own insurance policy for an injury she sustained in an underinsured vehicle owned by an immediate family member.