UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1646
September Term, 2014

JAMES T. SCHIFFLER

v.

ERIE INSURANCE EXCHANGE

No. 2250
September Term, 2014

TYLER A. FURMAN

v.

ERIE INSURANCE EXCHANGE

Meredith,
Kehoe,
Hotten,
JJ.

Opinion by Meredith, J.

Filed: October 27, 2015

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In these two cases, consolidated for appellate purposes, we review whether Erie Insurance Exchange ("Erie"), appellee in both appeals, properly denied claims made by its insureds for underinsured motorist coverage pursuant to motor vehicle insurance policies issued by Erie. In Appeal No. 1646, appellant James T. Schiffler ("Schiffler") filed suit against Erie in the Circuit Court for Worcester County, Case No. 23-C-13-0684, seeking underinsured motorist coverage for damages suffered when Schiffler was operating his moped on May 22, 2010. In Appeal No. 2250, appellant Tyler A. Furman ("Furman") made a claim upon Erie seeking underinsured motorist coverage for damages suffered when Furman was operating his motor scooter on July 29, 2012. Erie filed a declaratory judgment action against Furman in the Circuit Court for Montgomery County, Case No. 384521V. In each case, the circuit court granted summary judgment in favor of Erie, ruling that Erie's policy excluded coverage for the subject accident, and that the policy's exclusion was authorized by Maryland statute.

Schiffler and Furman contend, *inter alia*, that the circuit courts erred in concluding that Erie's exclusion of underinsured motorist coverage for their accidents was permitted by Maryland Code, (1996, 2011 Repl. Vol.), Insurance Article ("Insurance"), § 19-509(f). Because we view *Crespo v. Topi*, 154 Md. App. 391 (2003), as controlling authority that compels us to agree with the appellants, we shall reverse the judgment entered in each case.

BACKGROUND

Each of the underlying claims arose from a collision that occurred in Ocean City, Maryland. In Schiffler's case, he was riding his moped to his place of employment at Seacrets when a Jeep driven by Andrew Moore turned into his lane without yielding the

right of way and collided with Schiffler. The impact fractured Schiffler's leg. Schiffler made a claim against Moore, and Moore's auto insurer tendered policy limits of $100,000. Schiffler settled with Moore, but reserved the right to pursue a UIM claim against Erie pursuant to the policy insuring two automobiles owned by Schiffler. Erie took the position that, although Moore was an underinsured motorist in this instance, UIM coverage was excluded by a provision in Schiffler's policy. Schiffler filed suit against Erie in the Circuit Court for Worcester County. The circuit court granted summary judgment in favor of Erie.

In Furman's case, he was riding his motor scooter to his place of employment at Scopes when a vehicle driven negligently by John Wytrwal collided with Furman, causing serious injuries. Furman made a claim against Wytrwal, and Wytrwal's auto insurer tendered policy limits of $100,000. Furman settled with Wytrwal, but then submitted a UIM claim to Erie pursuant to the policy insuring the automobiles owned by Furman's parents (with whom he resided). Erie took the position that, although Wytrwal was an underinsured motorist in this instance, UIM coverage was excluded by a provision in Furman's policy. Erie filed a declaratory judgment action against Furman in the Circuit Court for Montgomery County. The circuit court granted summary judgment in favor of Erie.

DISCUSSION

At the time of the two accidents that are the subject of these appeals, neither a moped nor a motor scooter was considered a motor vehicle under the Maryland Vehicle Laws codified in Maryland Code (1977, 2009 Repl. Vol., 2010 Supp.), Transportation Article ("Transp."), § 11-135. Prior to October 1, 2012, owners of mopeds and motor scooters were

not required by law to maintain insurance coverage for either type of device, and neither Schiffler nor Furman purchased insurance expressly covering the moped and motor scooter that were involved in the accidents that gave rise to these cases.[1]

A "moped" — the mode of transportation being used by Schiffler at the time he was struck by an underinsured driver — was defined as follows in Transp. § 11-134.1:

> "Moped" means a bicycle that:
>
> (1) Is designed to be operated by human power with the assistance of a motor;
>
> (2) Is equipped with pedals that mechanically drive the rear wheel or wheels;
>
> (3) Has two or three wheels, of which one is more than 14 inches in diameter; and
>
> (4) Has a motor with a rating of 1.5 brake horsepower or less and, if the motor is an internal combustion engine, a capacity of 50 cubic centimeters piston displacement or less.

A "motor scooter" — the mode of transportation being used by Furman at the time he was struck by an underinsured driver — was defined as follows in Transp. § 11-134.5:

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[1]Until October 1, 2012, Maryland law did not require the operator of a moped or motor scooter to maintain the minimum levels of insurance that operators of motor vehicles are generally mandated to maintain pursuant to Title 17 of the Transportation Article. But, effective as of October 1, 2012 — *i.e.*, after the date of both of the accidents that are the subject of this appeal — Transp. § 17-104.1 provides: "The operator of a moped or motor scooter shall carry evidence of the required security when operating the moped or motor scooter." At the same time, Transp. § 13-104(a)(3) was amended to provide: "The owner of a motor scooter or moped shall certify at the time of titling that the motor scooter or moped is covered by the required security described in § 17-103 of this article." Had these requirements for insurance been in effect at the time of the subject accidents, it is likely the outcome of these appeals would be different.

> (a) *In general.* – "Motor scooter" means a nonpedal vehicle that:
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> (1) Has a seat for the operator;
>
> (2) Has two wheels, of which one is 10 inches or more in diameter;
>
> (3) Has a step-through chassis;
>
> (4) Has a motor:
> (i) With a rating of 2.7 brake horsepower or less; or
> (ii) If the motor is an internal combustion engine, with a capacity of 50 cubic centimeters piston displacement or less; and
>
> (5) Is equipped with an automatic transmission.
>
> (b) *Off-road Vehicles.* – "Motor scooter" does not include a vehicle that has been manufactured for off-road use, including a motorcycle and an all-terrain vehicle.

The Transportation Article provided expressly in § 11-135(b) that neither a moped nor a motor scooter was a "motor vehicle." That statute states:

> "Motor vehicle" does not include:
>
> (1) A moped, as defined in § 11-134.1 of this subtitle; or
>
> (2) A motor scooter, as defined in § 11-134.5 of this subtitle.

In *Maryland Auto. Ins. Fund v. Perry*, 356 Md. 668, 670 (1999), the Court of Appeals described Maryland's statutory scheme governing motor vehicle insurance by way of overlapping provisions in the Transportation Article and the Insurance Article. Judge Alan Wilner wrote for the Court:

> Maryland law requires that the owners of motor vehicles required to be registered have certain minimum insurance coverage (or comparable security acceptable to the Motor Vehicle Administration). It requires insurance companies writing motor vehicle insurance in Maryland to offer that minimum

> coverage as well as certain other coverages that an insured may opt to decline or limit. The requirements imposed upon vehicle owners to have the mandated security are provided for in title 17 of the Transportation Article. The requirements imposed upon insurance companies to offer the specified coverages are found in title 19, subtitle 5 of the Insurance Article. In a nutshell, the Transportation Article focuses on the owners and drivers of motor vehicles; the Insurance Article focuses on insurance companies and their insureds. **The two parts of the Code obviously need to be read together, in harmony.**
>
> Section 17-104 of the Transportation Article requires the owners of motor vehicles subject to registration in Maryland to maintain certain required security during the registration period and prohibits the Motor Vehicle Administration from issuing or transferring the registration of a motor vehicle unless the owner or prospective owner furnishes satisfactory evidence that the required security is in effect. The nature and extent of the required security is set forth in § 17-103. With exceptions not relevant here, that section requires the security to be in the form of an insurance policy providing (1) liability coverage for bodily injury or death arising from an accident of up to $20,000 for one person and up to $40,000 for two or more persons; (2) liability coverage for damage to the property of others of up to $10,000; (3) unless waived, the benefits described under § 19-505 of the Insurance Article as to basic primary coverage (PIP coverage); and (4) the benefits required under § 19-509 of the Insurance Article as to required additional coverage (uninsured/underinsured motorist coverage). A person who fails to maintain the required security is subject to a variety of civil penalties, including suspension of the person's driving privileges and monetary fines. See § 17-106. A person who knowingly drives an uninsured motor vehicle or an owner who knowingly permits one to be driven is subject as well to criminal penalties. See §§ 17-107, 27-101(h). For a first offense, the person is subject to a $1,000 fine and a year in jail.
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> Title 19, subtitle 5 of the Insurance Article, as noted, sets forth the kinds of primary coverages that motor vehicle insurers are required to offer in Maryland policies. There are three such coverages: PIP benefits, provided for in §§ 19-505 through 19-508; uninsured/underinsured motorist coverage, provided for in §§ 19-509 through 19-511; and collision coverage, provided for in § 19-512.

(Emphasis added; footnote omitted.)

Currently, Transp. § 17-103 sets forth the minimum benefits of security (typically provided by way of insurance coverage) that must be maintained by operators of motor vehicles, and requires that the security "shall provide for at least: . . . (3) . . . the benefits described under § 19-505 of the Insurance Article as to basic required primary coverage" and "(4) The benefits required under § 19-509 of the Insurance Article as to required additional coverage . . . ." This cross reference regarding the minimum coverages required under the Transportation Article and the insurance regulations contained in the Insurance Article is subject to the duty of the courts "to read the 'two parts of the Code . . . together, in harmony.'" *Crespo*, *supra*, 154 Md. App. at 397 (quoting *Maryland Auto. Ins. Fund v. Perry*, 356 Md. at 670). As we also noted in *Crespo*, *id*. at 397 n.4, the Insurance Article provides, in § 19-101(b): "In addition to any requirement of this article and to the extent not inconsistent with this article, a motor vehicle liability insurance policy is subject to the Maryland Vehicle Law." And Insurance § 19-502(a) stipulates: "This subtitle does not affect Title 17 of the Transportation Article." Further, Insurance § 19-504 mandates: "Each motor vehicle liability insurance policy issued, sold, or delivered in the State shall provide the minimum liability coverage specified in Title 17 of the Transportation Article."

Section 19-509(c) of the Insurance Article required Erie to include underinsured motorist coverage in the motor vehicle liability policies that covered the automobiles owned by Schiffler and Furman's family, as follows:

> (c) *Coverage required.* — In addition to any other coverage required by this subtitle, each motor vehicle liability insurance policy issued, sold, or delivered in the State after July 1, 1975, shall contain coverage for damages, subject to the policy limits, that:

> (1) the insured is entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injuries sustained in a motor vehicle accident arising out of ownership, maintenance, or use of the uninsured motor vehicle . . . .

With respect to the policy limit of the underinsured motorist coverage, § 19-509(e)(ii) and § 19-510(b)(2) provide that, unless affirmatively waived in accordance with § 19-510(d), "the insurer shall provide uninsured motorist coverage in an amount equal to the amount of the liability coverage provided under the policy or binder."

The policies Erie issued to Schiffler and Furman's family did, of course, provide coverage for UIM claims. But the Erie policies also contained a purported exclusion of the UIM coverage if the insured was injured while operating an "owned-but-uninsured" vehicle. The specific policy exclusion Erie relied upon to deny each of appellants' claims was as follows:

> This insurance does not apply to . . .
>
> 6. Damages sustained by 'anyone we protect' while 'occupying' or struck as a pedestrian by, a 'motor vehicle' or 'miscellaneous vehicle' owned or leased by 'you' or a 'relative,' but not insured for uninsured/underinsured Motorist Coverage under this policy.

The Erie policy further defined "Miscellaneous Vehicle" as:

> a motorcycle (including a motorcycle with a sidecar), moped, snowmobile, golf cart, all terrain vehicle and any similar recreational vehicle. It does not include a lawn and garden tractor or mower or similar vehicle.

Schiffler and Furman assert that the policy exclusion Erie relied upon to deny their claims for UIM coverage is contrary to the minimum coverage statutes that were applicable to operators of mopeds and motor scooters in Maryland at the time of the subject accidents.

They contend that the statutory minimum coverage provisions preclude Erie from relying upon the owned-but-uninsured exclusion in their policies as a defense to UIM claims made for injuries they incurred when they were struck by drivers of underinsured motor vehicles while appellants were operating their moped and motor scooter. As noted above, we conclude that our statutory interpretation in *Crespo* supports the appellants' claims.

Erie contends that the owned-but-uninsured exclusion is expressly authorized by Insurance § 19-509(f), which permits the following exclusions from UIM coverage:

> (f) *Exclusions*. – **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; . . . .

(Emphasis added.)

Erie asserted that, under Insurance § 19-509(f), the appellants could be denied UIM benefits for their injuries because Schiffler's moped and Furman's motor scooter were each "an uninsured motor vehicle that is owned by the named insured" (or family member of a named insured). Erie takes that position even though the Transportation Article expressly states that neither of those vehicles was a "motor vehicle" and motor vehicle insurance (or security) was not required for either vehicle at the time of the subject accidents.

In support of Erie's contention that its owned-but-uninsured exclusion of UIM coverage for injuries sustained while operating Schiffler's moped and Furman's motor

scooter was expressly permitted by Insurance § 19-509(f)(1), Erie points to a definition of "motor vehicle" set forth in Insurance § 19-501(b), which states: "(1) 'Motor vehicle' means a vehicle, including a trailer, that is operated or designed for operation on a public road by any power other than animal or muscular power." On its face, the general definition of "motor vehicle" in Insurance § 19-501(b) seems inconsistent with the specific statutory definition of "motor vehicle" in Transp. § 11-135(b), which states expressly that "motor vehicle" does not include a "moped" or "motor scooter."

It appears that the circuit courts resolved these conflicting definitions of "motor vehicle" by giving priority to the more general definition contained in Insurance § 19-501(b). If we were writing on a blank slate, we might be persuaded by the logic in Erie's argument. But this same conflict in the statutory definitions contained in the Transportation Article and the Insurance Article was considered by us in *Crespo* in 2003, and was resolved in that case in a manner that is contrary to Erie's contention that we should give controlling priority to the definition contained in Insurance § 19-501(b).

In *Crespo*, *supra*, 154 Md. App. at 397-398, we expressly resolved the discrepancy in statutory definitions by harmonizing the provisions of the Transportation Article with those of the Insurance Article, and we concluded that, for purposes of analyzing uninsured motorist coverage, "a moped is not a motor vehicle." We explained:

> **We are not convinced that, standing alone, the statutory definitions of "motor vehicle" and "moped" as found in the Transportation Article and the Insurance Article are dispositive.** As discussed, Transportation § 11-134.1 defines a moped as a "bicycle that is designed to be operated by human power with the assistance of a motor." Moreover, a moped, along with a motor scooter, is expressly exempted from the definitions of "motor vehicle"

> in Transportation § 11-135(b)(1) and (2). Title 19 of the Insurance Article defines a "'motor vehicle' as a vehicle . . . that is operated or designed for operation on a public road by any power *other than* animal or muscular power." Ins. § 19-501(b)(1) (emphasis added).
>
> **It can be argued that the definition of "motor vehicle" in Ins. § 19-501(b)(1) is broad enough to include a "moped."** The Merriam-Webster's Collegiate Dictionary 754 (10th ed. 2000) defines " 'moped' as a lightweight low-powered motorbike that can be pedaled." At times a moped can be operated on a public road by a power other than muscular or human power. The statutory definition of a moped as a "bicycle . . . designed to be operated by human power with the assistance of a motor" in Transp. § 11-134.1 would not preclude its *operation* on a public road by a power other than muscular power.
>
> Our analysis in this instance, however, does not end with the definitions. Because "the Transportation Article focuses on the owners and drivers of motor vehicles" and the Insurance Article focuses on insurance companies and their insureds," **the Court of Appeals has instructed us to read the "two parts of the Code . . . together, in harmony."** *Maryland Auto. Ins. Fund v. Perry*, 356 Md. 668, 670, 741 A.2d 1114 (1999). **When we do, we are persuaded that a moped is not a motor vehicle for uninsured motorist purposes.**

(Bold emphasis added.) At the conclusion of the *Crespo* opinion, we reiterated our conclusion, stating: "A moped is not a motor vehicle for uninsured motorist coverage." *Id.* at 399. We see no rational basis for suggesting that the analysis and conclusion could be any different for a motor scooter.

If we apply *Crespo's* pronouncement that, notwithstanding the seemingly broad definition of "motor vehicle" in Insurance § 19-501(b), "a moped is not a motor vehicle for uninsured motorist purposes," we are compelled to conclude that the reference in Insurance § 19-509(f) to possible exclusions from UIM coverage when the insured was occupying an uninsured "motor vehicle" owned by the named insured could not be applicable to a moped;

nor, by extension, could § 19-509(f) authorize an exclusion if the insured was occupying a motor scooter.

The statutory interpretation announced by this Court in *Crespo* was the law of this State at the time of the accidents that are the subject of this appeal. During the decade or so that passed between the announcement of our ruling in *Crespo* and the two accidents that are the subject of this appeal, the General Assembly took no action to amend the statutory definitions in a manner that would lead to a different result. Whether the legal landscape has changed by virtue of the enactment of Transp. § 17-104.1 — which requires, effective October 1, 2012, that "[t]he operator of a moped or motor scooter shall carry evidence of the required security when operating the moped or motor scooter" — is a question that is not before us at this time.

Accordingly, we hold that, in each of the cases before us, the circuit court erred in concluding that Erie's exclusion of UIM coverage for an owned-but-uninsured moped or motor scooter was permitted by Insurance § 19-509(f). Summary judgment should not have been granted in favor of Erie on the basis of the policy exclusion in either case.

JUDGMENTS OF THE CIRCUIT COURTS FOR WORCESTER COUNTY AND MONTGOMERY COUNTY REVERSED; CASES REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.