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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FIRE INSURANCE EXCHANGE, Plaintiff and Respondent, v. MARIA OLIVIA VASQUEZ, et al., Defendants and Appellants.	B265388 (Los Angeles County Super. Ct. No. BC554913)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rolf M. Treu, Judge. Affirmed.

Kabateck Brown Kellner, Brian S. Kabateck, Joshua H. Haffner, Justin F. Spearman, Drew R. Ferrandini; Geragos & Geragos, Mark J. Geragos and Benjamin J. Meiselas, for Defendants and Appellants.

Archer Norris, Limor Lehavi; Greines, Martin, Stein & Richland, Robert A. Olson and Edward L. Xanders, for Plaintiff and Respondent.

This appeal arises from a dispute about liability coverage under two insurance policies procured by Eduardo Ramirez (Ramirez) and his wife Rosa Batun (Batun) from defendant Fire Insurance Exchange (Fire Insurance). One of the policies covered their residence, and the other covered a subdivided home they rented out to two families, one of which was plaintiff Maria Olivia Vasquez (Vasquez) and her five children. Both policies insured Ramirez and Batun from damages they became obligated to pay because of bodily injury or property damage, but excluded from this liability coverage were any injuries or damage resulting from the use of motor vehicles. It is undisputed that on December 1, 2009, Ramirez negligently backed his truck down the driveway running adjacent to the door to Vasquez's rental unit and hit and killed Brian Guardado (Brian), Vasquez's sixteen-month-old toddler. It is also accepted that Ramirez and Batun negligently maintained the rental unit Vasquez occupied—specifically by subdividing the home into a rental unit that lacked a safe area for ingress and egress. We are asked to decide whether the negligent maintenance of the property was a cause of the accident sufficiently independent of the negligent driving to trigger coverage under the policies despite the terms of the motor vehicle exclusion.

I. BACKGROUND

A. The Accident

There are two buildings on the real property lot involved in this case. Ramirez and Batun lived in the residence in the back of the lot at 1074½ South Herbert Avenue, and they rented out a home at the front of the lot, 1074 South Herbert Avenue. A narrow driveway runs on the north side of the lot, alongside both

buildings, and provides the sole vehicle access to the street for each address. Ramirez routinely parked his GMC utility truck at the end of the driveway near his residence, which required him to back down the length of the driveway to reach the street.

The building at 1074 South Herbert Avenue initially included a residence and a laundry room, but Ramirez and Batun had the laundry room converted into a second residence (without obtaining a building permit for the renovation). The only way to get in or out of that new unit—the one occupied by Vasquez and her children—was through a doorway that exited to steps that let out immediately onto the driveway where Ramirez and Batun parked their vehicles, with no barrier separating the doorway from the driveway.

On the day of the accident, Ramirez was negligently backing his truck down the driveway from his residence toward the street and past Vasquez's residence. Vasquez and Brian were leaving their residence at about the same time, but Ramirez did not see Brian and ran into him, causing injuries that resulted in the child's death.

B. The Insurance Policies

As relevant here, Ramirez and Batun maintained three insurance policies. The first is a commercial vehicle insurance policy issued by Farmers Insurance Exchange, which defended the couple in a lawsuit later filed by Vasquez and Brian's father, Johny Guardado (Guardado), and paid the policy limit of $54,000. The other two policies are those at issue in this appeal, both of which were issued by Fire Insurance.

With respect to Ramirez and Batun's residence at 1074½ South Herbert Avenue, Fire Insurance issued a "special form

homeowners policy" naming Ramirez as the insured, with Batun an additional insured as a spouse residing with him (Homeowners Policy). With respect to the rental property at 1074 South Herbert Avenue, Fire Insurance issued a "special form dwelling fire policy" naming Ramirez as the insured, with Batun an additional insured as a spouse residing with him (Rental Policy). Both policies covered Ramirez and Batun against "those damages which an insured becomes legally obligated to pay because of bodily injury or property damage resulting from an occurrence to which this coverage applies."

The policies include three limitations on coverage. Both policies exclude liability coverage for bodily injury or property damage that "results from the ownership, maintenance, use, loading or unloading of . . . [¶] (b) **motor vehicles**" (the Motor Vehicle Exclusion). The policies also include a provision that states "[i]f other insurance is written by us, only the highest limit of any one policy applies to the loss" (the Stacking Provision). Lastly, the policies both provide "[t]his insurance applies separately to each **insured**" (the Separate Insurance Provision).

In addition, the Homeowners Policy excludes from liability coverage any bodily injury or property damage that "arises from or during the course of **business** pursuits of an **insured**," but the policy does cover "that part of a residence of yours which is rented or available for rent . . . to no more than two roomers or boarders for sole use as a residence" (Business Pursuits Exclusion).

C. The Lawsuits

Vasquez and Guardado, on behalf of themselves and Brian's estate, sued Ramirez and Batun (the Vasquez Action). The lawsuit alleged Ramirez negligently operated his truck, and

it further alleged Ramirez and Batun negligently converted and maintained the rental property, i.e., created a dangerous condition whereby the sole doorway to the Vasquez residence led directly onto a driveway.

While the Vasquez Action was pending, Fire Insurance filed a lawsuit against Vasquez and Guardado seeking a declaration that there was no coverage under either the Homeowners or Rental Policies for the damages alleged in the Vasquez Action and, in the event there was coverage, recovery against the two policies should be capped at the limit of only one of the policies (the Coverage Action). Fire Insurance contended the Motor Vehicle Exclusion in both policies barred coverage, and the insurance company further contended there could be no coverage under the Homeowners Policy because of its Business Pursuits Exclusion.

Farmers Insurance Exchange defended Ramirez and Batun in the Vasquez Action and settled the case. As part of the settlement of the Vasquez Action, Ramirez and Batun stipulated to judgment, not to be recorded, in an amount that would be decided in the Coverage Action. Specifically, the parties stipulated the Coverage Action would resolve three issues that would determine the total amount of any recovery: (1) whether the Motor Vehicle Exclusion applied, (2) whether the Business Pursuits Exclusion applied, and (3) whether the Stacking Provision applied. If the trial court determined the Motor Vehicle Exclusion applied, coverage would not be permitted under either policy and appellants would be awarded $79,000. If none of the three provisions applied, appellants would be awarded $1,250,000. If the Motor Vehicle Exclusion did not apply, but the Stacking Provision did, appellants would be awarded $700,000.

The parties also stipulated to the allegations in the complaint in the Vasquez Action, and agreed to limit discovery in the Coverage Action to that already taken in the Vasquez Action. The parties preserved their rights to appeal a final judgment in the Coverage Action.

Fire Insurance and Vasquez filed cross-motions for summary judgment[1] in the Coverage Action seeking determination of the three issues identified in the settlement of the Vasquez Action, i.e., the applicability of the Motor Vehicle Exclusion, Business Pursuits Exclusion, and Stacking Provision. Following a hearing, the trial court granted Fire Insurance's motion for summary judgment, concluding the Motor Vehicle Exclusion applied and barred Vasquez's claim. Reviewing applicable case law, and relying on close parallels to the facts at issue in *Farmers Ins. Exchange v. Superior Court* (2013) 220 Cal.App.4th 1199 (*Farmers*), the trial court reasoned that any negligence in situating "an illegally converted residence right off of a narrow driveway" was insufficiently independent from the use of a motor vehicle to conclude it was a concurrent proximate cause supporting liability. The trial court entered judgment for Fire Insurance and Vasquez and Guardado noticed this appeal.

II. DISCUSSION

The parties argue four issues on appeal, but only one—the applicability of the Motor Vehicle Exclusion—is dispositive.

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[1] Fire Insurance's motion was titled "Motion for Summary Judgment, or in the Alternative, Summary Adjudication." The summary adjudication aspect of the motion related to the Business Pursuit Exclusion and the Stacking Provision.

Vasquez and Guardado argue the Motor Vehicle Exclusion does not bar coverage under *State Farm Mutual Automobile Ins. Co. v. Partridge* (1973) 10 Cal.3d 94 (*Partridge*) because the negligent driving and the negligently converted premises were concurrent, independent proximate causes of the accident. We hold *Partridge* is not controlling on the facts here. Ramirez's use of his truck—an instrumentality excluded from insurance coverage—unquestionably played an active role in causing Brian's fatal injuries. In addition, the conversion of Vasquez's rental unit, so that the door opened immediately onto a narrow driveway, was negligent precisely because it exposed the unit's occupants to the danger of negligent automobile use. Under these circumstances, there do not exist two *independent* proximate causes for Brian's injuries such that recovery under the insurance policies would be permitted.

A. Standard of Review

"'Because this case comes before us after the trial court granted a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. (*State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1034-1035 [6 Cal.Rptr.3d 441, 79 P.3d 556].) "'We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.'" (*Id.* at p. 1035 [6 Cal.Rptr.3d 441, 79 P.3d 556].) We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142 [12 Cal.Rptr.3d 615, 88 P.3d 517].)' (*Yanowitz v.*

L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1037 [32 Cal.Rptr.3d 436, 116 P.3d 1123]." (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 716–17.)

B. The Motor Vehicle Exclusion Prevents Coverage for the Accident Under the Homeowners and Rental Policies

Whether a motor vehicle exclusion in a homeowners policy bars coverage for an accident involving a vehicle is a recurring, and often difficult, question that arises under California law. Many opinions, including this one, begin analyzing the issue with a discussion of our Supreme Court's 1973 decision in *Partridge*.

In that case, Wayne Partridge owned a gun that he had modified so that it had a "hair trigger action." (*Partridge*, *supra*, 10 Cal.3d at p. 97.) He brought the gun with him when he was driving with two friends to hunt jackrabbits from his vehicle. While driving off road, Partridge's vehicle hit a bump and the gun discharged—the bullet hit his friend and the resulting injury left her paralyzed. (*Id.* at p. 98.)

Partridge had both an automobile policy and a homeowners policy with State Farm. (*Partridge*, *supra*, 10 Cal.3d at pp. 98-99.) State Farm conceded coverage under the automobile policy and paid the policy limit, but it filed a declaratory relief action for a determination whether coverage was precluded on the homeowners policy because it incorporated an exclusion for bodily injuries caused by accidents arising out of the use of a vehicle. (*Ibid.*) State Farm argued that because the accident involved a car, the vehicle exclusion in the homeowners policy applied and defendant was covered only by the automobile policy. (*Id.* at p. 99.) The defendants in the declaratory relief action (including

Partridge) "argued that since two independent negligent acts, one covered by the homeowners policy and one by the automobile policy, jointly caused the accident, coverage should be afforded by both policies." (*Id.* at p. 97.)

Our Supreme Court held "the crucial question presented is whether a liability insurance policy provides coverage for an accident caused jointly by an insured risk (the negligent filing of the trigger mechanism) and by an excluded risk (the negligent driving). Defendants correctly contend that when two such risks constitute concurrent proximate causes of an accident, the insurer is liable so long as one of the causes is covered by the policy." (*Partridge*, *supra*, 10 Cal.3d at p. 102.) The Court noted State Farm conceded the negligent filing of the trigger mechanism was a risk covered by the liability policy and that had the injury occurred while the insured was walking down the street or running in the woods, the resulting injury would have been covered under the policy. The Court accordingly reasoned coverage under the homeowners policy should not be denied because negligent driving also contributed to the injury. (*Id.* at p. 103.)

The *Partridge* decision spawned a number of cases analyzing whether insurance coverage exists for accidents attributable to both negligence in operating a vehicle and some other arguably non-vehicle-related negligence. The central question in these cases has been whether the accidents were covered by a homeowners policy notwithstanding the common exclusion of coverage for accidents attributable to motor vehicle use. The cases have answered this question by focusing on whether the alleged concurrent proximate causes were sufficiently independent of one another to trigger coverage.

Where the negligent acts are independent, courts have held, as in *Partridge*, there would be coverage for the injury under both the vehicle and homeowners policies. (See, e.g., *Farmers*, *supra*, 220 Cal.App.4th at pp. 1208-1209 [citing cases].) However, where the asserted non-vehicle-related negligence is not independent of the vehicle-related negligence, courts have held the vehicle exclusion applies and there is no coverage for the injury under the homeowners policy. (*Ibid.*)

In assessing whether the alleged negligent conversion of Vasquez's rental unit is independent of the other undisputed cause of the accident (Ramirez's negligent use of his truck), the closest parallel is *Farmers*, *supra*, 220 Cal.App.4th 1199. In that case, a grandfather ran over and killed his toddler granddaughter when she left the house without supervision to greet him on the driveway. (*Id.* at p. 1202.) The child's mother filed a lawsuit against both grandparents, alleging the accident was caused by the grandfather's negligent operation of the truck and the grandmother's negligent supervision of the granddaughter. (*Ibid.*)

The grandparents had a homeowners policy with an exclusion for bodily injury resulting from the operation of a motor vehicle. (*Farmers*, *supra*, 220 Cal.App.4th at pp. 1201-1202.) The grandparents' insurer filed a lawsuit seeking, among other relief, a declaration the "motor vehicle exclusion in the homeowners policy precluded any potential coverage because all of the claims in the [daughter's] action arose out of [grandfather's] use of a motor vehicle." (*Id.* at p. 1203.) The child's mother opposed the motion and argued, like Ramirez and Batun here, the negligent operation of the truck and the negligent supervision were independent causes of the

granddaughter's death, such that under *Partridge*, the motor vehicle exclusion did not apply to preclude coverage. (*Ibid.*)

The *Farmers* court undertook a wide-ranging review of *Partridge* and subsequent decisions that address concurrent proximate cause questions. (*Farmers*, *supra*, 220 Cal.App.4th at pp. 1204-1208; see also, e.g., *State Farm Fire & Cas. Co. v. Kohl* (1982) 131 Cal.App.3d 1031 [exclusion did not bar coverage where, following an auto accident, plaintiff was further injured by insured who dragged him off the street]; *Ohio Casualty Ins. Co. v. Hartford Accident & Indem. Co.* (1983) 148 Cal.App.3d 641 [exclusion for harm arising from operation of a watercraft did not bar coverage when student diving off insured's boat was injured when run over by another boat]; *National American Ins. Co. v. Coburn* (1989) 209 Cal.App.3d 914 [coverage excluded where negligently supervised child was run over and killed by van on which the insured had failed to set the parking brake] (*Coburn*); *Prince v. United Nat. Ins. Co.* (2006) 142 Cal.App.4th 233 [coverage excluded where foster mother left two children in a car on a hot day and the children died].) In reviewing these cases, the court identified two considerations relevant to determining whether a vehicular and a non-vehicular proximate cause are independent of one another: (1) whether the vehicle (the "excluded instrumentality" under the insurance policy) played an active role in causing the accident, and (2) the degree to which an asserted non-vehicular cause of the accident was negligent because it exposed victim to the danger of negligent automobile use. (*Farmers*, *supra*, at pp. 1208-1211 [citing cases].)

The *Farmers* court concluded both of these considerations compelled a conclusion that the two causes of the accident (the negligent driving by the grandfather and the negligent

supervision of the child by the grandmother) were not independent. It was indisputable that the grandfather's vehicle had played an active role in causing the accident; indeed, the child's injuries "'involved no instrumentality other than the vehicle itself,' and 'there would have been no accident without the use or operation of' the vehicle. [Citation.]" (*Farmers*, *supra*, 220 Cal.App.4th at p. 1209.) In addition, the Farmers court concluded "the supervision . . . was negligent only because it exposed the children to the danger of negligent automobile use." (*Id.* at p. 1210.) The court recognized the grandmother's negligent supervision was not as closely "auto-related" as in the *Coburn* case, but reasoned "it is still related enough that it does not constitute an 'independent, concurrent proximate cause[ ] of'" the child's fatal injuries. (*Id.* at p. 1210; see also *Coburn*, *supra*, 209 Cal.App.3d at p. 917 [adult fails to supervise child who enters an open van and takes the gearshift out of the "park" position, causing the van to roll and strike another child].)

We reach a similar conclusion in this case. We assume Ramirez and Batun were negligent in converting and maintaining Vasquez's rental unit, but the unsafe conditions at the property were not an independent proximate cause of Brian's death.

Ramirez's truck played an active role in causing Brian's fatal injuries. That fact stands this case in contrast to *Partridge* and other decisions where the excluded instrumentality played a diminished or negligible role. (*Farmers*, *supra*, 220 Cal.App.4th at p. 1209 [explaining "courts have generally found that the motor vehicle or other relevant exclusion does not apply" where the excluded use of a vehicle (or boat) did not play an active role in causing the accidental injury]; compare *Partridge*, *supra*, 10

Cal.3d at pp. 97-98 [separate instrumentality, the gun with the "hair trigger action," played active role in causing the accidental injury].) In addition, and as was the case in *Farmers*, the asserted non-excluded proximate cause of the accident (the design of the rental unit that opened immediately onto a driveway) was negligent precisely because it exposed Vasquez and her children to the danger of negligent automobile use. (*Farmers*, *supra*, at pp. 1210-1211.) Unlike the modified gun in *Partridge*, which created a danger whether the gun was used in a car or elsewhere, the only significant risk of a doorway to an apartment opening straight out into a driveway is a potential collision with a vehicle. Put differently, it is motor vehicle use that makes the design of the rental unit negligent—the entrance to the rental unit is not unsafe if the driveway is not being used for its dedicated purpose.

Vasquez and Guardado do not dispute the vehicle played an active role in causing Brian's injuries, but they do argue that negligent vehicle use was not the only reason the design of the rental unit was dangerous. They contend there was also a risk of skateboards, bicycles, and tricycles using the driveway and that these were non-*motor-vehicle* dangers. The argument is unpersuasive. Most fundamentally, we assess whether the Motor Vehicle Exclusion bars coverage for the accident that did happen, not a hypothetical, claimed danger that never materialized. (*State Farm Fire & Casualty Co. v. Salas* (1990) 222 Cal.App.3d 268, 276.) In addition (and in any event), there is insufficient evidence that use of skateboards, bicycles, or tricycles on the driveway (as opposed to a much larger motor vehicle) posed any similar risk or could have caused the accident. Rather, Vasquez and Guardado litigated the Vasquez Action on the eminently

sensible premise that the rental unit was dangerous because of the risk from a car or truck (not a skateboard or tricycle) being driven on the driveway close to the entrance of the rental unit. (See *Farmers*, *supra*, 220 Cal.App.4th at p. 1211 ["The undisputed evidence on summary judgment, and the [grandparents'] position in this litigation, is not that [grandmother's] negligence allowed the children to be exposed to one of a number of dangers, such as the danger of wandering away and becoming lost, abduction by strangers in the neighborhood, or even collisions with cars driving down the street. To the contrary, the [grandparents] claim, and the evidence is undisputed, that [grandmother's] only negligence in this case was to expose the children to the known danger of [grandfather's] use of the truck"].)

Vasquez and Guardado also argue that even if the Motor Vehicle Exclusion bars coverage as to Ramirez's liability, it does not bar coverage as to Batun because she was not driving the truck. Relying on *Minkler v. Safeco Ins. Co. of America* (2010) 49 Cal.4th 315, appellants assert a separation of insurance provision can make "exclusions from coverage individual rather than collective." (*Id.* at p. 324.) The result in *Minkler*, however, was based on the specific language in the exclusion relating to intentional acts, which referred to "an insured." (*Id.* at pp. 322-325, 329.) By contrast, the Motor Vehicle Exclusion at issue here does not limit its application to "an insured," but rather to a category of risks, specifically, for bodily injury or property damage that "results from the ownership, maintenance, use, loading or unloading of . . . [¶] (b) **motor vehicles.**" Accordingly, *Minkler* is inapposite and the Motor Vehicle Exclusion applies to

Ramirez and Batun alike. (See *Farmers*, *supra*, 220 Cal.App.4th at p. 1213.)

Having determined the Motor Vehicle Exclusion bars coverage as to both Ramirez and Batun, we need not discuss the other points argued on appeal.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

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BAKER, J.

We concur:

TURNER, P. J.

KIN, J.[*]

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[*] Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.