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IN THE COURT OF APPEALS OF INDIANA

Quiana Jones and Campagna Academy, Inc.,

Appellants-Defendants,

v.

LaShonda Lofton, in her personal capacity as well as guardian of Ha'Lecia Walker, a Minor, A'Jayiah Lofton, a Minor, Jah'Zaria Lofton-Tolliver, a Minor, and Chyiah Lofton, a Minor on the date of accident,

Appellees-Plaintiffs

December 22, 2022

Court of Appeals Case No. 22A-CT-816

Interlocutory Appeal from the Lake Superior Court

The Honorable John M. Sedia, Judge

Trial Court Cause No. 45D01-2001-CT-61

Crone, Judge.

Case Summary

[1] Quiana Jones and LaShonda Lofton were the drivers of two vehicles that collided. Lofton did not have a motor vehicle liability insurance policy as required by Indiana law. On behalf of herself and her minor wards, who were riding in her vehicle, Lofton filed a negligence complaint against Jones and Jones's employer, Campagna Academy, Inc. (collectively Appellants), for whom Jones was operating the vehicle. Appellants filed a motion for partial summary judgment asserting that Lofton is barred from recovering noneconomic damages pursuant to Indiana Code Sections 27-7-5.1-4 and -5 (Sections 4 and 5) because she had a prior uninsured motorist violation in Illinois. The trial court denied the motion, ruling that the version of Section 4 in effect at the time of the collision did not apply to out-of-state violations. Appellants challenge this ruling. We agree with the trial court's interpretation of the statute, so we affirm.

Facts and Procedural History

[2] The relevant facts are undisputed. On January 26, 2018, Lofton's vehicle collided with Appellants' vehicle in East Chicago. Lofton did not have a motor vehicle liability insurance policy as required by Indiana law. In January 2020, Lofton, on behalf of herself and her minor wards, filed a negligence complaint against Appellants seeking damages for "injuries to [their] person[s] and property[,]" including lost wages, hospital and medical expenses, pain and suffering, and "emotional trauma." Appellants' App. Vol. 2 at 18, 20. In response to Appellants' requests for admission, Lofton admitted that she owned

her vehicle and that she had either committed or been convicted "of an Illinois mandatory-insurance offense" in June 2016 and was "thereafter, and within the five (5) years immediately preceding January 26, 2018, ordered and/or required by the Illinois authorities that regulated [her] driving privileges to provide proof of future financial responsibility … for a period of not less than three (3) years." *Id*. at 55.

[3] In July 2021, Appellants filed a motion for partial summary judgment asserting that Lofton is barred from recovering noneconomic damages pursuant to Sections 4 and 5 because of her Illinois offense. In January 2022, after a hearing, the trial court denied Appellants' motion, ruling that the version of Section 4 in effect at the time of the collision did not apply to out-of-state offenses. This appeal followed.

Discussion and Decision

[4] Appellants contend that the trial court erred in denying their motion for partial summary judgment. "Summary judgment is a tool which allows a trial court to dispose of cases where only legal issues exist." *Franciscan ACO, Inc. v. Newman*, 154 N.E.3d 841, 846 (Ind. Ct. App. 2020), *trans. denied* (2021).[1] "Statutory interpretation presents a pure question of law for which summary judgment is

[1] We remind Appellants' counsel that citations should "appear within the text of [a brief] immediately following the propositions they support" and not in footnotes. *The Bluebook: A Uniform System of Citation* R. B1.1, at 3 (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020); *see also* Ind. Appellate Rule 22 (requiring adherence to Bluebook rules); *City of Elkhart v. SFS, LLC*, 968 N.E.2d 812, 815 n.1 (Ind. Ct. App. 2012) (criticizing counsel's use of "footnotes to cite sources throughout its brief rather than citation sentences").

particularly appropriate." *Ramirez v. Wilson*, 901 N.E.2d 1, 2 (Ind. Ct. App. 2009), *trans. denied*. We review the matter de novo. *Id*.

[5] "Our goal when interpreting a statute is to determine and further the Legislature's intent." *Holcomb v. Bray*, 187 N.E.3d 1268, 1285 (Ind. 2022). "Noting that the statute is the best evidence of that intent, we 'first examine whether the language of the statute is clear and unambiguous.'" *Id*. (quoting *State v. Am. Fam. Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008)). We consider "the structure of the statute as a whole." *City of Lawrence Util. Serv. Bd. v. Curry*, 68 N.E.3d 581, 585 (Ind. 2017). "If a statute is unambiguous, that is, susceptible to but one meaning, we must give the statute its clear and plain meaning." *Bolin v. Wingert*, 764 N.E.2d 201, 204 (Ind. 2002), *superseded by statute on other grounds*; *see also Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828 (Ind. 2011) ("If a statute is clear and unambiguous on its face, no room exists for judicial construction."). "We may not read into a statute that which is not the expressed intent of the legislature; thus, it is just as important to recognize what a statute does not say as it is to recognize what it does say." *Ind. Office of Util. Consumer Counselor v. Citizens Wastewater of Westfield, LLC*, 177 N.E.3d 449, 458 (Ind. Ct. App. 2021), *trans. denied* (2022).

[6] Section 5 provides, "An insurer may not pay noneconomic damages on a claim for coverage under a motor vehicle insurance policy issued by the insurer if the

claim is for coverage for a loss incurred by an uninsured motorist with a previous violation."[2] At the time of the collision, Section 4 provided,

> As used in this chapter, "uninsured motorist with a previous violation" means an individual who:
>
> (1) owns a motor vehicle:
>
> (A) that is involved in an accident; and

[2] Indiana Code Section 27-7-5.1-3(a) provides that "'noneconomic damages' means costs for the following: (1) Physical and emotional pain and suffering. (2) Physical impairment. (3) Emotional distress. (4) Mental anguish. (5) Loss of enjoyment. (6) Loss of companionship, services, and consortium. (7) Any other nonpecuniary loss proximately caused by a motor vehicle accident." "The term does not include costs for the following: (1) Treatment and rehabilitation. (2) Medical expenses. (3) Loss of economic or educational potential. (4) Loss of productivity. (5) Absenteeism. (6) Support expenses. (7) Accidents or injury. (8) Any other pecuniary loss proximately caused by a motor vehicle accident." Ind. Code § 27-7-5.1-3(b). We note that Section 5 echoes Indiana Code Section 34-30-29.2-3(a), which provides,

> A person who:
>
> (1) sustained bodily injury or property damage as the result of a motor vehicle accident; and
>
> (2) was an uninsured motorist with a previous violation at the time of the motor vehicle accident;
>
> may not recover noneconomic damages for the person's bodily injury or property damage from the owner or operator of another motor vehicle involved in the motor vehicle accident.

Obviously, Section 5 speaks in terms of damages for which an insurer is not liable, and the foregoing provision speaks in terms of damages that a plaintiff may not recover.

(B) for which financial responsibility[3] is not in effect as required by IC 9-25-4; and

(2) during the immediately preceding five (5) years, has been required to provide proof of future financial responsibility for any period under IC 9-25-8-6(b);

regardless of whether the individual is operating the motor vehicle at the time of the accident.

And Indiana Code Section 9-25-8-6, which was repealed effective December 31, 2021, provided as follows:

(a) This section applies to a person:

(1) who is convicted of;

(2) against whom a judgment is entered for;

(3) against whom the bureau [of motor vehicles] has taken administrative action for; or

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[3] "'[F]inancial responsibility' means the ability to respond in damages as described in IC 9-25-2-3." Ind. Code § 27-7-5.1-1. Indiana Code Section 9-25-2-3 provides,

> "Proof of financial responsibility" means proof of ability to respond in damages for each motor vehicle registered by a person for liability that arises out of the ownership, maintenance, or use of the motor vehicle in the following amounts:
>
> (1) Twenty-five thousand dollars ($25,000) because of bodily injury to or death of any one (1) person.
>
> (2) Subject to the limit in subdivision (1), fifty thousand dollars ($50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident.
>
> (3) Before July 1, 2018, ten thousand dollars ($10,000) because of injury to or destruction of property in any one (1) accident. Beginning July 1, 2018, twenty-five thousand dollars ($25,000) because of injury to or destruction of property in any one (1) accident.

> (4) who the bureau otherwise determines was;
>
> operating a motor vehicle without financial responsibility in violation of this article.
>
> (b) A person described in subsection (a) must provide proof of future financial responsibility:
>
> (1) for a first or second offense, for a period of three (3) years; or
>
> (2) for a third or subsequent offense, for a period of five (5) years;
>
> beginning on the date on which the suspension of the person's driving privileges terminates.

[7] Appellants contend that the trial court misinterpreted Section 4 with respect to Lofton, but we disagree. The statute could not be more unambiguous: if a motor vehicle owner has not "been required to provide proof of future financial responsibility for any period under IC 9-25-8-6(b)" during the past five years, then that person is not an "uninsured motorist with a previous violation" pursuant to Section 4. And because Lofton was not "required to provide proof of future financial responsibility for any period under IC 9-25-8-6(b)" after she committed a "mandatory-insurance offense" in Illinois in 2016, Appellants' App. Vol. 2 at 55, she is not an "uninsured motorist with a previous violation" for purposes of Section 4; consequently, she is not barred from recovering

noneconomic damages under Section 5.[4] Based on the foregoing, we affirm the denial of Appellants' motion for partial summary judgment.

[8] Affirmed.

May, J., concurs.

Weissmann, J., dissents with opinion.

[4] We see no need to respond to Appellants' esoteric interpretive arguments, which attempt to overcomplicate an uncomplicated statute. Appellants also quote snippets from many other states' so-called "No-Pay-No-Play" statutes, all of which are irrelevant because they do not contain similar language. In 2021, the legislature removed "under IC 9-25-8-6(b)" from Section 4, but Appellants do not suggest that this version of the statute should be applied retroactively.

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Weissmann, Judge, dissenting.

[9] Although I agree with the majority that Indiana Code §§ 27-7-5.1-4 and -5 may be reasonably construed as excluding out-of-state uninsured motorist violations, I disagree that the statutes are unambiguous. Indiana Code §§ 27-7-5.1-4 and -5 also can be reasonably construed as including out-of-state uninsured motorist violations. Therefore, I would find the statutes ambiguous, interpret them

consistent with legislative intent, and find that the trial court erroneously determined that Lofton is barred from recovering noneconomic damages.

I. Indiana Code §§ 27-7-5.1-4 and -5 are Ambiguous

[10] A statute is unambiguous if it is only "susceptible to but one meaning." *Suggs v. State*, 51 N.E.3d 1190, 1193 (Ind. 2016). But "if a statute admits of more than one interpretation, then it is ambiguous." *Id.* Indiana Code §§ 27-7-5.1-4 and -5 are ambiguous because they can be reasonably construed in at least two ways.

[11] Section 5 specifies that "[a]n insurer may not pay noneconomic damages on a claim for coverage under a motor vehicle insurance policy issued by the insurer if the claim is for coverage for a loss incurred by an uninsured motorist with a previous violation." Ind. Code § 27-7-5.1-5. To qualify as an "uninsured motorist with a previous violation" for purposes of Section 5, the individual must meet the two requirements established in Section 4. First, the individual must own a motor vehicle involved in an accident "for which financial responsibility is not in effect as required by IC 9-25-4." Ind. Code § 27-7-5.1-4(1). Second, during the immediately preceding five years, the individual must have been "required to provide proof of future financial responsibility for any period under IC 9-25-8-6(b)." Ind. Code § 27-7-5.1-4(2).

[12] The majority construes "for any period under IC 9-25-8-6(b)" in Indiana Code § 27-7-5.1-4(2) to mean that the uninsured motorist must have been required to provide proof of future financial responsibility under Indiana Code § 9-25-8-

6(b), specifically, and not under a comparable statutory provision in another state. That is a reasonable interpretation but not the only one.

[13] "For any period under IC 9-25-8-6(b)" could also be construed as referring only to the time periods reflected in Indiana Code § 9-25-8-6(b) and not to any requirement that the prior violation arose under Indiana law. In other words, any prior violation in any state could qualify as a prior violation for purposes of the No Pay No Play statutes so long as the other state required proof of future financial responsibility for the time periods specified in Indiana Code 9-25-8-6(b). The relevant version of Indiana Code § 9-25-8-6, which was repealed effective December 31, 2021, provided:

> (a) This section applies to a person [who has been determined to have been] operating a motor vehicle without financial responsibility in violation of this article.
>
> (b) A person described in subsection (a) must provide proof of future financial responsibility:
>
> (1) for a first or second offense, for a period of three (3) years; or
>
> (2) for a third or subsequent offense, for a period of five (5) years;
>
> beginning on the date on which the suspension of the person's driving privileges terminates.

[14] Indiana Code § 9-25-8-6(b) incorporates two time periods: three years and five years, respectively, from the date that the uninsured motorist's driving suspension ends. Section 4 could be reasonably construed as defining an

"uninsured motorist with a previous violation" to include a repeat uninsured motorist whose prior violation occurred in another state if that motorist met two conditions.

[15] First, the other state must have required the uninsured motorist to provide proof of financial responsibility at some point during the five-year period immediately preceding the accident in Indiana. *See* Ind. Code § 27-7-5.1-4(2). Second, the requirement of proof of financial responsibility must have been imposed by that other state for a period of three or five years, beginning when the uninsured motorist's suspension ended. *See* Ind. Code § 9-25-8-6(b).

[16] This interpretation of "for any period under IC 9-25-8-6(b)" is more inclusive than that offered by the majority. Under the majority's view, Section 5's limitation on noneconomic damages would apply *only* to uninsured motorists with a prior violation in Indiana. Under the alternative interpretation, Section 5 could also apply to uninsured motorists with prior violations in another state, assuming that the other state required proof of future financial responsibility for the same periods as Indiana.

[17] Other reasonable interpretations of Sections 4 and 5 may even exist. But these two reasonable, but conflicting, constructions alone are enough to establish the statutes' ambiguity. *See Suggs*, 51 N.E.3d at 1193.

II. Indiana Code §§ 27-7-5.1-4 and -5 Apply to Both Residents and Nonresidents

[18] When faced with ambiguous statutes, we apply rules of statutory interpretation to give effect to the legislature's intent. *In re Supervised Estate of Kent*, 99 N.E.3d 634, 638 (Ind. 2018). "For example, we read the ambiguous statute as a whole, avoiding excessive reliance on a strict, literal meaning or the selective reading of individual words." *Suggs*, 51 N.E.3d at 1194. We also "consider the objects and purposes of the statute as well as the effects and repercussions of our interpretation." *Kitchell v. Franklin*, 997 N.E.2d 1020, 1026 (Ind. 2013) (internal citation omitted).

[19] As Jones notes, Sections 4 and 5 are part of Indiana's version of the so called "No Pay No Play" statutes enacted in about ten other states. Appellant's Br., p. 18 (citations omitted). Such statutes seek to reduce the number of uninsured motorists driving on a state's roads by requiring the uninsured motorists to waive the right to collect non-economic damages from a properly insured driver. *See generally* Jorell Kuttenkuler, *No Pay No Play: Not Okay? Analyzing the Constitutionality of Missouri's No Pay No Play Statute Following Jiles v. Schuster Co.*, 4 Bus. Entrep. & Tax L. Rev 316, 318-19 (Fall 2020).

[20] Indiana requires persons who register their cars in the state or operate a car on its public highways to be insured or provide other specific proof of financial responsibility. Ind. Code § 9-25-4-1(b). But Indiana also requires proof of financial responsibility: 1) from nonresidents driving in Indiana; and 2) for vehicles belonging to nonresidents that are driven in Indiana. Ind. Code §§ 9-25-

6-13, -5-10. Thus, motorists licensed in another state or who own vehicles registered in another state still must comply with Indiana's financial responsibility laws when they or their vehicles travel on Indiana roads.

[21] The majority's interpretation of Sections 4 and 5 creates an unwarranted distinction between repeat uninsured motorists previously caught driving uninsured in Indiana and those previously caught in another state. By excluding the latter from the scope of Indiana's "No Pay No Play" statute, the majority effectively ensures that uninsured motorists previously penalized for driving without insurance in another state will not suffer the same penalties as those previously sanctioned only in Indiana.

[22] Under the majority's reading, a nonresident who, like Lofton, is penalized as an uninsured driver in another state and continues her uninsured driving in Indiana could recover non-economic damages arising from an accident in Indiana. A repeat uninsured motorist sanctioned only in Indiana could not. That interpretation is inconsistent with the General Assembly's practice of holding out-of-state drivers to the same standards as Indiana drivers when traveling on Indiana's public highways. *See* I.C. §§ 9-25-6-13, -5-10; *see also* Ind. Code § 9-25-1-6 ("This article [governing financial responsibility] applies to a person that is a nonresident under the same conditions as this article applies to an Indiana resident."). The majority's interpretation also diminishes the effectiveness of Indiana's No Pay No Play statutory scheme by limiting the number of uninsured motorists to whom it applies.

[23] When interpreting ambiguous statutes, we "seek to give a practical application of the statute by construing it in a way that favors public convenience and avoids an absurdity, hardship, or injustice." *Suggs,* 51 N.E.3d at 1194. Interpreting Indiana's No Pay No Play statute as applying equally to repeat uninsured motorists sanctioned in another state and those sanctioned in Indiana accords with that approach. We do not discern any legislative intent or practical reason for treating repeat uninsured motorists more favorably just because their prior transgression occurred out of state. The obvious goal of such legislation is to reduce the number of uninsured motorists or vehicles on Indiana roads. The majority's interpretation of Sections 4 and 5 as excluding an entire group of uninsured motorists diminishes the statutes' deterrence.

[24] The General Assembly's amendment of Indiana Code § 27-7-5.1-4, effective December 31, 2021, supports this broader interpretation. *See* Ind. Pub. L. No. 86-2021, § 20. The amendment removed the language at issue—"for any period under IC 9-25-8-6(b)"—but made no other changes to the statute. That means "uninsured motorist with a previous violation," for purposes of Indiana Code § 27-7-5.1-5, can now only be interpreted as including uninsured motorists required by another state to provide proof of future responsibility if they meet Indiana's other statutory requirements. The amendment effectively cures the ambiguity in Indiana Code §§ 27-7-5.1-4 and -5 and tracks the overall intent of those statutes: deterring uninsured motorists, whatever their geographic history. *See Knutson v. State*, 103 N.E.3d 700, 702 (Ind. Ct. App. 2018) ("When the legislature amends a statute, we presume that it intended to the change the law

unless it clearly appears that the amendment was made only to express the original intention of the legislature more clearly.").

[25] For these reasons, I dissent and would reverse the trial court's denial of Jones' motion for partial summary judgment.