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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MERCURY CASUALTY COMPANY,

Plaintiff and Respondent,

v.

MONIQUE JONES,

Defendant and Appellant.

G049515

(Super. Ct. No. 30-2012-00607909)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig L. Griffin, Judge. Affirmed.

Drucker Law Firm and Barry Alan Drucker for Defendant and Appellant.

O'Connor, Schmeltzer & O'Connor, Lee P. O'Connor, and Timothy J.

O'Connor for Plaintiff and Respondent.

\* \* \*

Defendant Monique Jones, who was injured in a car accident, appeals from the court's grant of summary judgment to plaintiff Mercury Casualty Company (Mercury). At the time of the accident, Jones was a passenger in a car whose owner, as well as the driver, were insured under an automobile insurance policy issued by Mercury (the Mercury policy). Mercury's declaratory relief action sought a judicial determination that the Mercury policy's limit of liability for bodily injury per person applied to Jones's bodily injury claim. On appeal Jones argues two accidents occurred for purposes of the Mercury policy's limits, and alternatively, the policy is ambiguous as to whether a separate limit applies for each insured.

We conclude the court correctly granted summary judgment in favor of Mercury. Jones's injuries arose from a single "accident." Thus, the Mercury policy's per person limit of \$100,000 for injuries arising from a single accident applied. The Mercury policy also unambiguously states that the inclusion of more than one insured under the policy "shall not operate to increase the limits." Accordingly, we affirm the judgment.

## FACTS

### *The Undisputed Facts*

The parties stipulated to the following facts. Mercury issued an insurance policy to car owner Kari Amaya with bodily injury liability limits of \$100,000 per person and \$300,000 per accident. Ashley Amaya was listed as an insured driver.<sup>1</sup>

On July 19, 2011, Carla Hurtado was driving Kari's car with Ashley's permission and therefore qualified as an insured under the Mercury policy. Jones was a passenger in the rear seat. Hurtado was driving at around 85 miles per hour in a 70 mile-per-hour zone on the freeway. One of the car's tires blew out. Hurtado unsafely turned

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<sup>1</sup> For brevity and to avoid confusion we refer to the Amayas by their first names. We mean no disrespect.

the vehicle, causing it to roll over. The officer who investigated the accident found the blown-out “tire had less than 1/32 of an inch of tread.”

Jones contends two “incidents” caused the accident. The first was the negligence of Hurtado in driving the vehicle at an unsafe speed and turning the vehicle unsafely when the tire blew out. The second was Kari’s failure to properly maintain the tires on her vehicle.

Jones suffered serious injuries in the accident and incurred over \$200,000 in medical bills.

### *The Insurance Policy*

The Mercury policy’s declarations page provides coverage for bodily injury liability with limits of liability of “\$100,000 each person” and “\$300,000 each accident.”

“Part I – Liability” of the Mercury policy states, as to bodily injury liability coverage, that Mercury agrees to “pay on behalf of the insured all sums . . . which the insured shall become legally obligated to pay as damages because of” “bodily injury sustained by any person other than an insured” “caused by accident, arising out of the ownership, or use, of an owned automobile by an insured . . . .” Part I further states the insurance thereunder “applies separately to each insured against whom claim is made or a suit is brought but the inclusion herein of more than one insured shall not operate to increase the limits of the company’s liability.”

In Part I’s “Conditions,” the Mercury policy provides that the “limit of liability stated in the declarations as applicable to ‘each person’ is the limit of the company’s liability for all damages arising out of bodily injury sustained by one person in any one accident, and subject to this provision, the limit of liability stated in the declarations as applicable to ‘each accident’ is the total limit of the company’s liability for all such damages for bodily injury sustained by two or more persons in any one accident.” The Conditions to Part I further provide that the “term, the Insured, is used

severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.”

## DISCUSSION

Jones contends: “Under prevailing California law, the number of accidents for purposes of policy limits is determined by the ‘causation test’ which focuses on whether the underlying cause of the injury arises from ‘a single, uninterrupted course of conduct’ or whether the cause was interrupted or replaced by another cause.” She asserts the “undisputed facts showed that two, separately covered insureds, acted negligently, at separate times — weeks or potentially months apart — to create separate and independent causes of the crash.” She concludes that, “under the causation test, the original cause (the owner’s negligent maintenance) was ‘*interrupted or replaced*’ by another cause (the driver’s excessive speed, etc.) to compel a finding that two separate ‘accidents’ occurred for purposes of triggering two policy limits.” Alternatively, Jones contends the Mercury policy provides separate coverage for multiple insureds and therefore the applicable policy limit is \$300,000 for the accident.

The trial court found “there was only one accident for insurance purposes and only one policy limit applies to the personal injury claim of” Jones against the tree insureds (Kari, Ashley, and Hurtado). The court explained: “The tire blew. The car flipped. And somebody was injured. . . . That is an accident. [¶] Now, it’s true there may be different causes. The tire was bald. . . . The concrete company that poured the roadway did a bad job and made it hard to keep control of a car with a flat tire. And the county didn’t have the right signs. You can find five or six causes for the accident, [but] there’s not five or six accidents. There’s one accident. [¶] And the fact there are two insureds that do something negligently that contribute to that accident, doesn’t make it two accidents. [¶] These are concurrent acts of negligence.” The court noted that, in the

cases cited by Jones, the issue was whether the cause was superseding or concurrent. Accordingly, the court granted Mercury's summary judgment motion.

An appellate court conducts a de novo review of a summary judgment. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) The judgment is presumed correct, however, and the "appellant bears the burden of demonstrating error." (*Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1376.) Upon review, the appellate court determines whether the trial court's ruling was correct, not its reasons or rationale. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376.)

#### *There Was One Accident for Purposes of the Mercury Policy's Liability Limits*

Jones acknowledges there was a single "crash incident" in this case and therefore one "accident" as that term is commonly understood. She argues, however, that insurance law defines the word "accident" differently, and therefore two accidents occurred here for purposes of the Mercury policy's liability limits. One occurred when Kari failed to replace the bald tire and the other when Hurtado negligently drove the car.

Mercury counters, "The obvious problem with Jones' contention is that Kari Amaya's failure to maintain the tires did not give rise to an 'accident' until the tire blew out and the vehicle rolled on July 19, 2011." Mercury contends Kari and Hurtado committed separate negligent acts, but that only one accident occurred. It argues, "[I]f each negligent act or omission contributing to an accident were regarded as a separate [accident], the policy limits in insurance policies would be rendered meaningless and insurance rates would skyrocket to cover the increased risk that insurance companies would face."

Jones relies on *State Farm Fire & Cas. Co. v. Kohl* (1982) 131 Cal.App.3d 1031, 1035 (*Kohl*) for her assertion that two accidents occurred. *Kohl* stated: “In determining whether, under a particular set of circumstances, there was one accident or occurrence, the so-called ‘causation’ theory is applied. Hence a single *uninterrupted course of conduct* which gives rise to a number of injuries or incidents of property damage is one ‘accident’ or ‘occurrence.’ On the other hand, if the original cause is interrupted or replaced by another cause, then there is more than one ‘accident’ or ‘occurrence.’” Jones posits that Hurtado’s reckless driving “interrupted or replaced” Kari’s failure to maintain the tires resulting in two accidents.

Jones misapprehends the import of the rule paraphrased in *Kohl* as applied to the stipulated facts in this case. Moreover, her argument is circular. Jones’s two-accident theory presupposes that Hurtado and Kari were both negligent, i.e., each of them failed to use reasonable care to prevent harm to others. But the Mercury policy only requires Mercury to pay all sums “which the insured shall become legally obligated to pay as damages because of . . . bodily injury sustained by any person . . . .” Without injury, the insured is not liable, and thus there is no liability insurance coverage. As Cardozo famously said: “Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. ‘Proof of negligence in the air, so to speak, will not do.’” (*Palsgraf v. Long Island Railroad Co.* (1928) 248 N.Y. 339, 341.) Thus, Kari and Hurtado would be “legally obligated to pay” damages only if their respective conduct was a proximate cause of the injury, i.e., if Kari’s failure to maintain the tires and Hurtado’s reckless driving were concurrent causes of the injury. But if the causes are concurrent, *a fortiori*, the “original cause” is *not* “interrupted or replaced any another cause.” Under the *Kohl* formulation, there is but one accident.

This common sense result is illustrated by the cases. In *Hyer v. Inter-Insurance Exchange, Etc.* (1926) 77 Cal.App. 343, once described as the “leading California case” on interpreting policy limits for “any one auto accident,” (*United*

*Services Automobile Assn. v. Baggett* (1989) 209 Cal.App.3d 1387, 1392 (*Baggett*)), the insured's vehicle hit two cars in successive separate collisions, but the court held there was only one accident because the insured's vehicle went out of control after the first collision. (*Hyer*, at pp. 345-346, 348.) The insured's chauffeur's negligent driving "was the proximate cause of both collisions" (*id.* at p. 347; see *id.* at pp. 345-346), "which, in natural and continuous sequence, unbroken by any efficient intervening cause, produced the" second collision (*id.* at p. 347).

In *Baggett, supra*, 209 Cal.App.3d 1387, an "insured's vehicle struck the decedent's vehicle from behind on an expressway. After driving a short distance farther, decedent stopped her vehicle in the center lane and insured did likewise. They both left their vehicles and briefly discussed the accident. Within a minute, a third vehicle struck insured's vehicle from behind, driving insured's vehicle into decedent and her vehicle and killing decedent." (*Id.* at p. 1390.) In an underlying action, the decedent's heirs "alleged that insured was negligent in (1) driving his vehicle, (2) stopping it without displaying hazard or operating lights or setting out reflective devices or flares or directing traffic around the stopped vehicles, and (3) guiding decedent to a position of danger." (*Ibid.*) *Baggett* held there was one accident for purposes of the insurance policy's limitation of liability coverage (*id.* at p. 1392): "If each negligent act or omission were regarded as a separate accident, there arguably would be numerous accidents based on heirs' characterization of insured's negligence." (*Id.* at p. 1394; see *Government Employees Ins. Co. v. Oliver* (1987) 192 Cal.App.3d 12, 14 [rejecting insureds' contention the insurance company had to pay the uninsured motorist policy limit for each negligent uninsured motorist involved in a multiple vehicle accident].)

There appears to be no legal support for Jones's novel interpretation of the word "accident." Given this reality, she emphasizes the uniqueness of this case and that no "California court has addressed an instance where two separately covered insured persons, under the same insurance policy, acted negligently, at separate times, resulting in

an event causing bodily injury . . . .” She argues “each of the cases . . . involved a single insured and/or multiple accidents or collisions occurring within a very short time frame” and none of them involved “policy language similar to the Mercury Policy.”

We individually address each distinction proffered and conflated by Jones. We start with the time frame to be considered. That no published case has involved a lapse of weeks or even months between two alleged proximate causes of one automobile crash simply means that, as the court below pointed out, not “many people would even make the argument.” To argue that Kari’s failure to replace the tire (long before the crash) was an “accident” defies common sense and the definition of “accident.” As pointed out in *Baggett* and by Mercury, if prior negligent acts or omissions that contributed to a crash were each regarded as a separate accident, there would effectively be no per person or per accident limits to an insurance company’s liability. Under Jones’s reasoning, at least three accidents occurred here — one when Kari failed to maintain the tire, a second when Hurtado drove above the speed limit, and a third when Hurtado negligently turned the car (not to mention the construction company’s badly constructed roadway and the county’s poor signage theorized by the court) — in other words, a potentially unlimited number of “accidents.” Similarly, that the published cases involve multiple accidents or collisions, as opposed to the concededly single crash here, exposes a fundamental problem with Jones’s argument – multiple collisions require a causal analysis to determine whether the proximate cause of the subsequent collision was the same as the first collision, or was “the original cause . . . interrupted or replaced by another cause.” (*Kohl, supra*, 131 Cal.App.3d at p. 1035.) Here, there was only one collision proximately caused by two negligent acts or omissions. The only analysis required is whether the causes were concurrent. And, under Jones’s hypothesis they were.

Addressing Jones's proffered distinction based on multiple insureds, this factor is germane only to her alternate contention (discussed below) that the Mercury policy is ambiguous as to whether a separate liability limit applies for each insured.

Jones's final distinction (i.e., that no case involved policy language similar to the Mercury policy's provision concerning multiple insureds) is germane, again, only to Jones's alternate contention discussed below.

Thus, the case law, as well as a common sense interpretation of the events here, compel the conclusion that the concurrent proximate causes of the accident were (1) Kari's negligent failure to maintain the tires, and (2) Hurtado's negligent driving. The concurrent causes resulted in a single accident.

#### *The Number of Insureds Does Not Increase the Limits of Liability*

In an alternative argument, Jones contends that, "regardless of whether or not one or more 'accidents' occurred under the policy, [her] claim is limited only by a 'per accident' limitation in the Policy of \$300,000" because the policy "provides for *separate* coverage for ownership 'or' use of an owned automobile." She bases this contention on the Mercury policy's provision concerning multiple insureds, which she quotes as follows: "The insurance afforded under Part I applies separately to each insured against whom claim is made or a suit is brought . . . ." With her convenient use of an ellipsis, however, Jones omits the provision's critical proviso, "but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability." Nor does she acknowledge the Mercury policy's provision that "the term, the Insured, is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability." Thus, Mercury's policy unambiguously limits its liability coverage to \$100,000 per person injured in a single accident.

Moreover, Jones, by failing to fairly quote the Mercury policy's provisions central to her contention, and by omitting reasoned argument and legal authority concerning the policy's actual language, has waived the contention. (Cal. Rules of Court, rule 8.204(a)(1)(B).)

#### DISPOSITION

The judgment is affirmed. Mercury shall recover its costs incurred on appeal.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.