

534 N.W.2d 63
Supreme Court of South Dakota.

NATIONAL FARMERS UNION PROPERTY AND
CASUALTY COMPANY, Plaintiff and Appellee,
v.
UNIVERSAL UNDERWRITERS INSURANCE
COMPANY, Defendant and Appellant.

No. 18892.

Considered on Briefs Feb. 14, 1995.

Decided July 5, 1995.

Liability insurer for driver's parent sought declaratory judgment that dealership's automobile insurance policy provided coverage. The Fifth Judicial Circuit Court, Brown County, [Larry H. Lovrien, J.](#), upheld named driver exclusion in policy of driver's parent and ruled in favor of parent's insurer. Dealership's insurer appealed. The Supreme Court, [Miller, C.J.](#), held that named driver exclusion of liability coverage was permitted by statute.

Affirmed.

West Headnotes (5)

^[1] **Insurance**
✦ Persons Covered

Named driver exclusion from liability coverage was allowed by statute permitting exclusion of named individual from coverage or reduction of limits of liability coverage, "provided, however, that the liability coverage may not be less than" statutory minimum; under doctrine of last antecedent, modifying clause of proviso was confined to language about reduction of limits of liability, and minimum liability coverage limits were to be imposed only when the named driver restriction reduced liability limits. SDCL 50-11-9.3.

2 Cases that cite this headnote

^[2] **Statutes**
✦ Relative and qualifying terms and provisions, and their relation to antecedents

In general, doctrine of last antecedent applies unless there is something in subject matter or dominant purpose which requires different interpretation of statute.

6 Cases that cite this headnote

^[3] **Statutes**
✦ Plain language; plain, ordinary, common, or literal meaning

In arriving at intention of legislature, Supreme Court presumes that words of statute have been used to convey ordinary, popular meaning.

4 Cases that cite this headnote

^[4] **Statutes**
✦ Statute as a Whole; Relation of Parts to Whole and to One Another

Statute must be read as whole, and effect must be given to all provisions.

Cases that cite this headnote

^[5] **Statutes**
✦ Superfluosity

Legislature does not intend to insert surplusage in its enactments.

8 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

MILLER, Chief Justice.

Appellant Universal Underwriters Insurance Company (Universal) appeals the trial court's decision upholding a "driver restriction" in an automobile insurance policy issued by National Farmers Union Property and Casualty Company (National Farmers). We affirm.

FACTS

The parties stipulated to the facts before the trial court. In Aberdeen, South Dakota, on June 24, 1990, an automobile driven by Kelvin Elsing (Kelvin) collided with an automobile driven by Andrew Merkel and also occupied by Merkel's wife and daughter. The accident resulted in bodily injuries to the Merkels and property damage to their automobile. Kelvin's negligence caused the accident.

E.O. Johnson Motor Company (Johnson), an auto dealership, owned the automobile Kelvin had been driving at the time of the accident. Johnson carried automobile insurance from Universal. Universal's policy included liability coverage for persons who are strangers to the policy, if they are operating an insured automobile with the permission of the insured. Johnson had given Kelvin permission *64 to operate the vehicle involved in the accident.

At the time of the accident, Kelvin was living with his father, Henry Elsing (Henry). National Farmers had issued a policy of insurance to Henry, as the named insured, that provided automobile liability coverage to Henry and others.¹ This policy contained a "Driver Restriction" endorsement, signed by both Henry and Kelvin, that denied liability coverage to Kelvin while he was operating any vehicle to which the policy might apply, except for certain farm trucks.

Both National Farmers and Universal contributed sums

toward final settlement of the various claims the Merkels brought against Kelvin. National Farmers then filed a declaratory action in circuit court, seeking reimbursement from Universal for the amounts which National Farmers contributed to the settlement. National Farmers contended it had been under no obligation to provide liability coverage to Kelvin, because the "Driver Restriction" in its policy specifically excludes Kelvin from coverage. Alternatively, in the event it was obligated to provide coverage, National Farmers argued its coverage was secondary to that of Universal. Universal countered that, pursuant to SDCL 58-11-9.3, the "Driver Restriction" was void to the extent of the minimum liability coverage mandated by South Dakota's Financial Responsibility Law. Universal further argued SDCL 58-23-4 operated to establish National Farmers as the primary insurer. The trial court upheld the validity of the "Driver Restriction" and named Universal the primary insurer. The trial court ordered Universal to reimburse National Farmers for the amounts it expended in settlement of the Merkels' claims against Kelvin. Universal appeals.

DECISION

¹ The primary issue in this appeal is whether SDCL 58-11-9.3 allows the "Driver Restriction" endorsement in National Farmers' policy to effectively exclude Kelvin Elsing from liability coverage under the policy. Construction of a statute is a question of law, reviewable de novo. *Rural Pennington County Tax Ass'n v. Dier*, 515 N.W.2d 841, 843 (S.D.1994).

At the time of the accident, SDCL 58-11-9.3 provided:

An insurance policy covering a private passenger automobile or other motor vehicle registered or principally garaged in this state may by written agreement with the named insured exclude a named individual from coverage or contain a restrictive endorsement reducing the limits of liability or collision coverage when the vehicle is operated by a named person or class of persons, provided, however, that the liability coverage may not be less than the minimum prescribed by chapter 32-35 as amended.²

National Farmers interprets the requirement of minimum liability coverage in SDCL 58-11-9.3 to apply only in

cases where coverage has been reduced, as opposed to totally eliminated. According to this interpretation, no minimum level of liability insurance is required when an individual has been entirely excluded from coverage. Universal counters that the minimum level of coverage prescribed by Chapter 32–35 applies not only to reductions in coverage but also to attempts to exclude named drivers.

*65 In resolving this case, we first turn to the rule of statutory construction known as the doctrine of the last antecedent. Under this doctrine, “a modifying clause is confined to the last antecedent.” *Rogers v. Allied Mutual Ins. Co.*, 520 N.W.2d 614, 617 (S.D.1994) (citing *Kaberna v. School Bd. of Lead–Deadwood Sch. Dist. 40–1*, 438 N.W.2d 542, 543 (S.D.1989); *Lewis v. Annie Creek Mining Co.*, 74 S.D. 26, 33, 48 N.W.2d 815, 819 (1951)). The modifying clause in SDCL 58–11–9.3 is the language “provided, however, that the liability coverage may not be less than the minimum prescribed by chapter 32–35 as amended.” The last antecedent before this clause is the phrase “a restrictive endorsement reducing the limits of liability or collision coverage when the vehicle is operated by a named person or class of persons.” Therefore, under the doctrine, the minimum liability coverage limits of Chapter 32–35 should be imposed only when the restrictive endorsement reduces the liability limits available to the named person, not when the person has been entirely excluded from coverage.

[2] [3] In general, the doctrine of the last antecedent applies “unless there is something in the subject matter or dominant purpose which requires a different interpretation.” *Rogers*, 520 N.W.2d at 617 (citing *Kaberna*, 438 N.W.2d at 543; *Annie Creek Mining*, 74 S.D. at 33, 48 N.W.2d at 819). Universal contends the state’s Financial Responsibility Act, with its emphasis on compensating individuals injured by negligent drivers, mandates minimum liability coverage even when a policy purports to exclude a named individual. Universal overlooks the clear language of SDCL 58–11–9.3. The statute begins by stating an automobile insurance policy may “exclude a named individual from coverage.” SDCL 58–11–9.3 (emphasis supplied). In arriving at the intention of the legislature, it is presumed that the words of the statute have been used to convey their ordinary, popular meaning. *Oahe Conservancy Subdistrict v.*

Janklow, 308 N.W.2d 559, 561 (S.D.1981) (citations omitted). “Exclude” means “to bar from participation, enjoyment, consideration, or inclusion.” Webster’s Third New International Dictionary 793 (1971). The plain language of the statute *permits* rather than *prohibits* named driver exclusions. It is flatly inconsistent with any claimed legislative intent to impose minimum coverage for drivers expressly exempted from the policy.

[4] [5] Furthermore, by urging a minimum level of coverage for excluded drivers, Universal equates a policy exclusion with a policy reduction. If we adopted this interpretation, the clause concerning named driver exclusions would be superfluous. A statute must be read as a whole and effect must be given to all its provisions. *Beitelspacher v. Winther*, 447 N.W.2d 347, 351 (S.D.1989); *Hartpence v. Youth Forestry Camp*, 325 N.W.2d 292, 295 (S.D.1982); *State v. Heisinger*, 252 N.W.2d 899, 903 (S.D.1977). The legislature does not intend to insert surplusage in its enactments. *Revier v. School Bd. of Sioux Falls*, 300 N.W.2d 55, 57 (S.D.1981).

Because the legislature expressly stated that an automobile insurance policy may “exclude a named individual from coverage,” we conclude the named driver restriction in National Farmers’ policy effectively exempts Kelvin from coverage. The trial court properly required Universal to reimburse National Farmers for sums it paid in settlement of the Merkels’ claims against Kelvin.

Affirmed.

SABERS, AMUNDSON and KONENKAMP, JJ., concur.

GILBERTSON, J., not having been a member of the court at the time this case was submitted, did not participate.

All Citations

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Footnotes

1 The liability portion of the National Farmers policy issued to Henry provided in relevant part: “As used only in this Part ‘insured person’ or ‘insured persons’ mean: (1) You or a relative.” The policy defined “relative” as “a person living in your household, related to you by blood, marriage or adoption, including a ward or foster child.”

2 In 1994, the legislature amended SDCL 58–11–9.3 to read:

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An insurance policy covering a private passenger automobile or other motor vehicle registered or principally garaged in this state may by written agreement with the named insured exclude a named individual from coverage. The policy may also contain a restrictive endorsement reducing the limits of liability or collision coverage when the vehicle is operated by a named person or class of persons. However, if the policy does provide liability coverage to a person or persons named in a restrictive endorsement, the liability coverage may not be less than the minimum prescribed by chapter 32–35.
1994 S.D.Sess.L. ch. 376.

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