otherwise attended by another physician and conducting an autopsy when requested by the county coroner or when otherwise required by law.[4] In this case, where the death was that of a minor and under suspicious circumstances, state law required that an autopsy be performed.[5]

Here, Okoye was appointed as required by and in accordance with state law. He was vested with the duty to conduct an autopsy in connection with the minor in the underlying case. During the course of that autopsy, Okoye was tasked with attempting to establish, "by a reasonable degree of medical certainty, the cause or causes of the death" and was further required to "certify the cause or causes of death to the county attorney."[6]

Under the circumstances presented by this case, I would find that in his role, Okoye was acting in tandem with the county attorney, who was ultimately responsible for bringing any necessary criminal charges. I would find that the coroner's physician's duties, like the duties of a prosecutor in the same situation, are quasi-judicial in nature. As such, I would find that Okoye is entitled to the same immunity as enjoyed by the county attorney.

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[4] Neb. Rev. Stat § 23-1820 (Reissue 2007).

[5] Neb. Rev. Stat. § 23-1824(1) (Reissue 2007).

[6] § 23-1824(2).

Melissa Alsidez, Special Administrator of the Estate of Anthony Alsidez, deceased, and Melissa Alsidez, individually, appellants, v. American Family Mutual Insurance Company, appellee.

807 N.W.2d 184

Filed December 16, 2011. No. S-10-1220.

1. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.

2. ____: ____. In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence.
3. **Insurance: Contracts: Judgments: Appeal and Error.** The interpretation of an insurance policy presents a question of law that an appellate court decides independently of the trial court.
4. **Insurance: Motor Vehicles: Contracts: Statutes: Damages.** In order to be entitled to underinsured motorist coverage under the terms of both an insurance policy and the Uninsured and Underinsured Motorist Insurance Coverage Act, an insured must be legally entitled to recover compensatory damages from the owner or operator of an underinsured motor vehicle.
5. **Statutes: Legislature: Public Policy.** It is the function of the Legislature through the enactment of statutes to declare what is the law and public policy of this state.
6. **Insurance: Contracts: Statutes: Legislature: Public Policy.** An exclusion in an insurance policy cannot be void as against public policy when it mirrors a statutory exclusion and when the statute, which has not been found wanting, is the Legislature's expression of the public policy of this state.

Appeal from the District Court for Scotts Bluff County: LEO DOBROVOLNY, Judge. Affirmed.

Christopher Welsh, of Welsh & Welsh, P.C., L.L.O., for appellants.

Tanya J. Janulewicz, of Leininger, Smith, Johnson, Baack, Placzek & Allen, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF CASE

In this automobile accident insurance coverage appeal, the appellants, Melissa Alsidez, individually and as special administrator of the estate of Anthony Alsidez (collectively the appellants), appeal the order of the district court for Scotts Bluff County in which the court granted summary judgment in favor of American Family Mutual Insurance Company (American Family) and dismissed the complaint. Because we agree with the district court's conclusions that the recovery the appellants seek is not available under the underinsured motorist coverage endorsement of the policy issued to Melissa by American

Family and the policy is not void as against public policy, we affirm.

STATEMENT OF FACTS

The material facts in this appeal are not in dispute. On April 27, 2009, Anthony Alsidez was in a single-car accident on South Mitchell Road near Mitchell, Nebraska. Anthony was driving a 1996 Jeep Grand Cherokee Laredo, which was owned by Melissa, Anthony's mother. Gregory Segura was riding in the front passenger seat, and two others were riding in the back seat. At one point, Segura grabbed the steering wheel, which caused the vehicle to veer to the right. Anthony attempted to correct the vehicle, but overcorrected, which caused the vehicle to slide across the road and into a ditch, where the vehicle rolled and crashed. On May 1, Anthony died as a result of the injuries he received in the accident.

The appellants filed a negligence suit against Segura, combined with a coverage action against American Family. In May 2010, the appellants settled their claims against Segura for $50,000, which was the liability limit of Segura's policy with State Farm Automobile Insurance Company for a vehicle that was not involved in this accident. This limit did not compensate the appellants for their claimed loss. The appellants moved to dismiss their claims against Segura with prejudice, and the district court granted this motion on July 6. Accordingly, American Family was the only remaining defendant in the lawsuit.

The appellants sought to recover underinsured motorist coverage from American Family through the policy issued by American Family to Melissa individually, which was in effect on the date of the accident. The policy stated:

> **UNDERINSURED MOTORISTS (UIM) COVERAGE ENDORSEMENT** . . . .
>
> . . . .
>
> **We** will pay compensatory damages for **bodily injury** which an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle**. The **bodily injury** must be sustained by an

> **insured person** and must be caused by accident and arise out of the **use** of the **underinsured motor vehicle**.
>
> . . . .
>
> As used in this endorsement:
>
> 1. **Insured person** means:
>
> a. **You** or a **relative**.
>
> b. Anyone else **occupying your insured car**.
>
> . . . .
>
> 3. **Underinsured motor vehicle** means a **motor vehicle** which is insured by a liability bond or a policy at the time of the accident and the amount of the bond or policy:
>
> a. Is less than the limit of underinsured motorists coverage under this policy . . . .
>
> . . . .
>
> **Underinsured motor vehicle**, however, does not mean a vehicle:
>
> a. Insured under the Liability coverage of this policy.
>
> . . . .
>
> c. Owned by or furnished or available for the regular use of **you** or a **relative**.

The policy stated in its definitions section: "**Use** means ownership, maintenance, or use," and "[**r**]**elative** means a person living in **your** household, related to **you** by blood, marriage or adoption." The policy defines "**insured car**" as "[a]ny **car** described in the declarations . . . ." The Jeep is listed in the policy's declarations section.

American Family filed a motion for summary judgment, which the district court granted on November 18, 2010. The district court reasoned that the language of the American Family policy made it clear that the Jeep cannot be considered an "underinsured vehicle" under Melissa's policy. The district court also determined that the "'regular use'" exclusion in Melissa's policy does not violate public policy. Accordingly, the district court granted American Family's motion for summary judgment and dismissed the complaint.

The appellants appeal the order of the district court granting summary judgment in favor of American Family.

ASSIGNMENTS OF ERROR

The appellants claim generally that the district court erred as a matter of fact and law when it granted American Family's motion for summary judgment. They specifically claim that the district court erred when it determined that the Jeep was an "insured car" and not an "underinsured vehicle" under Melissa's policy and that the exclusion from the underinsured coverage in Melissa's policy for vehicles "[o]wned by or furnished or available for the regular use of **you** or a **relative**" was not void as against public policy.

STANDARDS OF REVIEW

[1,2] An appellate court will affirm a lower court's granting of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Palmer v. Lakeside Wellness Ctr.*, 281 Neb. 780, 798 N.W.2d 845 (2011). In reviewing a summary judgment, the appellate court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence. *Id.*

[3] The interpretation of an insurance policy presents a question of law that we decide independently of the trial court. *Countryside Co-op v. Harry A. Koch Co.*, 280 Neb. 795, 790 N.W.2d 873 (2010).

ANALYSIS

The appellants claim that the district court erred when it granted summary judgment in favor of American Family based on the provisions in Melissa's policy with American Family and further erred when it determined that such language was not void as against public policy.

With regard to the provisions in Melissa's policy, the appellants argue that under the facts of this case, the Jeep should be deemed as an "underinsured vehicle" under Melissa's policy and that the appellants should be compensated under the policy's underinsured provisions. The appellants reason that Segura

was "operating" the vehicle at the time of the accident and that because Segura's insurance policy compensated for liability that was insufficient to adequately compensate the appellants for the death of Anthony, the underinsured motorist coverage in Melissa's policy should be invoked and render the Jeep an "underinsured vehicle." The appellants claim the district court's determinations to the contrary were error.

With regard to the appellants' public policy argument, the appellants claim that the exclusion of vehicles that are "[o]wned by or furnished or available for the regular use of **you** or a **relative**" from the scope of "underinsured motor vehicles" is void as against public policy and that the district court erred when it failed to so find. The appellants point to cases from other jurisdictions which have concluded that similar "regular use" exclusions are void as against public policy. The appellants assert that the "regular use" exclusion is contrary to the purpose of Nebraska's underinsured motorist coverage statute. The appellants state that the purpose of the underinsured motorist coverage statute is to make victims of drivers who carry less than adequate liability insurance as nearly whole as possible. They assert that the purpose of the "regular use" exclusion is to prevent coverage under both the underinsured motorist and the liability portions of the same policy and that because they did not receive liability compensation under Melissa's policy, the rationale underlying the exclusion does not apply.

In response, American Family contends for a variety of reasons that the language in Melissa's policy precludes underinsured coverage in this case and that the "regular use" exclusion from the underinsured coverage in Melissa's policy is not against public policy. We agree with American Family that the Jeep was not an underinsured motor vehicle in this case and that the exclusion to which the appellants take exception is not void as against public policy.

Our resolution of this appeal relies on the provisions of Melissa's policy and references to Nebraska statutes. The underinsured motorist coverage provision of the automobile policy American Family issued to Melissa provides:

> We will pay compensatory damages for **bodily injury** which an **insured person** is legally entitled to recover

> from the owner or operator of an **underinsured motor vehicle.** The **bodily injury** must be sustained by an **insured person** and must be caused by accident and arise out of the **use** of the **underinsured motor vehicle.**

The policy describes an underinsured vehicle and states that an "[**u**]**nderinsured motor vehicle,** however, does not mean a vehicle: a. [i]nsured under the Liability coverage of this policy [or] c. [o]wned by or furnished or available for the regular use of **you** or a **relative**."

The Uninsured and Underinsured Motorist Insurance Coverage Act is implicated in our analysis of this case. As a general matter, the act requires that automobile liability insurance policies provide for protection against uninsured and underinsured motor vehicles. See Neb. Rev. Stat. §§ 44-6401 to 44-6414 (Reissue 2010). The act provides at § 44-6408(1) as follows:

> No policy insuring against liability imposed by law for bodily injury, sickness, disease, or death suffered by a natural person arising out of the ownership, operation, maintenance, or use of a motor vehicle within the United States, its territories or possessions, or Canada shall be delivered, issued for delivery, or renewed with respect to any motor vehicle principally garaged in this state unless coverage is provided for the protection of persons insured who are legally entitled to recover compensatory damages for bodily injury, sickness, disease, or death from . . . (b) the owner or operator of an *underinsured motor vehicle* . . . .

(Emphasis supplied.)

Elsewhere, § 44-6407 of the act provides in part:

> An uninsured or underinsured motor vehicle shall not include a motor vehicle:
>
> (1) Insured under the liability coverage of the same policy of which the uninsured or underinsured motorist coverage is a part;
>
> (2) Owned by, furnished, or available for the regular use of the named insured or any resident of the insured's household.

[4] In order to be entitled to underinsured motorist coverage under the terms of both the policy and the Uninsured and Underinsured Motorist Insurance Coverage Act, an insured must be legally entitled to recover compensatory damages from the owner or operator of an "underinsured motor vehicle." In the present case, in order for the appellants to be entitled to underinsured motorist compensation with respect to the April 27, 2009, accident, the Jeep involved in the accident must be an "underinsured motor vehicle." For the reasons set forth below, we conclude under both the policy issued by American Family and by reference to the Uninsured and Underinsured Motorist Insurance Coverage Act, that the Jeep was not an "underinsured motor vehicle" and that, therefore, the appellants cannot recover under the underinsured provisions of Melissa's policy.

The interpretation of an insurance policy presents a question of law that we decide independently of the trial court. *Countryside Co-op v. Harry A. Koch Co.*, 280 Neb. 795, 790 N.W.2d 873 (2010). We have reviewed the policy and the undisputed facts. We determine that the Jeep is not an underinsured vehicle under Melissa's policy for several reasons, including that it is an "insured" vehicle under the policy; that it is owned by Melissa, the policyholder; and that it was made available for the "regular use" of Anthony.

The policy issued by American Family in the present case specifically excludes from the definition of "underinsured motor vehicle" any vehicle "[i]nsured under the Liability coverage of this policy." According to the liability section of the policy, American Family "will pay compensatory damages an **insured person** is legally liable for because of **bodily injury** and **property damage** due to the **use** of a **car** or **utility trailer.**" The policy defines "[**i**]**nsured person**" as "[**y**]**ou** or a **relative**" or "[a]ny person using **your insured car.**" In the policy, "**You**" refers to Melissa. "**Your insured car**" is defined as "[a]ny **car** described in the declarations . . . ." The 1996 Jeep Grand Cherokee Laredo is listed in the policy's declarations section. Thus, because the Jeep is insured under the liability coverage section of the American Family policy, it is an insured vehicle

and excluded from the definition of "underinsured motor vehicle" under the terms of the policy. The district court did not err when it so determined.

Referring again to the policy, the Jeep is not an underinsured motor vehicle, because it was owned by Melissa, who is the named insured. The underinsured motorists coverage provision states that an "[**u**]**nderinsured motor vehicle**" does not mean a vehicle "[o]wned by or furnished or available for the regular use of **you** or a **relative**." The policy defines "[**y**]**ou** and **your**" as "the policyholder named in the declarations." The policyholder named in the declarations is Melissa. In this case, the Jeep was owned by Melissa and Melissa is the policyholder named in the declarations. Thus, because the Jeep was owned by the policyholder named in the declarations, it is excluded from the definition of "underinsured motor vehicle" under the terms of the policy. The district court did not err when it so determined.

Referring again to the policy, the policy defines "[**r**]**elative**" as "a person living in **your** household, related to **you** by blood, marriage or adoption." There is no dispute that the Jeep that Anthony was driving at the time of the accident was available to him for his regular use, that Anthony was Melissa's son, and that he was living with her at the time of the accident. Therefore, because the Jeep was made available for the regular use of Anthony, a relative of the policyholder, the Jeep was excluded from the definition of "underinsured motor vehicle" under the policy. The district court did not err when it so determined.

Similar to the policy language, the Uninsured and Underinsured Motorist Insurance Coverage Act, which mandates the availability of underinsured coverage, provides in part at § 44-6407 as follows:

> An uninsured or underinsured motor vehicle shall not include a motor vehicle:
>
> (1) Insured under the liability coverage of the same policy of which the uninsured or underinsured motorist coverage is a part;
>
> (2) Owned by, furnished, or available for the regular use of the named insured or any resident of the insured's household.

Thus, in addition to the terms of Melissa's policy, the Jeep was excluded from the definition of "underinsured motor vehicle" for purposes of the insurance requirements of the Uninsured and Underinsured Motorist Insurance Coverage Act.

Notwithstanding the dictates of the language of the policy and the act, the appellants assert that the provision in the policy excluding vehicles that are owned or furnished for the "regular use" of the insured or a relative is void as against public policy and is contrary to the purpose of Nebraska's underinsured motorist coverage statute. They claim that the district court erred when it rejected this assertion. We conclude that the district court did not err.

In connection with their public policy argument, the appellants refer us to cases from other jurisdictions. In the cases upon which the appellants rely, courts have held that various provisions in automobile insurance policies excluding vehicles owned by, furnished, or made available for the regular use of a named insured or a relative of the insured from the definition of "uninsured motor vehicles" or "underinsured motor vehicles" are unenforceable contract restrictions, because they are at odds with mandatory uninsured or underinsured motorist coverage required by statute, the purpose of which is to protect citizens from damages caused by uninsured or underinsured motorists. The appellants rely on these cases to show that the trial court erred in determining the provision in the policy is not void as against public policy. See, *Gibbs v. National General Ins. Co.*, 938 S.W.2d 600 (Mo. App. 1997); *Fontanez v. Texas Farm Bureau Ins. Companies*, 840 S.W.2d 647 (Tex. App. 1992). The decisions on which the appellants rely are distinguishable from the instant case, which must be decided with reference to Nebraska's statutes.

Unlike Nebraska's Uninsured and Underinsured Motorist Insurance Coverage Act, which excludes vehicles made available for the regular use of a named insured or any resident of the insured's household from the definition of "underinsured motor vehicle," § 44-6407(2), the state statutes involved in the cases relied on by the appellants do not require the exclusion of vehicles made available for the regular use of a relative of the insured. In *Gibbs v. National General Ins. Co., supra*, the uninsured and underinsured motorist coverage statute in

Missouri did not include a "regular use" exclusion. Similarly, in *Fontanez v. Texas Farm Bureau Ins. Companies, supra*, the uninsured and underinsured motorist coverage statute in Texas did not specifically include a "regular use" exclusion in the definition of an "underinsured motor vehicle."

Unlike the analyses in the cases relied on by the appellants which involve statutes which do not exclude vehicles provided for the regular use of the insured or a relative of the insured from the definition of "uninsured motor vehicle" or "underinsured motor vehicle," the instant case is more comparable to our analysis employed in *Continental Western Ins. Co. v. Conn*, 262 Neb. 147, 629 N.W.2d 494 (2001). In *Continental Western Ins. Co.*, the appellants therein asserted that the automobile policy provision which excluded from the definition of an "underinsured motor vehicle" any vehicle "'[o]wned by any governmental unit or agency'" was void as against public policy. *Id.* at 154, 629 N.W.2d at 499. We rejected this argument.

[5,6] In rejecting the contention of the appellants appearing in *Continental Western Ins. Co.*, we referred to Nebraska's Uninsured and Underinsured Motorist Insurance Coverage Act, which provides that an "'underinsured motor vehicle shall not include a motor vehicle . . . (4) [w]hich is owned by any government, political subdivision or agency thereof . . . .'" 262 Neb. at 154, 629 N.W.2d at 500. See § 44-6407(4). In *Continental Western Ins. Co.*, we stated:

> "[I]t is the function of the Legislature through the enactment of statutes to declare what is the law and public policy of this state." *Clemens v. Harvey*, 247 Neb. 77, 82, 525 N.W.2d 185, 189 (1994). The exclusion in the insurance policy cannot be void as against public policy when it mirrors the statutory exclusion and when the statute, which has not been found wanting, is the Legislature's expression of the public policy of this state.

262 Neb. at 157, 629 N.W.2d at 501. In *Continental Western Ins. Co.*, we therefore found that the exclusion of government-owned vehicles from the definition of an "underinsured motor

vehicle" in the insurance policy at issue was not void as against public policy.

Similar to our observation in *Continental Western Ins. Co. v. Conn, supra*, the policy exclusion challenged herein mirrors the statute's provisions. In the instant case, the policy issued by American Family excluded from the definition of an "underinsured motor vehicle" any vehicle "[o]wned by or furnished or available for the regular use of **you** or a **relative**." This policy language closely follows the language of Nebraska's Uninsured and Underinsured Motorist Insurance Coverage Act, which excludes from the definition of an "underinsured motor vehicle" a vehicle "[o]wned by, furnished, or available for the regular use of the name insured or any resident of the insured's household." § 44-6407(2). Applying our reasoning in *Continental Western Ins. Co.*, we conclude that the "regular use" exclusion in the insurance policy, which mirrors the statutory exclusion, reflects the public policy of this state and is not void as against public policy. The district court did not err when it reached the same conclusion.

CONCLUSION

Following our consideration on appeal, we agree with the district court that the Jeep is not an "underinsured vehicle" under the policy and that the "regular use" exclusion is consistent with § 44-6407(2) of the Uninsured and Underinsured Motorist Insurance Coverage Act, and not void as against public policy. The district court did not err when it entered summary judgment in favor of American Family and dismissed the complaint. We therefore affirm.

AFFIRMED.

WRIGHT, J., not participating in the decision.