REL: April 12, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2171114

Lester Beeman

v.

ACCC Insurance Company

Appeal from Montgomery Circuit Court
(CV-17-901212)

EDWARDS, Judge.

In January 2017, Lester Beeman was injured in an automobile accident. At the time of the accident, Beeman was driving an automobile insured under a policy of insurance ("the policy") purchased by Renada Reese from ACCC Insurance

Company ("the insurer"). The operator of the other automobile involved in the accident, Kimberly LaChance, was allegedly uninsured.

In August 2017, Beeman sued LaChance in the Montgomery Circuit Court ("the trial court"), asserting, among other things, claims alleging negligence and wantonness. Beeman amended his complaint in October 2017 to seek an award of uninsured-motorist ("UIM") benefits from the insurer.[1] The insurer moved to dismiss Beeman's claim against it pursuant to Rule 12(b)(6), Ala. R. Civ. P., arguing that Reese was the "named insured" in the policy and that she had rejected UIM coverage, as permitted by Ala. Code 1975, 32-7-23(a), which reads as follows:

> "No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be

[1]Beeman included fictitiously named parties in his complaint, but the record does not reflect that the complaint was ever amended to substitute any actual parties for the fictitiously named parties; thus, no parties other than LaChance and the insurer were served with the complaint, and the existence of the fictitiously named parties in the complaint does not prevent the judgment entered by the trial court from being final. See Rule 4(f), Ala. R. Civ. P.; Griffin v. Prime Healthcare Corp., 3 So. 3d 892 n.1 (Ala. Civ. App. 2008).

> delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of Section 32-7-6, [Ala. Code 1975,] under provisions approved by the Commissioner of Insurance for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him or her by the same insurer."

After a hearing on the insurer's motion, the trial court granted the motion and dismissed the claim against the insurer. The case proceeded to trial against LaChance, who failed to appear at trial, and the trial court entered a default judgment against her on August 13, 2018. Beeman timely appealed and argues solely that the trial court erred in dismissing his claim against the insurer for UIM benefits. We affirm.

> "On appeal, a dismissal is not entitled to a presumption of correctness. Jones v. Lee County Commission, 394 So. 2d 928, 930 (Ala. 1981); Allen v. Johnny Baker Hauling, Inc., 545 So. 2d 771, 772 (Ala. Civ. App. 1989). The appropriate standard of

> review under Rule 12(b)(6) is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle her to relief. Raley v. Citibanc of Alabama/Andalusia, 474 So. 2d 640, 641 (Ala. 1985); Hill v. Falletta, 589 So. 2d 746 (Ala. Civ. App. 1991). In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether she may possibly prevail. Fontenot v. Bramlett, 470 So. 2d 669, 671 (Ala. 1985); Rice v. United Ins. Co. of America, 465 So. 2d 1100, 1101 (Ala. 1984). We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. Garrett v. Hadden, 495 So. 2d 616, 617 (Ala. 1986); Hill v. Kraft, Inc., 496 So. 2d 768, 769 (Ala. 1986)."

Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993).

Because this appeal involves the meaning of terms in an insurance policy, we begin by noting the general rules governing our construction of insurance policies.

> "'General rules of contract law govern an insurance contract. Twin City Fire Ins. Co. v. Alfa Mut. Ins. Co., 817 So. 2d 687, 691 (Ala. 2001). The court must enforce the insurance policy as written if the terms are unambiguous, id.; Liggans R.V. Ctr. v. John Deere Ins. Co., 575 So. 2d 567, 569 (Ala. 1991). Whether a provision of an insurance policy is ambiguous is a question of law. Turvin v. Alfa Mut. Gen. Ins. Co., 774 So. 2d 597, 599 (Ala. Civ. App. 2000).'
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> "Safeway Ins. Co. of Alabama, Inc. v. Herrera, 912 So. 2d 1140, 1143 (Ala. 2005). Furthermore, '[t]he

> identity of the insured and liability of the insurer are determined from the terms of the [insurance] contract.' Kinnon v. Universal Underwriters Ins. Co., 418 So. 2d 887, 888 (Ala. 1982)."

Safeway Ins. Co. of Alabama, Inc. v. Thomas, [Ms. 2170088, March 30, 2018] ___ So. 3d ___, ___ (Ala. Civ. App. 2018).

Certain policy documents appear in the record.[2] The initial application for insurance, which was executed in June 2013, indicates that Reese is the sole applicant; in the

[2]We note that, based on Donoghue v. American National Insurance Co., 838 So. 2d 1032 (Ala. 2002), the inclusion of copies of the initial application for insurance, the renewal certificate, and the policy as attachments to the motion to dismiss or the response thereto did not serve to convert the motion to dismiss into a motion for a summary judgment. Rule 12(b), Ala. R. Civ. P., indicates that the presentation of "matters outside the pleading," unless those matters are "excluded by the court," converts a Rule 12(b)(b)(6) motion to dismiss into a motion for a summary judgment. However, "'"if a plaintiff does not incorporate by reference or attach a document to its complaint, but the document is referred to in the complaint and is central to the plaintiff's claim, a defendant may submit an indisputably authentic copy to the court to be considered on a motion to dismiss."'" Donoghue, 838 So. 2d at 1035 (quoting Wilson v. First Union Nat'l Bank of Georgia, 716 So. 2d 722, 726 (Ala. Civ. App. 1998), quoting in turn GFF Corp. v. Associated Wholesale Grocers, Inc., 130 F.3d 1381, 1384-85 (10th Cir. 1997)). Because the amended complaint "specifically references the policy, and the purchase and substance of the policy serve as the foundation for [Beeman's] claim[,]" we conclude that the presentation of the application, the renewal certificate, and the policy did not convert the insurer's motion to a motion for a summary judgment. Id. at 1036.

initial application, Reese specifically rejected UIM coverage.[3] The renewal certificate for the period from January 2017 to July 2017 indicates that the "policyholder" is Reese. Nothing in the initial application, the renewal certificate, or the policy defines the term "named insured" or indicates specifically that Reese is the "named insured" under the policy.[4] Moreover, neither the initial application, which does not list Beeman at all, nor the renewal certificate indicate that Beeman is a "named insured." The renewal certificate reflects that Beeman is listed on the declarations page as a "driver." He is an "insured person" under the

[3]The language in the initial application reflects the language of § 32-7-23(a) and informs the policyholder that the rejection of UIM coverage in the initial application "applies not only to this policy, but also to all renewals thereof unless [the policyholder] instruct[s] the [insurer] to the contrary in writing."

[4]As noted above, the policy does not define "named insured." However, we find the failure to include that term in the policy to be inconsequential, because the policy instead uses the term "policyholder." Both Black's Law Dictionary 1345 (10th ed. 2014), and Merriam-Webster's Collegiate Dictionary 901 (11th ed. 2003) define "policyholder" as one who owns, i.e., the owner of, an insurance policy. Other courts have equated the term "policyholder" with the term "named insured." See, e.g., Ball v. Allstate Ins. Co., 426 P.3d 862, 867 (Alaska 2018); Carlson v. Allstate Ins. Co., 749 N.W.2d 41, 45 (Minn. 2008); and Laird v. Allstate Ins. Co., 221 P.3d 780, 785, 232 Or. App. 162, 171 (2009).

policy because he is Reese's son, living in her household, and endorsed on the policy.[5]

Beeman argues on appeal, as he did below, that he is a "named insured" on the policy and that, therefore, Reese's rejection of UIM coverage is not binding on him. Indeed, our caselaw makes clear that each named insured must reject UIM coverage for himself or herself. See Nationwide Ins. Co. v. Nicholas, 868 So. 2d 457 (Ala. Civ. App. 2003) (plurality opinion); State Farm Mut. Auto. Ins. Co. v. Martin, 292 Ala. 103, 289 So. 2d 606 (1974). However, those cases do not assist us in determining whether Beeman was, in fact, a "named insured," because in both Nicholas and Martin the evidence demonstrated that the plaintiffs were, in fact, listed as "named insureds" on the respective policies. Nicholas, 868 So. 2d at 459; Martin, 292 Ala. at 104, 289 So. 2d at 607.

Beeman contends that consideration of the policy language in the "UIM section" of the policy, which defines "insured person" as "you, a relative, or a resident" and "any other

[5]The policy defines an "insured person" as including a "relative," which is defined as "a person living in [the policyholder's] household and related to [the policyholder] by blood, marriage or adoption, including a ward or foster child and listed on the application and endorsed on the policy prior to a loss."

person occupying your insured auto," results in the definitive conclusion that he is, in fact, an "insured person" under the policy and that he is, therefore, entitled to UIM coverage because he did not personally reject that coverage. He also contends that he "was a known and anticipated 'insured person'" under the policy. We find Beeman's reliance on the definitions contained in the "UIM section" of the policy disingenuous in light of the fact that the issue in the present case is whether Beeman is entitled to such coverage. Furthermore, we know of no authority, and Beeman provides none, indicating that a person known or anticipated to be an "insured person" under a policy is, in fact, a "named insured" of the policy and therefore entitled to UIM coverage unless he or she specifically rejects it.[6]

The policy contains the following definition of "you" and "your" in the "policy agreement" section: "'You' and 'your' mean the Policyholder named on the declarations page and

[6]There is authority indicating, however, that "[t]he term 'named insured' is not synonymous with 'insured' but has a restricted meaning" and that "[t]he term 'insured' is not limited to the named insured but applies to anyone who is insured under the policy." 7A Steven Plitt et al., Couch on Insurance § 110:1 (3d ed. 2013) (footnotes omitted).

spouse, if living in the same household." This language is quite similar to language contained in the policies at issue in Progressive Specialty Insurance Co. v. Naramore, 950 So. 2d 1138 (Ala. 2006), and Progressive Specialty Insurance Co. v. Green, 934 So. 2d 364 (Ala. 2006), upon which the trial court specifically relied to support its dismissal of Beeman's claim against the insurer. In both Naramore and Green, our supreme court considered whether a spouse of the named insured was also a "named insured" under the policy of insurance despite not being listed on the declarations page of the policy. In both cases, our supreme court answered that question in the negative.

Although the plaintiff in Green had argued that the definition in the policy defining "you" and "your" as the named insured and his or her spouse compelled the conclusion that the named insured's spouse was also a named insured, our supreme court explained:

> "The fact that the terms 'you' and 'your' are defined to include both the named insured —- the person named on the declarations page of the policy —- and the named insured's spouse actually makes clear that the named insured's spouse is not a named insured. ... [The] Progressive policy unambiguously distinguishes the 'named insured' from the 'named insured's spouse.' Although 'you' is defined to

> refer to both [the named insured] and [that person's spouse], 'named insured' does not refer to both. Therefore, we conclude that [the wife] was not a 'named insured' under [the husband's] automobile insurance policy with Progressive."

Green, 934 So. 2d at 367 (footnote omitted).

The argument advanced by the plaintiff in Naramore was slightly different than that advanced by the plaintiff in Green. In Naramore, the plaintiff contended that the fact that "you" and "your" were defined in the policy to include both the named insured and his or her spouse resulted in the conclusion that the references to "your application" in the application meant that the named insured and his or her spouse were both, in fact, applicants of the policy and should be treated equally under the policy. Naramore, 950 So. 2d at 1141. Yet our supreme court rested on its earlier conclusion in Green that the policy language distinguished between the named insured and the named insured's spouse.

Beeman argues that the trial court's reliance on Naramore and Green is inapposite because, in both cases, the spouses were not actually listed on the declarations page on the policy. The situations in those cases are, he contends, unlike his, because he is listed on the renewal certificate.

Although that is true, we do not find that factual distinction relevant. We agree that reliance solely on Naramore and Green does not completely resolve the issue in this case, which is whether Beeman is a "named insured" such that his personal rejection of UIM coverage was required under § 32-7-23(a).

Beeman contends that his being listed on the renewal certificate results in his being a "named insured" or "policyholder." We disagree. The renewal certificate clearly identifies Reese as the named insured. Beeman is listed on the renewal certificate only as a "driver." Although no Alabama court has directly considered the question whether being listed on a declarations page as a "driver" equates with being a "named insured" or "policyholder" under the policy, the courts of several of our sister states have. See Ball v. Allstate Ins. Co., 426 P.3d 862, 867 (Alaska 2018) (concluding that the term "policyholder" did not encompass "listed drivers"); Stanley v. Government Emps. Ins. Co., 344 Ga. App. 342, 345, 810 S.E.2d 179, 182 (2018) (quoting Dunn-Craft v. State Farm Mut. Auto. Ins. Co., 314 Ga. App. 620, 621, 724 S.E.2d 903, 906 (2012)) (stating that "Georgia law is clear that 'listed drivers are not named insureds'"); Georgia

Farm Bureau Mut. Ins. Co. v. Wilkerson, 250 Ga. App. 100, 101, 549 S.E.2d 740, 742 (2001) (declaring that, although a person "may be insured because he is an authorized driver of the insured vehicle, he is not the named insured"); Millspaugh v. Ross, 645 N.E.2d 14, 16-17 (Ind. Ct. App. 1994) (determining that a person listed only as a "principal driver" was not a "named insured"); Carlson v. Allstate Ins. Co., 749 N.W.2d 41, 46 (Minn. 2008) (determining that a person listed as a driver was not a "policy holder"); Nationwide Mut. Ins. Co. v. Williams, 123 N.C. App. 103, 106, 472 S.E.2d 220, 222 (1996) (rejecting the argument that "the term 'driver' is synonymous with 'named insured'"); Waller v. Rocky Mountain Fire & Cas. Co., 272 Or. 69, 76, 535 P.2d 530, 533 (1975) (concluding that the act of the named insured adding his son on the policy as a "new driver" did not make the son a "named insured"); and Laird v. Allstate Ins. Co., 232 Or. App. 162, 171, 221 P.3d 780, 785 (2009) (determining that a "listed driver" was not a policyholder").

The present case is quite like Waller. The policy at issue in Waller listed H.E. Waller as the named insured. Waller, 272 Or. at 76, 535 P.2d at 533. H.E. sought an

amendment to his insurance policy to add his son, Jerry Waller, as a "new driver" and to add a new vehicle. Id. The Oregon Supreme Court reasoned that H.E.'s addition of Jerry as a driver did not make Jerry a "named insured" under the policy because "[t]he amended declaration continued to name H.E. Waller as the only 'named insured.'" Waller, 272 Or. at 76, 535 P.2d at 534.

Furthermore, we find persuasive the decision of the Eleventh Circuit Court of Appeals in Rimas v. Progressive Specialty Insurance Co., 292 F. App'x 833 (11th Cir. 2008), in which the court affirmed a summary judgment in favor of the insurance company on Mark Rimas's claim that he was entitled to UIM benefits under a policy of insurance executed by Wendell Robinson. Like Beeman in the present case, Rimas was listed as a "driver" on the policy, but he was not listed as a "named insured." Relying on § 32-7-23(a), Naramore, and Green, the Eleventh Circuit Court of Appeals concluded that only a named insured is entitled to specifically reject UIM coverage under a policy. The opinion indicates that Rimas contended that "he was an 'intended insured' and a 'listed insured'" and was therefore entitled to UIM coverage unless he

rejected that coverage, but the court noted that Rimas provided no authority in support of such a conclusion.

Like in Waller and Rimas, Beeman was added to the policy as a driver. The renewal certificate continues to list only Reese as the policyholder. Thus, we conclude that Beeman does not provide a convincing argument that his inclusion on the renewal certificate as a "driver" resulted in his being made a named insured or a policyholder and, therefore, that he did not have a right under § 32-7-23(a) to reject UIM coverage.

Beeman also argues that nothing in the language rejecting UIM coverage in the initial application signed by Reese indicates that the rejection is effective for "additional insureds" under the policy or nonsignatories to the policy. The language rejecting UIM coverage in the application, which Reese signed, reads, in pertinent part:

> "I understand that the state requires [UIM coverage] be afforded me under my motor vehicle liability policy unless I specifically reject this coverage. ... UNDERSTANDING THIS I SIGN THIS ... REJECTIONS AS WITNESS MY SIGNATURE with respect to all vehicles covered under this policy. Further this ... rejection applies not only to this policy, but also to all renewals thereof unless I instruct the Company to the contrary in writing."

(Capitalization in original.)

The policy contains the following language relevant to the rejection of UIM coverage:

> "You [defined as the 'policyholder,' i.e., Reese and her spouse] and we [defined as the insurer] agree that in accordance with the provisions of Section 32-7-23, [Ala. Code 1975,] which permits you to reject [UIM] Coverage, you hereby reject such insurance, being the insurance provided for protection of persons insured under this policy who would legally be entitled to recover damages from the owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom."

Although the language in the application does not specifically mention that it is binding on "additional insureds" or other persons covered by the policy, the language in the policy does indicate that the rejection of UIM coverage by the policyholder rejects such coverage for those insured under the policy. In any event, the language of § 32-7-23(a) makes clear that "the named insured shall have the right to reject such coverage." In addition, contrary to Beeman's argument otherwise, our supreme court has explained that § 32-7-23(a) provides the named insured the "right to knowingly reject [UIM] coverage with respect to additional insureds." Federated Mut. Ins. Co. v. Vaughn, 961 So. 2d 816, 819 (Ala. 2007). The only party with the right to reject UIM coverage

is the named insured or the policyholder, which, in the present case, was Reese. Her rejection of UIM coverage is binding on Beeman.

Our review of the record reveals that only Reese is listed on the initial application and the renewal certificate as the "policyholder," which term we find to be equivalent to "named insured," and that Beeman is merely listed as a "driver" on the renewal certificate contained in the record. Based on § 32-7-23(a), Rimas, Green, and Naramore, we agree with the trial court's conclusion that Beeman is not a "named insured" under the policy with the insurer and that, therefore, Reese's rejection of UIM coverage was effective as to Beeman. Accordingly, because Beeman has presented no set of facts under which he would be entitled to recover UIM benefits, we affirm the judgment of the trial court dismissing Beeman's claim against the insurer.

AFFIRMED.

Thompson, P.J., and Moore and Hanson, JJ., concur.

Donaldson, J., recuses himself.