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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001080-MR

SHERRY L. TAYLOR — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KEN G. COREY, JUDGE
ACTION NO. 1997-CI-4440

AMERICAN NATIONAL GENERAL INSURANCE COMPANY — APPELLEE

OPINION
REVERSING AND REMANDING
** ** ** ** **

BEFORE: GUDGEL, CHIEF JUDGE, AND HUDDLESTON AND KNOPF, JUDGES.

KNOPF, JUDGE: This is an appeal from an order granting summary judgment finding that an automobile was not an insured vehicle under the owner's existing policy. We find that the trial court erred in determining as a matter of law that the vehicle was not covered. We further find that the appellant was entitled to coverage on her vehicle as a matter of law. Hence, we reverse and remand.

Except where noted, the facts of this case are not in dispute. The appellant, Sherry L. Taylor, had a policy of automobile insurance in effect as of January 1997 with the appellee, American National General Insurance Company. (American

National). The only car listed as an insured vehicle under the policy was a 1990 Ford Probe. On January 28, 1997, Taylor completed the paper work to purchase an additional car, a 1997 Ford Probe. She took possession of the 1997 Probe on January 31, 1997. She did not notify American National that she had purchased a new car, nor did she pay any premium to cover the 1997 Probe.

On March 1, 1997, both the 1990 Probe and the 1997 Probe were damaged during a flood. On March 3, 1997, Taylor contacted American National and attempted to file a claim on the 1997 Probe. The following day, she filed a claim on the 1990 Probe. American National paid the claim on the 1990 Probe, but refused to pay the claim on the 1997 Probe.

Taylor then brought this action in Jefferson Circuit Court, to recover under her insurance policy for the damages to the 1997 Probe. Following a period of discovery, the trial court granted American National's motion for summary judgment, and dismissed Taylor's claim. This appeal followed.

Although Taylor is now proceeding in this appeal *pro se*, the issue presented is relatively simple: Was the 1997 Probe an "insured car" under the policy of insurance? Matters involving the interpretation of an insurance contract are questions of law, which this Court may review *de novo*. *See* Morganfield National Bank v. Damien Elder & Sons, Ky. 836 S.W.2d 272 (1997). Furthermore, insurance contracts should be liberally construed and all doubts resolved in favor of the insured. Davis v. American States Ins. Co., Ky.App., 562 S.W.2d 653, 655 (1977),

Wolford v. Wolford, Ky., 662 S.W.2d 835 (1984). Exceptions and exclusions should be strictly construed to make insurance effective. Davis, *supra*. *See also* Grimes v. Nationwide Mut. Ins. Co., Ky. App., 705 S.W.2d 926 (1985).

American National agrees that if Taylor acquired the 1997 Probe on January 31, 1997, then she had until March 2, 1997 to notify it that she had purchased the vehicle and to pay a premium on it. It argues that in any case her claim filed on March 3 was untimely. We disagree.

The insurance policy defines "your insured car," in pertinent part, to mean:

> (14) . . .
> (e) a car **you** acquire during the policy period if it is an additional car and **we** insure all **private passenger cars** or **utility vehicles** owned by **you** on the date of **your** acquisition of the car. **You** must notify **us** during the policy period and within 30 days after the date of acquisition of **your** election to make this and no other policy issued by **us** applicable to the car and **you** must pay **us** any additional premium due.
> **Emphasis in original**

Under the plain language of the insurance policy, any additional vehicle purchased by the insured is an "insured car." In considering similar clauses, other states have taken two (2) different approaches. *See*, Annotation, "Construction and Application of 'Automatic Insurance' or 'Newly Acquired Vehicle' Clause ('Replacement,' and 'Blanket,' or 'Fleet' Provisions) Contained in Automobile Liability Policy," 39 A.L.R. 4Th 229,§§ 22-23, pp 299-310 (1985) (1998 Supp., p. 11). A majority of

states view notice to be a condition subsequent to coverage. They interpret the clause to provide automatic coverage for a newly acquired vehicle during the notice period, even if notice was never given to the insurer. Coverage terminates at the end of the grace period upon failure of the condition subsequent (notice to the insurer) to occur. *See, e.g.* Auto Owners Insurance Company v. Rasmus, 222 Wis.2d 342, 353-54, 588 N.W.2d 49, 54 (Wis. App., 1998).

The remaining states which have considered the question view the notice requirement in an automatic coverage clause as a condition precedent. Thus, if the insured fails to give notice to the insurer within the prescribed time period, no coverage is afforded to the additional vehicle during the grace period. Notice to the insurer is deemed to be a condition precedent to coverage. *See e.g.*, Colonial Penn Insurance Company v. Guzorek, 690 N.E.2d 664, 668-70 (Ind., 1997).

American National interprets the clause in its policy to follow the latter approach. As a result, according to the insurer, Taylor's failure to notify it that she had purchased the 1997 Probe resulted in a termination of coverage retroactive to the date of purchase. However, we find that the clear language of the policy is more closely reflected in the majority rule. As we read the clause in Taylor's policy, the insured is required to make an election whether the new car will be covered under the existing policy. If the insured wants coverage to continue under the existing policy, he or she must notify the insurer and pay any additional premium on the new car within thirty (30) days

from the vehicle's acquisition. However, the vehicle remains covered during the grace period, and coverage will terminate only at the end of the grace period if notice is not given.

KRS 304.39-010, *et seq.*, requires all persons who operate a motor vehicle within the state to maintain insurance on that vehicle. A retroactive termination of coverage creates a situation where a vehicle may become uninsured for a period during which the owner reasonably believed it would be covered. We conclude that such a result is in violation of the purposes of the Motor Vehicle Reparations Act. See also, Crenshaw v. Weinberg, Ky., 805 S.W.2d 129, 131 (1991).

Moreover, we find that the plain language of this policy creates a reasonable expectation that any additional vehicle will be insured under the policy for thirty (30) days following its acquisition. Although Taylor had no right to expect that coverage on the 1997 Probe would continue after that time if she failed comply with the requirements of the contract, she reasonably expected that damage to the vehicle within the thirty (30) day period would be covered. The date of filing of the claim is irrelevant as long as the casualty occurred during the contractual period of coverage.

American National admitted in its answer that the 1997 Probe was damaged during the flood on March 1. In the proceedings before the trial court, American National argued that the thirty (30) day period should be counted from January 28, 1997, the date Taylor signed the transfer paperwork on the 1997 Probe. Taylor presented evidence that she did not actually take

possession of the vehicle until January 31, and she alleged that the paperwork was not actually signed until that date. American National conceded the January 31 date for purposes of the summary judgment motion only. However, if Taylor actually acquired the vehicle on January 28, then her coverage under the policy would have lapsed after February 27. Thus, the damage to the 1997 Probe on March 1 would have occurred outside of the contractual period of coverage. Conversely, if Taylor acquired the vehicle on January 31, then it was covered under Taylor's existing policy as of March 1.

Although this appears to be a genuine issue of material fact, we find as a matter of law that the time for giving an insurer notice of acquisition is to be computed from the date the vehicle was delivered to the insured. Brown v. State Farm Mut. Auto. Ins. Co., Ky. 306 S.W.2d 836, 837 (1957). There is no factual dispute that Taylor accepted delivery of the vehicle on January 31. Therefore, the thirty (30) day notice period did not commence until that date.

Accordingly, the judgment of the Jefferson Circuit Court is reversed, and this matter is remanded for entry of a judgment in favor of the appellant as stated in this opinion.

ALL CONCUR.

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