

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000594-MR

KYLE PUCKETT

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 06-CI-011197

GEICO INDEMNITY COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, NICKELL, AND WINE, JUDGES.

WINE, JUDGE: Kyle Puckett appeals from a summary judgment entered by the Jefferson Circuit Court finding that an all-terrain vehicle (“ATV”) was not an “uninsured auto” within the meaning of GEICO’s uninsured motorist (“UM”) policy. Finding that the trial court properly interpreted the policy language at issue, we affirm.

On August 6, 2006, Kyle Puckett was operating an ATV on a neighborhood road in southern Jefferson County. While riding, Puckett's ATV was struck by another ATV being driven by a friend, Robert Stettler, Jr. As a result of the accident, Puckett suffered injuries and was hospitalized for a broken arm.

At the time of the collision, both Puckett and Stettler were minors and both lived with their parents. Puckett's parents, Gary and Shannon Puckett, had a motor vehicle insurance policy issued by GEICO and were listed on the policy as named insureds. Stettler's father, Robert Stettler, Sr., had auto and homeowners' insurance issued by Nationwide Insurance Company.

On December 13, 2006, Puckett filed a complaint against Stettler and his father. Nationwide denied coverage because its policies excluded coverage for ATVs. Thereafter, Puckett filed an amended complaint seeking to recover under GEICO's UM coverage.

Puckett and GEICO filed cross-motions for summary judgment. Puckett sought an order finding that GEICO owed him coverage pursuant to the UM provision of the policy, and GEICO sought an order finding that the policy excluded coverage for accidents involving ATVs. On March 23, 2009, the trial court granted GEICO's motion, holding that the ATV being operated by Stettler was not an "uninsured auto" under the policy. Puckett now appeals from this judgment.

An ATV is not considered as a motor vehicle for purposes of the Motor Vehicle Repairs Act (“MVRA”). Kentucky Revised Statute (“KRS”) 304.39-020(7). *See also, Manies v. Croan*, 977 S.W.2d 22, 23 (Ky. App. 1998). However, Puckett maintains that the definition of “uninsured auto” in GEICO’s policy is broad enough to include the ATV under the circumstances in this case. At the very least, he argues that he should be given the benefit of any ambiguity in the contractual definition of “uninsured auto.”

The construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003). If no ambiguity exists, “a written instrument is to be strictly enforced according to its terms which are to be interpreted ‘by assigning language its ordinary meaning and without resort to extrinsic evidence.’” *Allen v. Lawyers Mutual Insurance Company of Kentucky*, 216 S.W.3d 657, 659 (Ky. App. 2007) (*quoting Island Creek Coal Co. v. Wells*, 113 S.W.3d 100, 104 (Ky. 2003)). Since this is a matter of law, we owe no deference to the conclusions of the trial court. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

The parties agree that Section IV of GEICO’s policy provides for “damages for ***bodily injury*** caused by accident which the ***insured*** is legally entitled to recover from the owner or operator of an ***uninsured auto*** ... arising out of the ownership, maintenance or use of that auto.” The policy further defines “uninsured auto” as,

...an auto which has no bodily injury liability bond or insurance policy applicable with liability limits complying with the financial responsibility law of the *state* in which the *insured auto* is principally garaged at the time of an accident. This term also includes an auto whose insurer is or becomes insolvent within one year after the accident date or denies coverage.

The term “*uninsured auto*” does not include

- (a) an *insured* auto;
- (b) an auto owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- (c) an auto owned by the United States of America, any other national government, a state, or a political subdivision of any such government or its agencies;
- (d) a land motor vehicle or *trailer* operated on rails or crawler-treads or located for use as a residence or premises; or
- (e) a farm-type tractor or equipment designed for use principally off public roads, except while used upon public roads.

Puckett contends that the ATV is “equipment designed for use principally off public roads” under subsection (e). Furthermore, since both ATVs involved in this case were being used on public roads, Pucket argues that the ATVs fall within the provisions of subsection (e) and should be considered as uninsured autos for purposes of this section.

Puckett’s interpretation of subsection (e) creates coverage for two types of vehicles: a farm-type tractor, and equipment designed for use principally off public roads. We agree with the trial court, however, that this interpretation is not in keeping with the rest of the contract. In subsection (d), the terms “land motor vehicle” and “trailer” are not meant to be read as two distinct types of

vehicles even though they are separated by the word “or”. Rather, the adjective “land” modifies both “motor vehicle” and “trailer” and these words are further modified the subsequent qualifying phrases. Similarly, in subsection (e), the adjective “farm-type” modifies both “tractor” and “equipment”. Likewise, these words are further modified by the phrase “designed for use principally off public roads.”

Furthermore, there is a reasonable basis for allowing coverage of certain types of farm equipment while they are being operated on public roads. Farm tractors, as a category of vehicles, do not meet Kentucky's highway use specifications. However, they may be operated on certain public roads under specific circumstances where they are used “solely for agricultural, farming or manufacturing purposes”. KRS 189.190(3). *See also, Ryan v. Pennsylvania Life Insurance Co.*, 123 S.W.3d 142, 144-45 (Ky. 2004).

Along the same lines, ATVs may not be lawfully operated on public roads. KRS 189.515. However, there are some limited exceptions to this rule, allowing ATVs to cross public roads or to operate on two-lane public roads if the operator is engaged in farm or agricultural-related activities, construction, road maintenance or snow removal. KRS 189.515(6). The ATVs in this case were not lawfully operating on the public roads under any of these exceptions.

We agree with the trial court that allowing coverage in this instance would run counter to the terms of GEICO’s UM policy and to the policy of this

state. Consequently, the trial court properly granted GEICO's motion for summary judgment.

Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert D. Walker, II
Mark B. Wallace
Louisville, Kentucky

BRIEF FOR APPELLEE:

Michael D. DeFilippo
Louisville, Kentucky