RENDERED: AUGUST 19, 2011; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000022-MR

RICHARD YATES — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KEN M. HOWARD, JUDGE
ACTION NO. 08-CI-00771

SHELTER MUTUAL INSURANCE COMPANY — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: FORMTEXT TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE, SENIOR JUDGE.

SHAKE, SENIOR JUDGE: Richard Yates brings this appeal from a December 14, 2009, summary judgment of the Hardin Circuit Court in favor of Shelter Mutual Insurance Company. The underlying dispute involved a summary judgment action to adjudicate the bodily injury liability limits of an automobile insurance policy

issued by Shelter to Yates. Because we hold that Yates was not given satisfactory notice of his policy's changes, we reverse and remand.

The underlying material facts of this case are uncontroverted. In 2006, Yates and James Meredith traveled to Kansas in Yates' automobile. Yates became tired and requested that Meredith drive the vehicle. While Meredith was driving and Yates was a passenger, the vehicle was involved in a single vehicle accident. Yates was severely injured in the accident.

Yates had secured motor vehicle insurance coverage for his vehicle with Shelter Mutual Insurance Company. Yates was a named insured under the insurance policy, and the insurance policy specifically listed the vehicle as an insured vehicle. The declarations page also listed the limits of liability coverage as $50,000 each person/$100,000 each accident for bodily injury claims. Because Meredith's negligence led to the accident and Yates' injuries were in excess of the $50,000 bodily injury liability limit, Yates requested Shelter to tender the liability limit of $50,000.

Shelter refused to tender the liability limit and cited Yates to the permissive driver step-down provision found in the body of the insurance policy. This provision is triggered when a driver other than an insured of the first class is operating the covered vehicle with permission.[1] The provision operates to lower

[1] It must be noted that Yates is an insured of the "first class" and that the permissive driver of Yates' motor vehicle (James Meredith) was an insured of the "second class" at the time of the accident. *See James v. James*, 25 S.W.3d 110 (Ky. 2000)(holding that insureds of the first class include named insureds and those residing in his household and that insureds of the second class are those who are not included in first class under the terms of the insurance policy). The insurance policy issued to Yates by Shelter contained similar differentiations between first- and

the limits of Shelter's liability for bodily injury to the minimum required by the Motor Vehicle Reparations Act (MVRA).[2] Under the MVRA, the minimum liability limits for bodily injury are $25,000 each person/$50,000 each accident. Because a permissive driver (Meredith) was driving Yates' vehicle when Yates was injured as a passenger, Shelter maintained that the lower bodily injury liability limits of $25,000 each person/$50,000 each accident were applicable. Yates rejected Shelter's interpretation of the insurance policy and demanded the remaining $25,000. Yates argues that as a named insured under the policy, he was entitled to the higher bodily injury liability limit of $50,000.

Consequently, Shelter instituted the underlying declarations of rights action seeking an adjudication of the parties' respective rights and obligations under the insurance policy. Eventually, Shelter filed a motion for summary judgment. Shelter asserted that the policy's permissive driver step-down provision was valid and effectively limited its liability to $25,000 for bodily injuries sustained by Yates. The circuit court agreed. By summary judgment entered December 14, 2009, the circuit court held that the permissive driver step-down provision validly limited Shelter's bodily injury liability to the minimum of $25,000 each person/$50,000 each accident. This appeal followed.

Yates contends that the circuit court erred by rendering summary judgment in favor of Shelter. Yates asserts that the court erroneously applied the

---

second-class insureds as presented in *James*, 25 S.W.3d 110.

[2] The Motor Vehicle Reparations Act (MVRA) is codified at KRS Chapter 304.39.

permissive driver step-down provision to limit Shelter's liability for bodily injury to $25,000 each person/$50,000 each accident. For the reasons set forth below, we agree.

Summary judgment is proper where there exists no genuine issue of material fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). In this appeal, the material facts are uncontroverted and resolution centers upon a question of law – the validity of the permissive driver step-down provision found in the insurance policy issued by Shelter to Yates.

To begin, a permissive driver step-down provision in a motor vehicle insurance policy may be broadly defined as a provision that lowers the insurer's limits of liability for bodily injury when an individual, who is not a first-class insured, is driving the vehicle with permission to do so. In an insurance policy containing a permissive driver step-down provision, the limits of bodily injury liability differ depending upon the class of the insured. Thus, an insured of the first class or named insured, which includes Yates, is entitled to the higher limits of bodily injury liability coverage when driving the insured vehicle; whereas, a second-class insured or a permissive driver is only entitled to the lower (or step-down) limits of liability coverage when driving the insured vehicle.

In the insurance policy issued by Shelter to Yates, the particular permissive driver step-down provisions read as follows:

PART I – AUTO LIABILITY
COVERAGE A – BODILY INURY LIABILITY;
COVERAGE B – PROPERTY DAMAGE LIABILITY

ADDITIONAL DEFINITIONS USED IN PART I
As used in this Part, insured means:

. . . .

(5) Any individual who has permission or general consent to use the described auto. However, the limits of our liability for individuals who become insureds solely because of this subparagraph, will be minimum limits of liability insurance coverage specified by the financial responsibility law applicable to the accident, regardless of the limits stated in the Declarations.

. . . .

LIMIT OF OUR LIABILITY
The limit of liability Coverages A and B are stated in the Declarations. Those are subject to the following limitations:

. . . .

(5) Regardless of the limit of liability shown in the Declarations, the limit of liability under Coverages A and B for persons who meet the definition of insured solely because they have permission or general consent to use the described auto, will be the minimum limits of liability insurance coverages mandated by the financial responsibility law applicable to the accident.

Yates makes several arguments on appeal regarding the alleged validity of the step-down provision. However, for the purposes of this appeal, we will address only one: that the permissive driver step-down provision is unenforceable under the doctrine of reasonable expectations. Yates points out that

he paid a premium for the higher bodily injury liability limits, for "full coverage protection," and was led to believe by the declarations page of the policy that the higher bodily liability limits of $50,000 each person/$100,000 each accident were applicable. Yates argues that an insured would reasonably believe to be covered by the higher limits of bodily injury liability coverage and, thus, is entitled to such coverage. Given the particular facts of this action, we agree.

The interpretation of a contract presents an issue of law for the Court. *See Cinelli v. Ward*, 997 S.W.2d 474 (Ky. App. 1998). Generally, a contract of insurance is recognized as a contract of adhesion and is to be interpreted liberally in favor of the insured. *See Woodson v. Manhattan Life Ins. Co. of New York, N.Y.*, 743 S.W.2d 835 (Ky. 1987). In this Commonwealth, our courts have consistently upheld and protected the reasonable expectations of insureds of insurance policies. *Lewis v. W. Amn. Ins. Co.*, 927 S.W.2d 829. By relying upon the reasonable expectations of the insured, sundry exclusions or limitations upon coverage in a motor vehicle insurance policy have been deemed unenforceable and invalid. *See Chaffin v. Ky. Farm Bureau Ins. Companies*, 789 S.W.2d 754 (Ky. 1990); *Hamilton v. Allstate Ins. Co.*, 789 S.W.2d 751 (Ky. 1990); and *Lewis*, 927 S.W.2d 829. Simply stated, the doctrine of reasonable expectations provides that "when one has bought and paid for an item of insurance coverage, he may reasonably expect it to be provided." *Hamilton*, 789 S.W.2d at 753.

The declarations page of Yates' policy lists the bodily injury liability limits as $50,000 each person/$100,000 each accident. The declarations page fails

to set forth the lower limits of bodily injury liability ($25,000 each person/$50,000 each accident) of the permissive driver step-down provision. Rather, the permissive driver step-down provision is buried in the body of the policy. Yates maintains that he relied upon the declarations page to inform him of Shelter's bodily injury liability limits pursuant to the following policy provision:

> YOUR DUTY TO MAKE SURE YOUR COVERAGES ARE CORRECT
>
> You agree to check the Declarations page each time you receive one, in order to make sure that:
>
> (1) all the coverages you requested are included in this policy; and
> (2) the limit of our liability for each of those coverages is the amount you requested.
>
> You agree to notify us within ten days of the date you receive any Declarations page if you believe the coverages or amounts of coverage it shows are different from those you requested. If you do not notify us of a discrepancy, we will presume the policy meets your requirements.

It is undisputed that Yates had been paying premiums for the $50,000/$100,000 coverage to Shelter for many years. However, Yates' original plan did not include the permissive driver step-down provision. The step-down provision was not inserted into Yates' policy until 2004. Although Shelter sent a vague letter to Yates indicating that his policy had changes, it failed to indicate where in the policy these changes were located or that the changes were specifically to the coverage which he had been receiving. In fact, the declarations pages prior to the reduction in coverage and after the reduction in coverage were

identical. Furthermore, the premium difference on the policy before and after the reduction in coverage was only a few cents. Shelter failed to provide adequate notification to Yates of the policy changes, creating a reasonable expectation that Yates' coverage with the higher bodily liability limits of $50,000/$100,000 was continuing, regardless of whether the driver was himself or a permissive driver.

Counsel for Shelter argues that a more specific notification, outlining the changes to the policy, would discourage policyholders from reading their policies. We disagree. A vague articulation that some changes have been made to the policy, without indicating where in the fine print of the policy those changes are located, presents a greater deterrence to reading one's policy. Instead, Shelter's vague notice, in conjunction with the virtually unchanged declarations page, can be viewed as a thinly veiled attempt to keep its policyholders in the dark about the specificity of the plan's changes. Such practices are, simply put, duplicitous. The reduced coverage at the same cost was, under these circumstances, hardly a bargained-for exchange.

Given the unique facts of this case, we hold that Shelter failed to provide adequate notification of its reduction in coverage to Yates, promoting a reasonable expectation that the coverage continued to encompass the higher bodily liability limits. However, our holding has no bearing on the appropriateness of step-down provisions in general. Because we have already held that summary judgment against Yates was inappropriate, we need not address alternate grounds for reversal.

For the foregoing reasons, the summary judgment of the Hardin Circuit Court is reversed and remanded with instructions to enter judgment for Yates for the $50,000/$100,000 limits of personal injury protection.

STUMBO, JUDGE, CONCURS.

TAYLOR, CHIEF JUDGE, DISSENTS AND FILES SEPARATE OPINION.

TAYLOR, CHIEF JUDGE, DISSENTING: Respectfully, I dissent. I believe the majority has misapplied and misinterpreted the doctrine of reasonable expectations holding that the permissive driver step-down provision in the insurance policy at issue was unenforceable. Additionally, I believe the step-down provision was enforceable under applicable contract law.

As noted by the majority, our Courts have consistently upheld and protected the reasonable expectations of insurance policyholders. The gist of this rule is that an insured should reasonably expect to receive what he has paid for. However, I do not believe the doctrine of reasonable expectations mandates application of the higher bodily injury liability limits of $50,000 each person/$100,000 each accident to a permissive driver of the insured auto as opposed to the named insureds in the policy in this case.

In this case, Yates is seeking recovery under the bodily injury liability provision of the policy as an injured party of a permissive driver, not as a named insured, who could never receive monetary damages as a driver of the insured auto under the liability provisions of his policy. This is where I believe the majority has

become confused in regard to the coverage provided. It must be emphasized that a bodily injury liability provision in an auto insurance policy does not extend coverage to bodily injuries sustained by the named insured driver; rather, it merely extends coverage to protect the insured driver from claims of parties who suffer bodily injuries occurring in an accident for which the named insured is liable.

At the time of the accident, Yates was a passenger in his motor vehicle, and Meredith was operating the vehicle as a permissive driver, not the named insured on the policy. It is beyond dispute that the permissive driver (Meredith) was covered per the insurance policy step-down provision and was provided with liability coverage for claims made by Yates for bodily injuries sustained in the accident. Again, the step-down provision in the policy under the facts of this case did not provide direct coverage to Yates as a named insured for bodily injuries sustained in the accident; instead, the bodily injury liability provision provided liability coverage to the permissive driver (Meredith), to the extent of the step-down provision, for Yates' claim of bodily injuries arising from the accident while Meredith was driving the vehicle. This distinction is pivotal to this case, in my opinion.

Since the bodily injury provision provided liability coverage to the permissive driver of Yates' motor vehicle, the relevant inquiry must focus upon the reasonable expectations of the permissive driver for coverage thereunder, rather than those of Yates. *See James v. James*, 25 S.W.3d 110 (Ky. 2000). The permissive driver of Yates' motor vehicle is classified as an insured of the "second

class."[3] An insured of the second class is not a party to the insurance policy and pays no premiums for coverage. Accordingly, it is well established that such a second-class insured generally possesses no reasonable expectations of coverage:

> [B]y permitting the insured to stack his coverages it had, "simply honored the reasonable expectations of the 'named insured' that his payment of an additional premium will result in increased coverage for those falling within the definition of the 'named insured,' and where an expectation of this nature is in conflict with a limiting clause in the policy, the resulting ambiguity must be resolved in favor of the insured due to the nature of insurance contracts." . . . [S]ince an insured of the second class was not a party to the contract his expectations as to extent of his coverage does [*sic*] not result in contract ambiguity and are not sufficient to avoid the effect of the policy's limiting clause.

Ohio Cas. Ins. Co. v. Stanfield, 581 S.W.2d 555, 558-559 (Ky. 1979)(quoting *Lambert v. Liberty Mutual Ins. Co.*, 331 So.2d 260, 263 (Ala. 1976)); *see also James*, 25 S.W.3d 110. Although the above reasoning pertained to stacking of uninsured motorist coverage, the reasoning is broad enough to encompass the facts of this case, in my opinion.

Since Meredith was insured as a permissive driver under the policy's step-down provision at the time of the accident, he was a second-class insured and was neither a party to the contract of insurance nor paid premiums for such insurance coverage. There is no reference on the declarations page of the policy to coverage provided to a permissive driver and thus, contrary to the majority's

[3] For a discussion of the distinction between insureds of the first and second class, please note the Supreme Court's opinion of *James v. James*, 25 S.W.3d 110 (Ky. 2000), and also footnote 2 of this opinion.

position, I believe has no relevance to the legal analysis in this case. Thus, I believe, Meredith possesses no reasonable expectations of entitlement to the higher bodily injury liability limits of $50,000 each person/$100,000 each accident, and he is the only person entitled to the bodily injury liability coverage under the policy when an accident occurs while he is driving. Accordingly, Yates' argument under the doctrine of reasonable expectations is simply without legal merit, in my opinion.

I further believe that the insurance contract on its face is enforceable as concerns the step-down coverage provision for permissive drivers. The declarations page of the policy specifically sets forth the bodily injury liability limits as $50,000 each person/$100,000 each accident for the named insured. The policy itself also contains the permissive driver step-down provision that plainly lowers the bodily injury liability limits when a permissive driver is operating the vehicle. There is no ambiguity present in the policy. The policy carefully sets forth the applicable bodily injury liability limits and provides that each applicable liability limit is dependent upon the class of driver. As a Court, we cannot create ambiguities where none exists in an insurance policy. *Snow v. W. Amn. Ins. Co.*, 161 S.W.3d 338 (Ky. App. 2004). The policy plainly sets forth two distinct bodily injury liability limits in terms readily understandable. In short, I do not believe the policy terms are ambiguous regarding the two bodily injury liability limits as set forth in the declarations page and in the permissive driver step-down provision, and thus, must be enforced in accord with their plain meaning.

Additionally, the permissive driver step-down provision is not unreasonably vague for providing that the available bodily injury liability limits be commensurate with the "minimum limits" set forth in the state's "financial responsibility law" without identifying a specific dollar amount. The inclusion of the term "basic limits" or "minimum limits" does not render the policy *per se* ambiguous. *Transport Ins. Co. v. Ford*, 886 S.W.2d 901 (Ky. App. 1994). Rather, an insurance policy provision that affords bodily injury liability coverage equal to this Commonwealth's minimum limits under the financial responsibility law MVRA simply provides coverage in the amount of $25,000 each person/$50,000 each accident as mandated by KRS 304.39-110. In so concluding, I believe the Court should give the term "minimum limits" its ordinary and usual meaning. *See City of Louisville v. McDonald*, 819 S.W.2d 319 (Ky. App. 1991); *Holzknecht v. Ky. Farm Bureau Mut. Ins., Co.*, 320 S.W.3d 115 (Ky. App. 2010). Thus, I would, as did the circuit court below, not view the permissive driver step-down provision as ambiguously vague. Consequently, I would reject Yates' argument that the permissive driver step-down provision should have been interpreted against Shelter so as to provide the higher limits of bodily injury liability of $50,000 each person/$100,000 each accident for Yates' injury claim.

For the foregoing reasons, I would affirm the thoroughly written Judgment of the Hardin Circuit Court in this case.

BRIEFS AND ORAL ARGUMENT FOR APPELLANT:

Chadwick N. Gardner
Louisville, Kentucky

BRIEF FOR APPELLEE:

James W. Taylor
Amanda P. Thompson
Lexington, Kentucky

ORAL ARGUMENT FOR APPELLEE:

Amanda P. Thompson
Lexington, Kentucky