

RENDERED: JANUARY 11, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-001682-MR

UNIVERSAL UNDERWRITERS  
INSURANCE COMPANY

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE  
ACTION NO. 10-CI-01834

BILLIE JO MASTERS; LORI HAYS AS  
ADMINISTRATRIX OF THE ESTATE OF  
GREGORY HAYS; LORI HAYS AS  
GUARDIAN OF KAYLEE AND BAYLEE  
HAYS; LORI HAYS; DEBORAH GRIFFITH AS  
PERSONAL REPRESENTATIVE OF THE ESTATE  
OF ERIC SHANE COX; DEBORAH GRIFFITH;  
ROGER MILLION, JR.; ELBY COX; ELBY COX, JR.  
AS ADMINISTRATOR OF THE ESTATE OF WILMA  
COX; AND ROGER MILLION, JR.

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: CLAYTON, LAMBERT AND STUMBO, JUDGES.

STUMBO, JUDGE: Universal Underwriters Insurance Company appeals from an order of the Madison Circuit Court granting summary judgment in favor of the Appellees and awarding them \$1,300,000. Universal argues that the Appellees are only entitled to \$300,000. We agree with Universal and reverse and remand.

Primarily, this is an auto accident case, but on appeal, the only issue is how much insurance coverage the Appellees are entitled to receive. The following facts are not in dispute. On June 3, 2010, a vehicle operated by Wilma Cox was involved in an auto accident with a vehicle operated by Roger Million, Jr. The accident resulted in multiple injuries and multiple deaths. Cox was the cause of the accident. Prior to the accident, Cox had bought the vehicle she was driving from Delmus Gross, d/b/a Bunt Gross Auto Sales. The paperwork from this sale had not been completed, nor had the title to the vehicle been transferred; therefore, Gross and his auto sales company were the owners of the vehicle Cox was driving.<sup>1</sup>

Gross is insured by Universal. Gross has two types of insurance at issue here, Auto Hazard Coverage and Commercial Umbrella Coverage. The parties agree that Universal owes Cox's estate the policy limit of the Auto Hazard Coverage in the amount of \$300,000. The issue on appeal is whether Universal owes Cox's estate \$1,000,000 in Commercial Umbrella Coverage. Universal argues that Cox was not an insured under the Umbrella Coverage, only Mr. Gross, Emily Gross, and Bunt Gross Auto Sales are. The Appellees argue that Cox "stands in the shoes" of Gross and his company and is therefore entitled to

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<sup>1</sup> Mr. Gross and his dealership were not named as defendants in this case.

coverage. The circuit court found that Cox did stand in the shoes of Gross and was entitled to coverage based on the cases of *Kentucky Farm Bureau Mut. Ins. Co. v. Shelter Mut. Ins. Co.*, 326 S.W.3d 803 (Ky. 2010), *Gainsco Companies v. Gentry*, 191 S.W.3d 633 (Ky. 2006), and *McGrew v. Stone*, 998, S.W.2d 5 (Ky. 1999). It also relied on Kentucky Revised Statute (KRS) 186A.220(5). This appeal followed.

Gross' Commercial Umbrella Coverage is limited in who it covers. Generally, it only covers Mr. Gross, Emily Gross, and Bunt Gross Auto Sales. However, according to the terms of the policy, the only person it covers with respect to claims involving automobiles is Mr. Gross. Relying on the cases and statute cited previously, the trial court found that Gross was vicariously liable for Cox; therefore, Cox "stepped into the shoes of Delmus Gross." In short, Cox became Mr. Gross for the purposes of his Commercial Umbrella Coverage. We find this reasoning was in error.

"Interpretation and construction of an insurance contract is a matter of law for the court." *Kemper Nat. Ins. Companies v. Heaven Hill Distilleries, Inc.*, 82 S.W.3d 869, 871 (Ky. 2002). This Court reviews issues of law *de novo*. *Camenisch v. City of Stanford*, 140 S.W.3d 1, 3 (Ky. App. 2003). "Where the terms of an insurance policy are clear and unambiguous, the policy will be enforced as written." *Kemper, supra*. The issue in this case is who did the insurance policies cover? We find that the cases and statute relied upon by the trial

court are distinguishable in this instance and the terms of the Commercial Umbrella Coverage should have been enforced as written.

KRS 186A.220(5) lists the requirements a car dealer must comply with in order to transfer title and ownership to a buyer. *Gainsco* stands for the position that when a dealer fails to strictly comply with the requirements of KRS 186A.220(5), the dealer remains the owner of the vehicle. *Gainsco* also holds that because the dealer is still the owner of the automobile, its automobile liability coverage is the primary insurance should the vehicle become involved in an auto accident. *Kentucky Farm Bureau* holds that in the case of an auto accident, the vehicle's insurer is the primary insurer and the permissive driver's insurance is the excess insurer. Finally, *McGrew* stands for the position that the owner of an uninsured automobile is liable for damages when the car is driven by a permissive user and is involved in an auto accident. In essence, the owner of the vehicle becomes a de facto self-insurer of the vehicle.

These cases are all distinguishable from the case at hand. They all hold that the auto insurance flows with the automobile. If the vehicle is insured, then the owner's insurance is the primary insurance. If the vehicle is uninsured, then the owner pays for damages him or herself. They do not hold that the permissive driver of the vehicle legally becomes the same person as the owner of the vehicle. In the case *sub judice*, the car being driven by Cox was insured by Universal. Gross' Auto Hazard Coverage specifically insured permissive drivers,

which Cox was. In addition, permissive drivers are insured by law. *See Mitchell v. Allstate Ins. Co.*, 244 S.W.3d 59 (Ky. 2008).

On the other hand is the Commercial Umbrella Coverage. This type of insurance is voluntary and is to provide extra coverage to Mr. Gross and his business. When it comes to automobiles, the only person the Commercial Umbrella Coverage insures is Mr. Gross. It does not cover permissive drivers.

Here, the Commercial Umbrella Coverage insurance policy clearly states that Mr. Gross is the only person covered for damages relating to an automobile. The Auto Hazard Coverage specifically covers permissive drivers. These provide two separate and distinct types of coverage. The case law cited previously and utilized by the Appellees and the trial court does not rewrite the terms of the policy. Nor does the case law stand for the proposition that Cox becomes Mr. Gross for the purposes of Universal's insurance policy. Each insurance policy only covers whom it says it covers. The Commercial Umbrella Coverage insurance policy should have been enforced as written.

Universal makes other arguments on appeal. These arguments are moot because we find that the trial court erred in holding that Cox was insured under Gross' Commercial Umbrella Coverage.

Based on the foregoing, we reverse the judgment of the trial court and hold that Universal is entitled to summary judgment in its favor regarding the Commercial Umbrella Coverage issue.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE DEBORAH  
GRIFFITH, INDIVIDUALLY AND  
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BRIEF FOR APPELLEE ROGER  
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BRIEF FOR APPELLEE BILLIE JO  
MASTERS:

Rodney G. Davis  
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BRIEF FOR APPELLEE LORI  
HAYS, INDIVIDUALLY AND AS  
ADMINISTRATRIX OF THE  
ESTATE OF GREGORY HAYS  
AND AS GUARDIAN FOR  
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HAYS:

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