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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000519-MR

THOMAS WALLING

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 14-CI-004281

SAFECO INSURANCE COMPANY OF ILLINOIS

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: D. LAMBERT, STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Thomas Walling appeals from an order of the Jefferson Circuit Court which granted Safeco Insurance Company of Illinois summary judgment. Walling claims that summary judgment was granted in error because he did not have sufficient time to conduct discovery and that he was not given

adequate information about the scope of his coverage. We find summary judgment was properly granted and affirm the trial court's judgment.

Walling had an insurance policy with Safeco for the period beginning on April 5, 2013, and ending on April 5, 2014. On June 4, 2013, Walling and Priscilla Bowman were involved in a motor vehicle accident. Walling was operating a motorcycle when Bowman negligently collided into him with the vehicle she was operating. Walling's insurance policy covered bodily injury and property damage. Walling also sought to recover basic reparation benefits, also known as personal injury protection or "PIP" coverage, for medical bills and services he incurred as a result of the collision.

Safeco denied these benefits because Walling was operating a motorcycle at the time of the accident. PIP coverage is normally required to be in every motor vehicle insurance policy, Kentucky Revised Statute (KRS) 304.39-100(2), however, motorcycles are treated differently. PIP coverage for motorcycles must be made available to purchase but only as optional coverage. KRS 304.39-040(3) and (4). Safeco denied Walling's request to pay medical expenses because he did not purchase the optional PIP coverage.

Following the denial of this PIP coverage, Walling brought suit against Bowman and Safeco on August 14, 2014. Safeco answered the complaint on September 10, 2014. Safeco then moved for summary judgment on October 16, 2014. Safeco argued that Walling did not purchase the optional PIP coverage. Walling responded by arguing that summary judgment was improper because he

had not been afforded time to complete discovery and that as a matter of public policy, PIP coverage should be included in motorcycle policies unless rejected by the policy owner.

The trial court granted the motion for summary judgment. The trial court believed more discovery would not be useful in this case because this was an issue of contract and statutory interpretation. The insurance policy at issue was in the record and the court only needed to decide if Safeco's requirement that Walling purchase or opt-in to receive the PIP coverage was unlawful or violated public policy. The court also found that the statutes at issue required the PIP coverage to be purchased as additional coverage and that Walling was given the opportunity to purchase said coverage, but did not. This appeal followed.

Walling's first argument on appeal is that he was not given sufficient time to complete discovery. We disagree. It is not necessary for Walling to have actually completed discovery, but only that he has had the opportunity to do so.

Hartford Ins. Group v. Citizens Fidelity Bank & Trust Co., 579 S.W.2d 628, 630 (Ky. App. 1979).

Whether a summary judgment was prematurely granted must be determined within the context of the individual case. In the absence of a pretrial discovery order, there are no time limitations within which a party is required to commence or complete discovery. As a practical matter, complex factual cases necessarily require more discovery than those where the facts are straightforward and readily accessible to all parties.

Suter v. Mazyck, 226 S.W.3d 837, 842 (Ky. App. 2007) (footnote omitted).

Here, we agree with the trial court. This case involved the interpretation of a motor vehicle insurance policy and applicable statutes, which are both questions of law for the court. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998); *Commonwealth v. Long*, 118 S.W.3d 178, 181 (Ky. App. 2003). The facts of this case were already known to both parties and Walling does not indicate what additional evidence might be discoverable. Summary judgment was not prematurely granted.

Walling also argues that the trial court misinterpreted the statutes at issue and that requiring a person to opt-in to PIP coverage is against public policy.

KRS 304.39-040 states in relevant part:

(3) Every insurer writing liability insurance coverage for motorcycles in this Commonwealth shall make available for purchase as a part of every policy of insurance covering the ownership, use, and operation of motorcycles the option of basic reparations benefits, added reparations benefits, uninsured motorist, and underinsured motorist coverages.

(4) Notwithstanding any other provisions of this subtitle, no operator or passenger on a motorcycle is entitled to basic reparation benefits from any source for injuries arising out of the maintenance or use of such a motorcycle unless such reparation benefits have been purchased as optional coverage for the motorcycle or by the individual so injured.

Questions of law regarding the interpretation of a statute are reviewed *de novo*. *Long, supra*. KRS 304.39-040 states that an operator of a motorcycle be given the opportunity to purchase PIP coverage and that the coverage must be purchased as optional coverage. Here, it is undisputed that Walling was given the

opportunity to purchase PIP coverage and chose not to do so. The trial court did not misinterpret KRS 304.39-040.

As for the public policy argument, Walling relies on the case of *Midwest Mut. Ins. Co. v. Wireman*, 54 S.W.3d 177 (Ky. App. 2001). In that case, Keith Bailey was operating a motorcycle and Nicholas Wireman was a passenger on said motorcycle. The motorcycle was involved in a collision with another vehicle being driven by Barry Collins, Jr. Bailey had an insurance policy through Midwest Mutual Insurance Company and sought PIP benefits after the accident. A previous panel of this Court held that Bailey was not entitled to PIP benefits because he had rejected the coverage in writing. Walling argues that PIP coverage should be included in motorcycle insurance policies, but that an insured can affirmatively reject such coverage. Walling believes requiring an insured to opt-in to PIP coverage for motorcycles is against public policy.

We disagree with Walling's argument. KRS 304.39-040 is clearly written and unambiguous. The statute only requires that PIP coverage be made available for purchase as optional coverage. An insurance company could require that an insured reject PIP coverage for a motorcycle in writing, like it did in the *Wireman* case, but it is not required by Kentucky statute. PIP coverage for motorcycles is only optional. Walling was given the opportunity to purchase PIP coverage, but chose not to do so.

Based on the foregoing, we affirm the judgment of the Jefferson Circuit Court.

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