

[J-58-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

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| STATE FARM MUTUAL AUTOMOBILE | : | No. 7 MAP 2005 |
| INSURANCE COMPANY, | : | |
| | : | Appeal from the Order of the Superior |
| Appellee | : | Court entered 1-22-2004 at No. 1200 MDA |
| | : | 2002 which Affirmed the Order of |
| | : | Huntington County Court of Common |
| v. | : | Pleas Civil Division entered 7-15-2002 at |
| | : | No. 2001-1382 |
| | : | |
| LORI FOSTER, | : | |
| | : | |
| Appellant | : | ARGUED: May 17, 2005 |

OPINION

MR. JUSTICE EAKIN

Decided: December 30, 2005

Appellant Lori Foster was injured when she was forced to jump out of the way of an unidentified vehicle while working as a flagger on the highway. Foster filed a claim for uninsured motorist benefits under an automobile insurance policy issued by appellee State Farm Mutual Automobile Insurance Company. She faxed State Farm a copy of the report form she received from her employer, but she never reported the accident to the police. State Farm filed a declaratory judgment action alleging Foster was not entitled to uninsured benefits because she had failed to report the accident to the police or other governmental authority, as required by both the insurance policy and the Motor Vehicle Financial Responsibility Law (MVFRL) 75 Pa.C.S. §§ 1701-1799.7. The policy provides, in pertinent part:

4. Other Duties Under Medical Payments, Funeral Benefits, Loss of Income, Death, Dismemberment and Loss of Sight, Uninsured Motor Vehicle and Underinsured Motor Vehicle Coverages

The person making the claim also shall:

* * *

c. under the uninsured motor vehicle coverage, report an accident caused by an unidentified land motor vehicle to the police as soon as practicable and to us within 30 days or as soon as practicable.

State Farm Policy, at 7 (emphasis added).

The MVFRL definition of “uninsured motor vehicle” includes:

* * *

(3) An unidentified motor vehicle that causes an accident resulting in injury provided the accident is reported to the police or proper governmental authority and the claimant notifies his insurer within 30 days, or as soon as practicable thereafter, that the claimant or his legal representative has a legal action arising out of the accident.

75 Pa.C.S. § 1702 (emphasis added).

Foster argued that absent a showing of prejudice, State Farm could not deny coverage on this basis, particularly when it had not alleged prejudice. The trial court concluded sua sponte that State Farm had been prejudiced by Foster’s failure to notify police, and entered judgment in favor of State Farm.

Foster appealed to the Superior Court, arguing that under Brakeman v. Potomac Insurance Company, 371 A.2d 193 (Pa. 1977), State Farm was required to demonstrate prejudice arising from the failure to notify police.¹ Brakeman addressed the enforceability of an insurance policy’s provision which required the insured to provide written notice of an accident to the insurer “as soon as practicable” after the accident. This Court held “where

¹ Foster further contended the trial court erred in concluding State Farm was prejudiced, and in raising the issue sua sponte.

an insurance company seeks to be relieved of its obligations under a liability insurance policy on the ground of late notice, the insurance company will be required to prove that the notice provision was in fact breached and that the breach resulted in prejudice to its position.” Id., at 198. The rationale underlying this holding was that since such notice provisions are generally “dictated by the insurance company to the insured” to protect the insurer’s interests, id., at 196, enforcement of these provisions, absent prejudice to the insurer, would result in an inequitable forfeiture, allowing the insurer to refuse the coverage for which the insured paid. Id., at 196-97. Therefore, if the insurer was not harmed by the lack of notice, the reason behind the notice provision--protection of the insurer’s interests--was no longer a concern, and enforcement of the provision to deny coverage was neither logical nor fair. Id., at 197.

The Superior Court, by unpublished decision, rejected Foster’s argument that Brakeman was controlling, and the court did not reach the issue of the trial court’s sua sponte determination that prejudice existed. The Superior Court affirmed the order entering declaratory judgment in favor of State Farm. We granted allowance of appeal to determine whether an insurer must demonstrate prejudice, pursuant to Brakeman, when the insured has failed to report the accident to the police as required by § 1702 of the MVFRL.

“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S. § 1921(a). “Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words.” Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 664 A.2d 84, 87 (Pa. 1995). In ascertaining the intent of the General Assembly, it is presumed “the General Assembly intends to favor the public interest as against any private interest.” 1 Pa.C.S. § 1922(5); see English, at 87. The legislative concern for the increasing cost of automobile insurance is the public policy to be advanced by statutory interpretation of the

MVFRL. See Burstein v. Prudential Property and Casualty Insurance Company, 809 A.2d 204, 207-08 (Pa. 2002).

Foster argues the Superior Court's decision, in effect, overruled Brakeman by holding it was no longer applicable due to the enactment of the MVFRL, and claims the court erred in holding an insured's failure to notify the police about an accident was per se prejudicial to an insurer. She contends Brakeman should have been applied to her case.

Contrary to Foster's assertion, the Superior Court neither overruled Brakeman² nor held that failure to report an accident is per se prejudicial to the insurer; rather, the court held Brakeman did not apply, and therefore State Farm was not required to show prejudice. See State Farm Mutual Automobile Insurance Company v. Foster, No.1200 MDA 2002, unpublished memorandum at 8-9 (Pa. Super. filed January 22, 2004) (finding Brakeman "not controlling under the facts" and "not applicable here").

The MVFRL had not been enacted when Brakeman was decided. The legislative concern behind enactment of the MVFRL was "the spiraling consumer cost of automobile insurance and the resultant increase in the number of uninsured motorists driving on public highways." Burstein, at 207 (citing Paylor v. Hartford Insurance Co., 640 A.2d 1234, 1234 (Pa. 1994). Section 1702's police notification requirement advances the policy of keeping automobile insurance affordable to the public by minimizing fraudulent claims "and the attempted recovery of benefits in cases where accidents were alleged to have been caused by 'phantom' vehicles." Jackson v. Pennsylvania Financial Responsibility Assigned Claims Plan, 575 A.2d 626, 628 n.2 (Pa. Super. 1990); see also Blazquez v. Pennsylvania Financial Responsibility Assigned Claims Plan, 757 A.2d 384 (Pa. Super. 2000) (purpose of

² As the Superior Court's decision in the instant case was unpublished, it is not of precedential value. See Superior Court I.O.P. 65.37 (unpublished memorandum decision shall not be relied upon or cited by Court or party). Non-precedential decisions cannot overrule existing case law.

§ 1702's reporting requirement is prevention of fraudulent claims; Department of Transportation not "proper governmental authority" within meaning of § 1702); Owens v. The Travelers Insurance Co., 675 A.2d 751 (Pa. Super. 1996) (purpose of § 1702's reporting requirement is to prevent fraud; employer and Department of Labor and Industry not "proper governmental authority" within meaning of § 1702).³ The cost to the insurer of paying fraudulent claims is ultimately passed on to the public in the form of higher premiums. That is, the purpose behind § 1702's reporting requirement is protection of the public's interest in affordable automobile insurance--the primary goal of the MVFRL.

In contrast, the purpose of the notification requirement in Brakeman was protection of the insurer's private interest. The requirement was not imposed by a statutory scheme to further a public policy interest, but was drafted by the insurer to protect its own interest in being able to conduct timely investigations of claims. See Brakeman, at 197. The notice provision in Brakeman required the insured to report the accident to the insurer, whereas § 1702 requires reporting to the police or other proper governmental authority, agents independent from the insurer itself. Based on the differing purposes behind the notification provisions in Brakeman and § 1702, we agree with the Superior Court that Brakeman's prejudice requirement is inapplicable to the notice provision of § 1702.

Foster argues, however, that the intent behind the MVFRL should not apply to an insurance contract; an insurance contract is essentially a contract of adhesion, and the MVFRL is not concerned with forfeiture of the insured's policy. Foster claims that because the State Farm policy places the notification requirement in its section pertaining to duties

³ Foster argues these cases are inapplicable because they involve the Assigned Claims Plan, 75 Pa.C.S. §§ 1751-1757, where the funding for insurance does not come from premiums paid by the insured but instead from the insurer. See Appellant's Brief, at 16-17. However, the MVFRL's reporting requirement does not differentiate between claims made under the Assigned Claims Plan and claims made under insurance contracts.

of the insured, whereas the MVFRL includes the reporting requirement in its definition of “uninsured vehicle,” the intent behind the MVFRL does not apply to the policy’s provisions.

Foster’s attempt to distinguish between the two notification provisions fails. She overlooks the fact that, unlike Brakeman, which only required the insurer be notified, the instant policy requires police notification, just as the MVFRL does. Regardless of where the requirement is located within the policy, it is required under the MVFRL and is consistent with the MVFRL’s purpose of preventing fraudulent claims by requiring that accidents be reported to the police. Furthermore, to the extent there is any conflict between the policy and the MVFRL: “stipulations in a contract of insurance in conflict with, or repugnant to, statutory provisions which are applicable to, and consequently form a part of, the contract, must yield to the statute, and are invalid, since contracts cannot change existing statutory laws.” Prudential Property and Casualty Insurance Company v. Colbert, 813 A.2d 747, 751 (Pa. 2002) (quoting Allwein v. Donegal Mutual Insurance Company, 671 A.2d 744, 752 (Pa. 1996) (quoting Couch on Insurance 2d (Rev. ed) § 13.7 at 827 (1984))).

Finally, Foster contends the purpose of the police reporting requirement was fulfilled since she reported the accident to her doctors, employer, and State Farm. However, § 1702’s language does not refer to an insured’s employer as an authority to be notified, and it requires reporting to the insurer in addition to, not instead of, notifying the police. As the Superior Court held in Owens and Blazquez, § 1702’s fraud prevention is not achieved by reporting to employers or other agencies which do not investigate accidents, care for accident victims, or ensure highway safety; the police are charged with reporting and investigating accidents and are “in a unique position to prevent fraud....” Owens, at 753; see also Blazquez, at 387 (“[G]overnmental agencies which are proper repositories for reporting under the MVFRL are those that care for victims of accidents such as governmental fire and rescue squads, those agencies which investigate accidents such as

law enforcement, and those agencies charged with the safety of the roads and highways, such as PennDOT.” (citation omitted)).

Thus, the MVFRL’s provision is controlling, and neither its plain language, the case law interpreting it, nor its underlying policy require that prejudice must be established before uninsured coverage can be denied based on lack of police notification. The Superior Court did not err in concluding that Brakeman was inapplicable, and the denial of uninsured coverage to Foster was proper.

Order affirmed. Jurisdiction relinquished.

Mr. Chief Justice Cappy and Madame Justice Newman join the opinion.

Mr. Justice Nigro did not participate in the decision of this case.

Mr. Justice Saylor files a concurring opinion.

Mr. Justice Baer files a dissenting opinion in which Mr. Justice Castille joins.