

RENDERED: March 27, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2133-MR

MARY WIDMER

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOPF, JUDGE
ACTION NO. 95-CI-2062

HARTFORD FIRE INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

* * * * *

BEFORE: COMBS, GUIDUGLI, and JOHNSON, Judges.

COMBS, JUDGE: Mary E. Widmer appeals from an order of the Jefferson Circuit Court entered on July 1, 1996, holding that she was not entitled to recover uninsured motorist benefits under an insurance policy issued by Hartford Fire Insurance Company, the appellee. We affirm.

In an exceptionally well-reasoned opinion, the Jefferson Circuit Court has addressed the issues raised in this proceeding. As the circuit court's opinion parallels our views, we adopt the greater part of it as follows:

On April 16, 1994, Mary E. Widmer (also known as Sister Dominica) was operating her father's motor vehicle when it was involved in a collision with a motor vehicle operated by Gerald David Dixon. Mr. Dixon was allegedly under the influence of alcohol and was uninsured.

Sister Dominica's father, a passenger, was killed. Sister Dominica sustained serious injuries, and she received uninsured motorist ("UM") benefits from the insurer of her father's motor vehicle. At the time of the accident, Ursuline Society and Academy ("Ursuline") provided motor vehicles to its nuns for their use. Sister Dominica is an Ursuline nun and had driven to her father's house in such a vehicle prior to the accident.

At the time of the accident, Ursuline had a business auto policy on 100 vehicles, which also included UM coverage, with Hartford Fire Insurance Company ("Hartford"). On April 14, 1995, Sister Dominica brought suit against Hartford seeking UM benefits under the policy up to the stacked uninsured policy limits (i.e., 100 million).

On August 28, 1995, Humana Health Plans of Kentucky, Inc. was given leave to intervene as a plaintiff to recover the medical expenses it has paid

on behalf of its insured, Sister Dominica, from Hartford.

On January 25, 1996, Sister Dominica filed a motion for summary judgment on the issue of UM coverage being owed to her by Hartford. On February 8, 1996, Hartford filed a cross-motion for summary judgment, and it filed a response to Sister Dominica's motion on February 14, 1996. Sister Dominica filed her response to Hartford's motion on March 4, 1996. On April 15, 1996, oral argument was heard on said motions.

* * * *

Hartford argues that it does not owe Sister Dominica UM benefits under the policy it issued to Ursuline as she was an insured of the second class and was in a non-owned vehicle, nor is she entitled to stack the coverage available on each of the vehicles owned by Ursuline. Sister Dominica disagrees and argues that UM coverage is not vehicle oriented but is personal coverage.

Under the UM coverage in the Schedule of Coverages of the Hartford policy, it lists "02" as covered autos and \$6,086 as the estimated premium for the policy period of 7/1/92 through 7/1/93. The Court assumes this policy was renewed as the parties agree that the policy was in effect on April 16, 1994, the date of the accident.

In the section of the policy entitled "Business Auto Coverage Form," it provides that the words "you" and "your" refer to the named insured shown in the declarations, which in this case is Ursuline. In "Section I - Covered Autos" thereof, it explains the covered auto designation symbols. The UM coverage's symbol of "02" designates that "only those autos you [named insured] own" are covered autos.

Under the section of the policy entitled "Kentucky Uninsured Motorists Coverage," it provides that this endorsement modifies insurance provided under the Business Auto Coverage Form. The relevant parts of UM endorsement are listed as follows:

A. COVERAGE

1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle." The damages must result for "bodily injury" sustained by the "insured" caused by an "accident."

* * * *

B. WHO IS AN INSURED

1. You [named insured].
2. If you are an individual, any "family member."
3. Anyone else "occupying" a covered "auto."

* * * *

C. EXCLUSIONS

This insurance does not apply to any of the following: . . .

3. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle owned by you or any "family member" that is not a covered "auto."

* * * *

F. ADDITIONAL DEFINITIONS

The following are added to the DEFINITIONS Section:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

Sister Dominica argues that Exclusion No. 3 does not apply to her, even though she was operating her father's vehicle, since "family member" is limited to residents of your household and her father did not live with her. As no exclusions apply, she contends that she is entitled to UM coverage, which is personal to her and not vehicle oriented, despite the insurer's invalid attempt to limit it to Ursuline-owned vehicles by its "02" designation.

To support her argument, Sister Dominica cites Hamilton v. Allstate Insurance Company, Ky., 789 S.W.2d 751 (1990, and Chaffin v. Kentucky Farm Bureau Insurance Companies, Ky., 789 S.W.2d 754 (1990). Hamilton and Chaffin both deal with anti-stacking

clauses in an insurance policy. However, before Sister Dominica can stack UM coverage, she must first prove she is entitled to such coverage. See Windham v. Cunningham, Ky. App., 902 S.W.2d 838 (1995).

The Court agrees with Sister Dominica that Kentucky courts have held UM coverage to be personal and not vehicle oriented. See State Farm Mutual Automobile Insurance company v. Mattox, Ky., 862 S.W.2d 325 (1993) (UM coverage is personal to the insured in that it applies to any motor vehicle injury).

Hartford argues, however, that while UM coverage is personal to the insured in Kentucky, it follows only insureds of the first class and not insureds of the second class, like Sister Dominica.

In Ohio Casualty Insurance Company v. Stanfield, Ky., 581 S.W.2d 555 (1979), the court distinguished between two classes of insureds. The policy at issue in Stanfield was a fleet policy insuring 63 vehicles owned by the City of Newport, and it contained the following provision under its UM coverage section:

Each of the following is an insured under this insurance to the extent set forth below:

- (a) the named insured and any designated insured and, while residents of the same household, the spouse and relative of either;
- (b) any other person while occupying an insured highway vehicle; and

(c) any person, with respect to damages he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above.

Id. at 557.

The Stanfield court stated that the definitions set out above, which are essentially the same as those in Hartford's policy in this case, created two classes of insured. It explained the differences between the two classes as follows:

The first class is composed of the named insured, the insured who bought and paid for the protection and who has a statutory right to reject uninsured motorist coverage, and the members of his family residing in the same household. The protection afforded the first class is broad. Insureds of the first class are protected regardless of their location or activity from damages caused by injury inflicted by an uninsured motorist.

As to the second class of insureds, however, - "other person"- it is clear that their protection is confined to damages from injury inflicted by an uninsured motorist while they are "occupying an insured highway vehicle." [Citation omitted].

Id. at 557. The court further stated that said definitions did not violate the requirements of KRS 304.20-020, Kentucky's uninsured motorists statute.

Id. at 557.

Sister Dominica is not the named insured under Hartford's business auto policy. Ursuline is the named insured as shown by the declaration page of the policy. It pays the premiums on the policy, notwithstanding the fact that Sister Dominica gives any salary she makes to Ursuline based upon her vow of

poverty. As Ursuline is not an individual, it can have no "family members" under the clear language of the policy.

Accordingly, Sister Dominica does not fit within the definitions (Nos. 1 and 2) of first class insured under the "WHO IS AN INSURED" section of the UM coverage policy provision. She is a second class insured who is entitled to UM coverage only while occupying a vehicle owned by Ursuline (Definition No.3), as UM coverage is only personal to first class insureds.

As Sister Dominica was injured while operating her father's vehicle, she is not entitled to UM coverage as she does not meet the definition of "insured" under said coverage in the policy. The issue of stacking coverage is thus moot.

While this seems like a harsh result, especially in a case such as this where the person is seriously injured, other jurisdictions have reached the same conclusion. See 7Am.Jr.2d Automobile Insurance § 311 (1996 Supp.).

In Meyer v. American Economy Insurance Company, Or. App., 796 P.2d 1223 (1990), the court held that UM provision in a policy issued to a corporation, which provided coverage to the named insured or any family member, did not provide UM coverage to a

corporate employee in a non-covered auto, despite the employee's argument that if the policy was to be read literally, coverage was a nullity given the fact that corporation could not suffer bodily injury and could not have family members.

In Sproles v. Greene, N.C. 407 S.E.2d 497 (1991), the court stated the following:

[T]he fact that the corporation is the named insured and the only class one insured under the terms of the UIM portion of the policy does not mean that the terms of the policy should be judicially interpreted to mandate that employees of the corporation should be treated as class one insureds.

Id. at 501. See also Pearcy v. Travelers Indemnity Company, Fla. App., 429 So.2d 1298 (1983), and Buckner v. Motor Vehicle Accident Indemnification Corporation, N.Y., 486 N.E.2d 810 (1985).

Therefore, . . . the motion for summary judgment brought by Plaintiff, Mary E. Widmer (Sister Dominica), is DENIED. . . . [T]he motion for summary judgment brought by Defendant, Hartford Fire Insurance Company, is GRANTED.

We do not believe that we can add to this very complete and carefully drafted opinion. Finding no error, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Gregory L. Smith
Louisville, KY

BRIEF FOR APPELLEE:

Lynn M. Hartzman
Louisville, KY