

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001275-MR

PAMELA MONOHAN GRIFFITH, Administratrix
of the Estate of REBECCA ANNE GRIFFITH;
PAMELA MONOHAN GRIFFITH; DARYL GRIFFITH;
and MOLLY GRIFFITH

APPELLANTS

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE WILLIAM J. WEHR, JUDGE
ACTION NO. 97-CI-1117

COLONIAL INSURANCE COMPANY OF CALIFORNIA

APPELLEE

OPINION AFFIRMING

** ** * * *

BEFORE: GUDGEL, CHIEF JUDGE, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is a declaratory judgment action against an insurance company seeking coverage on an automobile that was involved in an accident. A student from Saudia Arabia had purchased the vehicle from the policy holder, but had not registered the vehicle with the county clerk. The circuit court entered summary judgment determining that there was no coverage.

Anwar Saqr (Anwar) was here on a student visa from Saudia Arabia. Anwar purchased a 1985 Nissan 300ZX from Jerry Suchy, owner of Sport and Import Motors. Jerry Suchy had

purchased the car on June 18, 1993. Before the transfer of the vehicle to Anwar was registered at the clerk's office (June 30, 1993), Anwar was involved in a serious accident on June 22, 1993, which killed one individual and seriously injured another. In a previous action before the Campbell Circuit Court, Judge Leonard Kopowski apparently ruled that title was in Jerry Suchy. Three appeals were filed - 1997-CA-001606, 1997-CA-001607, and 1997-CA-001275 - and were all subsequently dismissed. The dismissals on the first two were final in June of 1997, and the last was final in February of 1998.

Jerry Suchy had an insurance policy with Colonial Insurance Company on another vehicle at the time of the accident. The policy declaration states it covers a 1985 Nissan with a different serial number, which does exist, and apparently is for Jerry Suchy's personal use, rather than a car purchased for resale. The policy also provides that an insured car means:

- (a) any car described in the Declarations.
- (b) any car you replace it with. You must notify us within 30 days of the acquisition of the replacement.
- (c) any additional car which you purchase during the policy period, provided we insured all cars owned by you for this coverage on the date of purchase and you notify us within 30 days following the date of purchase; . . .

In this declaratory judgment action, the trial court granted the insurance company summary judgment on the theory that the plaintiffs (appellants herein) provided no affirmative evidence that the policy holder had insurance on the Nissan 300ZX. On appeal, appellants contend that under (c) above, the policy holder had thirty days to notify the insurance company of the

purchase of any additional car and that since the accident occurred within that thirty-day period, the vehicle was covered by operation of law.

The trial court reviewed the record in considering summary judgment. Included in the record is the deposition of Jerry Suchy, owner of Sport and Import Motors. Jerry Suchy testified that he obtained the Colonial Insurance Company policy for his personal vehicle or on a vehicle that he would drive, and that the other vehicles in the business were not insured. As to the car involved in the accident, he understood that if he drove it, he would have had to notify the insurance company first in order to have coverage. He never drove the Nissan 300ZX and never had it placed on his personal policy. He considered it a lot car and may have had a lot policy in effect at the time of the accident, but wasn't sure.

The other evidence before the trial court was uncontroverted: the 300ZX was not listed in the declaration; the 300ZX was not intended to replace his personal car; that the 300ZX was a lot car; the lot vehicles were not covered by this policy; and that the policy holder did not notify the insurance company of the purchase of the 300ZX, nor request coverage. Under Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991), summary judgment should only be used to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor against the movant. We

believe the trial court correctly applied the Steelvest standard in this case and therefore affirm.

Ownership of the vehicle is not an issue in this case. Mitchell v. Kentucky Farm Bureau Mutual Insurance Company, Ky., 927 S.W.2d 343 (1996) cited by the appellant, was expressly overruled in Nantz v. Lexington Lincoln Mercury, Ky., 947 S.W.2d 36 (1997). However, the earlier case decided ownership of the Nissan 300ZX was in Jerry Suchy, and when the appeals were dismissed, that finding became the law of the case. McHargue v. Sizemore, Ky., 438 S.W.2d 338 (1969); Siler v. Williford, Ky., 375 S.W.2d 262 (1964).

In the case of Simon v. Continental Insurance Company, Ky., 724 S.W.2d 210 (1986), the Court held that if there is any doubt about whether coverage is provided, the insured is entitled by law to a favorable construction of the policy. The Court specifically recognized the "doctrine of reasonable expectations" as an essential tool in deciding whether an ambiguity exists - that is, "[t]he insured is entitled to all the coverage he may reasonably expect to be provided under the policy. Only an unequivocally conspicuous, plain and clear manifestation of the company's intent to exclude coverage will defeat that expectation." Id. at 212. See also Woodson v. Manhattan Life Insurance Company of New York, Ky., 743 S.W.2d 835 (1987) for the proposition that an insurance company will be held strictly accountable for the terms of the contract. In reviewing the policy's definitions of an insured's car and the deposition of the policy holder, we do not believe the terms of the policy nor

the reasonable expectations of the insured included coverage under the policy for the Nissan 300ZX.

For the foregoing reasons, the judgment of the Campbell Circuit Court is affirmed.

GUDGEL, CHIEF JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT AND FILES A SEPARATE OPINION.

JOHNSON, JUDGE, CONCURRING. I concur with the result reached by the Majority Opinion, but choose to write separately. I am of the opinion that while Jerry Suchy was still the owner of the 300ZX on June 23, 1993, the 300ZX was not an "insured car" within the definition of Section (1)(c) of Suchy's policy with Colonial Insurance Company. Colonial did not insure "all cars owned by" Suchy. Thus, coverage was not provided from this insurance policy.

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