RENDERED: AUGUST 16, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002172-MR

GLENNA BRADEN — APPELLANT

v.

APPEAL FROM HENRY CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 99-CI-00212

SECURITY NATIONAL INSURANCE COMPANY, AND TRINITY UNIVERSAL INSURANCE COMPANIES — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DYCHE, KNOPF, AND McANULTY, JUDGES.

McANULTY, JUDGE: Glenna Braden appeals from an order of the Henry Circuit Court, which granted summary judgment to Security National Insurance Company and Universal Insurance Company on Braden's petition for declaration of rights seeking payment under an underinsured motorists benefits provision in an automobile insurance policy. Finding no error, we affirm.

On October 23, 1998, Braden suffered injuries and damages in excess of $50,000[1] when the vehicle she was driving was struck by another vehicle that was being driven by Terry Jones. Braden had an automobile insurance policy covering two family vehicles issued by Security National Insurance Company, a subsidiary of Trinity Universal Insurance Companies. Jones had no automobile insurance coverage on his vehicle. Braden's policy included, inter alia, uninsured motorists (UM) coverage and underinsured motorists (UIM) coverage with policy limits of $25,000 per person and $50,000 per accident for each item of coverage. When Braden submitted a claim, Security paid her $50,000 under the UM provisions based on stacking the coverage for the two family vehicles, but it refused to pay her any amount under the UIM provisions.

On September 22, 1999, Braden filed a declaration of rights action pursuant to Kentucky Revised Statute (KRS) 418.040 seeking a determination that the appellees were obligated to pay her UIM benefits under statutory law and/or the terms of the policy contract. In their Answer, the appellees denied Braden was entitled to any additional payment. In December 1999, the parties filed cross-motions for summary judgment pursuant to Kentucky Rule of Civil Procedure (CR) 56. The trial court initially denied both motions based on perceived disputed factual issues. In April 2000, the parties filed a joint request asking the trial court to reconsider because there were no genuine

[1] The exact amount of Braden's damages is not disclosed in the record.

issues of material fact in dispute and resolution of the case involved purely legal issues of contract and statutory interpretation. On September 21, 2001, the trial court entered an order setting aside its previous order denying the summary judgment motions, holding that Braden was not entitled to UIM benefits, and granting summary judgment to the appellees. This appeal followed.

The standard of review on appeal when a trial court grants summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." Stewart v. University of Louisville, Ky. App., 65 S.W.3d 536, 540 (2001)(quoting Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996)). See also City of Florence, Kentucky v. Chipman, Ky., 38 S.W.3d 387, 390 (2001). While summary judgment should be cautiously granted, where there are no substantive or controlling facts in dispute, summary judgment is proper to expedite the disposition of cases and avoid unnecessary trials. See Lipsteuer v. CSX Transportation, Inc., Ky., 37 S.W.3d 732, 736 (2000)(quoting Steelvest v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991); Isaacs v. Smith, Ky., 5 S.W.3d 500, 503 (1999). Summary judgment is appropriate where the court must resolve only legal issues, including judicial precedent. Cornette v. Commonwealth, Kentucky Dep't of Educ., Ky. App., 899 S.W.2d 502, 505 (1995). Because only legal questions are involved and no factual findings are at issue, a reviewing court need not defer to the trial court. Barnette v. Hospital of

Louisa, Inc., Ky. App., 64 S.W.3d 828, 829 (2002); Midwest Mut. Ins. Co. v. Wireman, Ky. App., 54 S.W.3d 177, 180 (2001).

In order to resolve this appeal, we must review statutory and case law, and the automobile insurance policy. Interpretation of a statute is a question of law subject to de novo review. Commonwealth v. Gaitherwright, Ky., 70 S.W.3d 411, 413 (2002); Hardin County Schools v. Foster, Ky., 40 S.W.3d 865, 868 (2001). Similarly, "interpretation of an insurance contract is a matter of law for the court. While ambiguous terms are to be construed against the drafter and in favor of the insured, [a court] must also give the policy a reasonable interpretation, and there is no requirement that every doubt be resolved against the insurer." Stone v. Kentucky Farm Bureau Mut. Ins. Co., Ky. App., 34 S.W.3d 809, 810-11 (2000) (internal citations omitted). In the current case, no genuine issues of material fact are in dispute and only legal issues are involved; thus, it was ripe for summary judgment.

Braden contends the trial court erred in holding she was not entitled to combine or "stack"[2] the coverage for both the UM and UIM provisions. This is an issue of first impression in Kentucky under the facts of this case. Braden relies on a line of cases that have held that provisions in insurance policies attempting to prevent or limit stacking of coverage violate the

[2] Stacking has been defined as a concept "where the same claimant and the same loss are covered under multiple policies, or multiple coverages contained in a single policy, and the amount available under one policy is inadequate to satisfy the damages alleged or awarded." Wallace v. Balint, 94 Ohio St.3d 182, 185, 761 N.E.2d 598, 603 (2002)(quoting 12 Couch on Insurance §169 n.1 (3d ed. 1998)).

Motor Vehicle Regulations Act (MVRA)and public policy. See, e.g., Meridian Mut. Ins. Co. v. Siddons, Ky., 451 S.W.2d 831 (1970); Ohio Cas. Ins. Co. v. Stanfield, Ky., 581 S.W.2d 555 (1979); Hamilton v. Allstate Ins. Co., Ky., 789 S.W.2d 751 (1990); Chaffin v. Kentucky Farm Bureau Ins. Co., Ky., 789 S.W.2d 754 (1990); Allstate Ins. Co. v. Dicke, Ky., 862 S.W.2d 327 (1993). These cases also are based in part on the doctrine of reasonable expectations, which in this context postulates that "when [a person] has bought and paid for an item of insurance coverage, he may reasonably expect it to be provided." Hamilton, supra at 753. See generally Simon v. Continental Ins. Co., Ky., 724 S.W.2d 210 (1986); Marcum v. Rice, Ky., 987 S.W.2d 789, 791 (1999). "The reasonable expectations of an insured are generally determined on the basis of an objective analysis of separate policy items and the premiums charged for each." Marcum, 987 S.W.2d at 791; Estate of Swartz v. Metropolitan Property & Casualty Co., Ky. App., 949 S.W.2d 72, 75 (1997). In Meridian Mutual Ins. Co. v. Siddons, supra, the Court considered the mandatory nature of UM coverage in construing the MVRA as voiding anti-stacking provisions in insurance policies. In Allstate Ins. Co. v. Dicke, supra, the Kentucky Supreme Court extended the rationale of Siddons to UIM coverage stating, "[w]e have consistently held that when separate items of 'personal' insurance are bought and paid for, there is a reasonable expectation that the coverage will be provided. As such, we have held that it is contrary to public policy for it to be denied." Id. at 369. However, see Marcum v. Rice, supra (holding public

policy did not require stacking for UIM coverage on policy covering four vehicles with single premium).

A careful review of the case law, however, indicates that Braden's reliance on this line of cases is misplaced. First, there are no cases specifically sanctioning the stacking of UM and UIM coverage. As the court noted in Saxe v. State Farm Mut. Auto. Ins. Co., Ky. App., 955 S.W.2d 188, 192 (1997), which held the insured could not stack additional reparations benefits coverage and UIM coverage, all of the anti-stacking cases involve "stacking of the same type of coverage, not the combination of different types of insurance[.]" In Chaffin, the court described Siddons and its progeny as holding that uninsured motorist coverage is personal to the insured and that an insured who pays separate premiums for multiple items of the same coverage has a reasonable expectation that such coverage will be afforded. Chaffin, at 756. Braden attempts to fit her situation into the principles recognized by the anti-stacking cases by arguing that both UM and UIM coverage are "personal" insurance items and she paid separate premiums for each type of coverage. Her argument ignores the underlying presumption of these cases that the same type of coverage with the exact same elements is involved. UM and UIM coverage are characterized as "personal" items because they are intended to provide protection to the individual injured or persons, as opposed to coverage based on the particular vehicle, as with liability coverage. See, e.g., Hamilton, supra at 753; Butler v. Robinette, Ky., 614 S.W.2d 944 (1981)(rejecting stacking of bodily injury liability coverage). Merely because UM

and UIM coverage share this single characteristic does not mandate that they can be stacked with each other given the differences in the two types of coverage.

Ultimately, the dispositive issue in this case is coverage in the first instance. On this question, the discussion in Windham v. Cunningham, Ky. App., 902 S.W.2d 838 (1995) is instructive. In that case, Windham's decedent, Toni Potter, was killed while riding as a passenger in her automobile that was being driven by Cunningham with Potter's permission. Potter had an insurance policy insuring two vehicles and included UM and UIM coverage. The court held that Windham could not stack the UM and UIM coverages because she was not entitled to UM or UIM benefits under the definition for these items of coverage under the statutes or insurance policy. The court stated that KRS 304.020(1) requires UM coverage to recover damages from owners or operators of uninsured motor vehicles, subject to three exceptions. Since the vehicle being driven by Cunningham was not uninsured and none of the exceptions applied, Windham was not entitled to UM benefits under the statute. The court held she also was not entitled to UM benefits under the policy, which defined an uninsured motor vehicle as a vehicle to which no bodily injury liability bond applies at the time of the accident and excluded vehicles owned or furnished or available for the regular use of the insured. The court rejected Windham's argument that the policy exclusions were void under the anti-stacking cases, Hamilton and Chaffin, because they dealt with anti-stacking policy provisions, not clauses defining initial UM

coverage. It stated, "Windham ignores the fact that before she can stack coverage, she must prove that she is entitled to them." Windham, at 840.

Similarly, Windham was not entitled to UIM benefits under KRS 304.39-320(1) because it defined an underinsured motorist as an individual separate from the victim and underinsured motorist coverage as uncompensated damages from injury in a vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon. The policy excluded vehicles owned by or furnished or available for regular use by the insured from its definition of an underinsured motor vehicle. The court rejected Windham's claim that the policy exclusion was void as against public policy because she had a reasonable expectation of UIM coverage. Again, the court noted that this argument ignored "whether UIM coverage is available in this situation at all." Id. at 841. Although factually distinguishable, the analysis used in Windham is applicable to the present appeal.

In Pridham v. State Farm Mut. Ins. Co., Ky. App., 903 S.W.2d 909 (1995), the court held the appellant, who was injured as a passenger in a one-car accident, could not recover under both the bodily injury liability and UIM provisions of the driver's mother's policy. It stated that the insurance policy exclusion of UIM coverage for vehicles furnished for the regular use of the insured or any relative was unambiguous and valid as consistent with the Kentucky uninsured motorist statute. The court rejected Pridham's claim that he was entitled to UIM

benefits under the doctrine of reasonable expectations. The court said that because Pridham was not entitled to UIM benefits in the first instance, the issue of stacking liability and UIM coverage was moot. Id. at 911.

In the case sub judice, Braden relies on case law recognizing a public policy prohibiting anti-stacking provisions in automobile insurance contracts for UM and UIM coverage based on certain statutes and the reasonable expectations doctrine. As discussed earlier, while some of the language in those cases may superficially support her position, a review of the factual background and the issues decided indicate that they apply only to stacking of the same type of coverage and not different types of coverage items. A careful analysis of the statutory definitions of UM and UIM and the purpose of those coverages supports the view that the rationale of the anti-stacking cases should not be expanded to permit stacking of both UM and UIM coverage to a single loss or accident.

KRS 304.020(1) limits recovery of UM benefits to damages caused by owners or operators of uninsured motor vehicles. KRS 304.39-320(1) defines an underinsured motorist as a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against the tortfeasor. Subsection 2 of KRS 304.39-320 defines underinsured motorist coverage as uncompensated damages recoverable against the owner of another vehicle on a judgment that exceeds the liability policy limits on the other vehicle. Braden's contention that stacking of both UM and UIM coverage should be available simply

because the statutes do not specifically prohibit it belies the reasonable and logical application of the statutes. UM and UIM coverage clearly is intended to apply to different, and mutually exclusive, situations. Braden's assertion that UIM coverage applies whenever policy limits are exhausted on another coverage item, including UM benefits, is contrary to the language of the UIM statute and the purpose of that coverage. The statute refers only to the exhaustion of bodily injury liability limits, not uninsured motorist coverage. "Conceptually, the purpose of the [UIM] statute is to give the insured the right to purchase additional liability coverage for the vehicle of a prospective underinsured tortfeasor." Motorists Mut. Ins. Co. v. Glass, Ky., 996 S.W.2d 437, 449 (1997)(citing LaFrange v. United States Services Automobile Ass'n, Ky., 700 S.W.2d 411, 414 (1985)). An uninsured motorist also does not become an underinsured motorist simply because the limits of the uninsured motorist coverage are exhausted.

The Security policy defines an "uninsured motor vehicle," in relevant part, as a vehicle "to which no bodily injury liability bond or policy applies at the time of the accident." By contrast, it defines an "underinsured motor vehicle" as a vehicle "to which a bodily injury liability bond or policy applies at the time of the accident but the amount paid for 'bodily injury' under that bond or policy to an 'insured' is not enough to pay the full amount the 'insured' is legally entitled to recover as damages." These provisions are consistent with the MVRA. Braden's argument that she had a reasonable

expectation of recovery under both the UM and UIM provisions because she paid premiums for both types of coverage is unpersuasive. These provisions clearly and unambiguously apply to different, mutually exclusive situations.

Jones had no liability insurance and Security paid Braden $50,000 under the UM coverage. We agree with the trial court that she had no reasonable expectation of benefits under the UIM provision of her policy or the statutes, which require the existence of a bodily injury liability policy. Because she was not entitled to UIM benefits at all, Braden necessarily is not entitled to stack the UIM and UM coverages. Consequently, the appellees were entitled to summary judgment as a matter of law.

For the foregoing reasons, we affirm the judgment of the Henry Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

William H. Brammell
Brammell Law Office
New Castle, Kentucky

BRIEF FOR APPELLEES:

Douglas Becker
Wyatt, Tarrant & Combs
Louisville, Kentucky