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Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002541-MR

KENTUCKY NATIONAL INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 01-CI-008547

TONYA FLETCHER — APPELLEE

OPINION
AFFIRMING IN PART AND
REVERSING IN PART

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Kentucky National Insurance Company (KNIC) has appealed from an opinion and order entered by the Jefferson Circuit Court on October 24, 2003, which denied its motion for summary judgment as to whether the tortfeasor, Brittany Brockman, was uninsured and whether the appellee, Tonya Fletcher, was entitled to stack uninsured motorist coverages.[1]

[1] The judgment in the amount of $102,143.72 against Brockman entered on April 4, 2003, left open the question of KNIC's liability for uninsured benefits.

The trial court ordered KNIC to pay Tonya $102,143.72 in uninsured motorist coverages under her father, Roy Fletcher's, automobile insurance policy.[2] Having concluded that the trial court did not err in determining that there was no genuine issue as to any material fact as to whether Brockman was uninsured, we affirm the trial court's order denying KNIC's motion for summary judgment to this extent. Having further concluded that the trial court erred by denying KNIC's motion for summary judgment as to whether Tonya was entitled to stack the uninsured motorist coverages of the policy in question and by entering judgment against KNIC in an amount exceeding $50,000.00,[3] we reverse that portion of the trial court's order.

On December 26, 1999, at approximately 6:42 p.m., Tonya was driving to work in a 1995 Chevrolet Baretta on Interstate 65 North in Louisville, Kentucky. Tonya exited onto the Preston-Grade Lane exit and came to a stop at the red light at the bottom of the ramp. When the light turned green, Tonya proceeded forward and she was immediately hit by a car driven by Brockman. Tonya remembered seeing lights to her left just prior to the accident, then she blacked out. When she regained consciousness she was lying in the middle of the road, despite having her seat belt fastened at the time of the accident. She

[2] This amount is less $10,000.00 in no-fault benefits previously paid by KNIC.

[3] This was the amount of uninsured motorist coverage, per person, on the 1995 Chevrolet Baretta that Tonya was driving at the time of the accident.

did not see Brockman at the scene of the accident and has never spoken to her. Tonya sustained road burns to her right arm and left lower leg, knots on the left side of her head, injury to her right index finger, and experienced pain in her left lower back and hip, which radiated down her leg into her foot.

On April 22, 2003, Tonya signed an affidavit, as a part of this civil action, stating that she owned the Baretta with her father, Roy Fletcher.[4] The vehicle was insured under a policy through KNIC in the name of Roy. At the time of the accident, there were four vehicles on the policy,[5] for which separate premiums were paid, including the Baretta. In addition to Roy, Tonya and her mother, Janice Fletcher, were listed on the policy as drivers. It is undisputed that at the time of the accident, Roy and Janice resided at 9617 Maple Drive in Louisville, and Tonya, who was 27 years old, resided at 315 Barracks Road #272, in Louisville. Under the policy, Tonya was not listed as the driver of the Baretta, but rather the 1988 Chevrolet S-10 pickup truck. The policy provided uninsured motorist benefits on three of the four vehicles in the amount of $50,000.00 per person, and $100,000.00 per accident.[6]

[4] KNIC argues that it was unaware of Tonya's claimed ownership in the vehicle until she filed the affidavit in the case.

[5] The four vehicles listed on the policy at the time of the accident were a 1995 Chevrolet Baretta, a 1989 Chevrolet Astro Van, a 1988 Chevrolet S-10 pickup, and a 1993 Viking Camper.

[6] There was no uninsured motorist coverage on the 1993 Viking Camper.

On December 14, 2001, Tonya filed suit in Jefferson Circuit Court against Brockman and KNIC claiming that Brockman was uninsured, and that she was entitled to uninsured motorist coverage under the KNIC policy in Roy's name. On December 17, 2001, Brockman was served by certified mail, but she did not file an answer. KNIC was also served on December 17, 2001, and filed an answer and a cross-claim against Brockman.[7] In its answer, KNIC asserted various defenses, challenged Tonya's claim for damages, and denied that Brockman was an uninsured motorist. In KNIC's cross-claim against Brockman, it sought to recover from her any damages that it had to pay Tonya in the event Brockman was determined to be uninsured.

KNIC's counsel took Tonya's deposition on March 1, 2002, and she testified that she had contacted the insurance company listed on the accident report and determined that Brockman was not insured through that company. On February 2, 2002, Tonya served notice on both KNIC and Brockman that she would take Brockman's deposition on March 20, 2002; however, neither Brockman nor KNIC appeared for the deposition.

The discovery before the trial in this matter included requests for admissions that Tonya served on Brockman asking her to admit that she was uninsured at the time of the accident. Brockman failed to answer this discovery request. Tonya also

[7] Brockman did not respond to the cross-claim.

served interrogatories on KNIC regarding her status with KNIC under the policy. KNIC responded by admitting Tonya was an "insured" under the policy, but conditioned its admission upon all the terms and provisions of the insurance contract being fulfilled.

A jury trial was held on January 28 and 29, 2003. Prior to voir dire, after hearing arguments from counsel for Tonya and KNIC, the trial court ruled Brockman to be uninsured.[8] KNIC's counsel asked Tonya's counsel if Tonya intended to seek damages in excess of $50,000.00, which was the amount of uninsured motorist coverage per person on the Baretta under the KNIC policy.[9] Tonya's counsel stated that he intended to prove her full damages. In response, KNIC's counsel stated that at trial he needed to ask Tonya questions regarding her coverage. Tonya's counsel objected and stated that stacking was a question of law and not a question for the jury. He stated that if stacking became an issue, it could be brought before the trial court after the jury trial. No written motions were filed regarding stacking and the issue was passed for post-verdict proceedings.

[8] This ruling was in effect a partial summary judgment, but other than KNIC's answer the record only reflects an oral request for this relief. This was one of many procedural oddities in this case that have caused difficulty in our review.

[9] In addition to challenging the extent of Tonya's entitlement to coverages under the policy, KNIC also disputed the value of Tonya's claim.

The jury found Brockman to be 100% at fault for the accident and awarded Tonya $112,143.72 in damages for her past and future medical expenses, past and future lost earning capacity, and past and future pain and suffering. Subsequently, Tonya tendered a written judgment to the trial court, but KNIC objected to the judgment before it was entered.[10]

On March 20, 2003, KNIC filed a motion for summary judgment, claiming (1) Tonya was not entitled to any coverage because the insurance policy issued to Roy had been obtained by fraud or misrepresentation since Tonya did not reside in the same household as her father; (2) if Tonya was an innocent party to the alleged fraud of obtaining the insurance policy, her uninsured coverage should be limited to $25,000.00; and (3) as a "second class" insured, Tonya would only be entitled to $50,000.00 for uninsured motorist coverage, not $150,000.00 under the stacking provision of the policy. While Tonya did not directly reply to the motion for summary judgment, on March 24, 2003, she did reply to KNIC's objection to her tendered judgment. Tonya stated as follows:

> [KNIC] is nothing more than an impediment to [Tonya's] obtaining a proper judgment against the tortfeasor which

[10] KNIC objected because the judgment stated Brockman was uninsured. KNIC argued that that language had nothing to do with the judgment tendered; that the judgment was also against KNIC in the full amount of the jury award, prior to a post-judgment hearing being held to determine if Tonya was entitled to stack coverages; and the judgment indicated that it was final and appealable, before the stacking issue had been addressed.

> defaulted on the issues of liability, and which a jury has now found to have caused harm. The Court should enter an appropriate judgment consistent with the record in this case, and should enter a final judgment against [Brockman].

The trial court entered a judgment on April 4, 2003, granting a default judgment against Brockman in the amount of $102,143.72, and stating that the issues relating to KNIC's liability for uninsured motorist coverages were "pending."

The trial court held a hearing on KNIC's motion for summary judgment on September 17, 2003, at which time counsel for Tonya and KNIC argued the legal issues regarding stacking. No evidence was offered. On October 24, 2003, the trial court entered its opinion and order, denying KNIC's motion for summary judgment, and awarding Tonya a judgment against KNIC in the amount of $102,143.72. Thus, Tonya was allowed to stack the three uninsured motorist coverages under the policy.

On November 3, 2003, KNIC filed a motion to reconsider and to set aside the trial court's order, arguing that the trial court erred when it denied summary judgment to KNIC and essentially cut off the post-trial proceedings by not allowing it to submit evidence. KNIC argued that the trial court should have either granted it summary judgment or it should have returned the case to the active docket for submission of further proof by the parties on the uninsured issue. On November 10,

2003, the trial court denied KNIC's motion to set aside its order of October 24, 2003. This appeal followed.

KNIC argues that Tonya's proof was not sufficient to establish Brockman's uninsured status and that Fletcher should not be allowed to stack uninsured motorist coverages under the policy because: (1) the trial court improperly interpreted the "stacking" law and misapplied it to the undisputed facts of the case; (2) any misrepresentations by Tonya or Roy should not benefit Tonya; and (3) KNIC was denied an opportunity to present evidence to the trial court regarding insurance coverages. Since this case has many procedural twists, we will discuss the procedural issues first.

PROCEDURAL ISSUES

Tonya makes several arguments throughout her brief regarding procedural failures by KNIC in trying this case. Tonya argues that KNIC waived various affirmative defenses by failing to specifically plead them, including whether Tonya was a "first class insured", and whether Brockman was uninsured.[11] CR[12] 8.03 sets forth specific defenses that must be pled affirmatively, and includes "any other matter constituting an avoidance or affirmative defense." All affirmative defenses

[11] Tonya also asserts that KNIC failed to affirmatively plead fraud, but since fraud is not an issue alleged in KNIC's appeal, we will not address it any further.

[12] Kentucky Rules of Civil Procedure.

must be pleaded.[13] Tonya has not cited any legal authority to support her contention that the defenses that she claims KNIC waived come under the general language of the rule. We conclude that these defenses do not come under the CR 8.03 language requiring the pleading of "any other matter constituting an avoidance or affirmative defense."

From our review of the record, we do not see where Tonya asserted a claim to stack coverages prior to trial. She stated in her complaint as follows:

> [Tonya] . . . was, at the time of the accident referred to above, insured under a policy of automobile liability insurance with [KNIC], which among other coverage's [sic] provided [Tonya] with uninsured motorist coverage; upon which policy premiums were paid and which policy was in full force and effect on the date of the accident referred to above.

As the case proceeded toward trial, the parties in their memoranda identified the sole issue in the case as the extent of Tonya's damages. As mentioned previously, prior to voir dire the issue of stacking appeared to be raised for the first time. However, Tonya's counsel insisted that the issue was a matter of law which could be addressed by the trial court

[13] Ohio Casualty Insurance Co. v. Cisneros, 657 S.W.2d 244, 246 (Ky.App. 1983). See also First National Bank of Grayson v. Citizens Deposit Bank and Trust, 735 S.W.2d 328, 330 (Ky.App. 1987)(stating that when looking at how claims are set out in a pleading it is important to determine whether there was "undue prejudice or surprise[.]" "The nature and legal effect of a pleading will be determined by its substance rather than by mere linguistic form" [citations omitted]).

post-verdict. After the jury returned a verdict for $112,143.72, Tonya tendered a judgment against KNIC and Brockman for the full amount, except the $10,000.00 already paid by KNIC in no-fault benefits. As noted previously, KNIC objected to coverage in excess of $50,000.00 and filed a motion for summary judgment on that issue.

Only after the jury trial and the filing of Tonya's affidavit on April 10, 2003, did her basis for stacking uninsured motorist coverages become apparent in the record. Accordingly, this procedural history negates Tonya's argument that KNIC failed to preserve the stacking issue by not pleading affirmative defenses, in failing to amend its answer to the complaint, in failing to take discovery, in failing to provide witnesses at trial, or in failing to file a compulsory counterclaim to determine whether Tonya was a first class insured. Instead of filing a declaratory judgment action,[14] KNIC chose to integrate the stacking issue as part of this action.

Additionally, we find no merit to Tonya's claim that KNIC's summary judgment motion was not timely because it was not filed within 90 days of entry of the trial court's pretrial order. First, the claim of untimeliness was not raised before the trial court, and second, it is our opinion that the

[14] Despite Tonya's argument to the contrary, we know of no law requiring KNIC to file a declaratory judgment action in order to resolve the stacking issue.

deadlines in the pretrial order related to issues of damages only, as that was the limited scope of the trial. Tonya argues that there is no way she could have known that KNIC disputed that she was a first class insured before the stacking issue was first raised by KNIC prior to voir dire. From our review of the record, we conclude to the contrary that there was no way KNIC could have known before that time that Tonya was going to claim stacking, and thus, KNIC did not fail to adequately preserve this argument for appeal.[15] Further, we find no error in the preservation of KNIC's argument that Brockman was uninsured; however, since we hold in Tonya's favor regarding this issue, the procedural aspects of this issue do not merit further discussion.

UNINSURED STATUS OF BROCKMAN

KNIC argues that Tonya failed to meet her burden of proof that Brockman was an uninsured motorist at the time of the accident, and therefore, the default judgment entered by the trial court against Brockman was improper. "UM coverage is first party coverage, which means that it is a contractual

[15] In fact, in Tonya's answer to KNIC's interrogatories in compliance with CR 8.01(2) she said that her unliquidated damages for pain and suffering, future medical expenses, and future lost wages were all "undetermined at this time." While this is not an issue on appeal, under LaFleur v. Shoney's Inc., 83 S.W.3d 474 (Ky. 2002), it would appear that Tonya could have been prohibited from recovering the $70,000.00 for pain and suffering, $10,000.00 for future medical expenses, and $19,250.00 for future lost earnings even though she had tendered proposed jury instructions on the day of trial that equaled or exceeded these amounts.

obligation directly to the insured which must be honored even if the tortfeasor cannot be identified" [emphasis original].[16] As stated earlier, Brockman accepted service of the summons and complaint filed by Tonya, but never answered the complaint or Tonya's requests for admissions requesting her to admit that she was uninsured.[17] In its pleadings, KNIC denied that Brockman was uninsured and filed a cross-claim against her, which Brockman did not respond to. "'The burden of showing that the party responsible for the accident was uninsured is on the insured plaintiff attempting to recover under the uninsured motorist coverage'" [citations omitted].[18] This burden requires that "'all reasonable efforts have been made to ascertain the existence of an applicable policy and that such efforts have proven fruitless.'"[19]

Tonya relies on Hunt, supra, and argues that she made all reasonable efforts to determine whether Brockman was an

[16] Coots v. Allstate Insurance Co., 853 S.W.2d 895, 898 (Ky. 1993) (citing First National Insurance Co. v. Harris, 455 S.W.2d 542 (Ky. 1970); and Puckett v. Liberty Mutual Insurance Co., 477 S.W.2d 811 (Ky. 1971)).

[17] Pursuant to CR 36.01, failure to answer a request for admissions within the prescribed period of time, has the effect of the request being deemed admitted, and pursuant to CR 36.02 any matter admitted under this rule is "conclusively established[.]" See also Lyons v. Sponcil, 343 S.W.2d 836 (Ky. 1961).

[18] Motorist Mutual Insurance Co. v. Hunt, 549 S.W.2d 845, 846 (Ky.App. 1977).

[19] Id. at 847 (quoting Merchants Mutual Insurance Co. v. Schmid, 288 N.Y.S.2d 822 (N.Y. 1968).

uninsured motorist at the time of the accident.[20] Tonya's actions included contacting the insurance company listed on the accident report, which denied that it provided Brockman coverage; noticing Brockman to take her deposition, but Brockman failed to appear; and serving requests for admissions on Brockman asking her to admit or to deny that she had automobile coverage, which Brockman failed to answer. Tonya claims that if KNIC's argument were accepted, a plaintiff would never be able to prove that an unanswering defendant was uninsured as long as the defendant never made an appearance. Tonya claims that she did all she could do to determine whether Brockman was uninsured at the time of the accident, and that pursuant to Hunt, absent affirmative proof from KNIC, an inference may be drawn that no insurance policy was in force.[21]

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[20] The Court in Hunt stated as follows:

> "Since the absence of insurance upon the offending vehicle and its driver is a condition precedent to the applicability of the uninsured driver endorsement, we hold that the burden of proving such absence is on the claimant."

Hunt, 549 S.W.2d at 847 (quoting Merchants Mutual, 288 N.Y.S.2d at 822).

[21] Tonya argues that this is not a shift in the burden of proof, but rather is simply an opportunity for the insurance company to rebut the proof that the other driver was not uninsured. The Court in Hunt stated as follows:

> "However, we must keep in mind that proving a negative is always difficult and frequently impossible and that, consequently, the quantum of proof must merely be such as will convince the trier of facts that all reasonable efforts have been made to ascertain the existence of an applicable policy and that such efforts have proven fruitless. In such an event, and absent any affirmative proof by

KNIC argues that there was "no proof" that Brockman was uninsured and that the trial court used a procedural mechanism, i.e., Brockman's failure to respond to requests for admissions, to deem admitted that she was uninsured and then entered a default judgment.[22] Tonya argues that Brockman's failure to answer the requests for admissions was essentially a declaration against her interest,[23] because Brockman was subject to being held personally liable to Tonya or KNIC, if she did not have insurance, and thus, it would have been better for her to admit that she had insurance, if she did. Further, Tonya argues that Brockman's silence is no different than if Brockman had answered the admission affirmatively.

> petitioner (the insurance company), the inference may be drawn that there is in fact no insurance policy in force which is applicable."

Hunt, 549 S.W.2d at 847 (quoting Merchants Mutual, 288 N.Y.S.2d at 822).

[22] KNIC cites Tackett v. Green, 187 Ky 49, 218 S.W. 468 (1920), and Beddow's Adm'r v. Barbourville Water, Ice & Light Co., 252 Ky. 267, 66 S.W.2d 821 (1933), and argues that because it and Brockman were in pari delicto, the trial court erroneously ruled that it was liable because of Brockman's failure to respond to discovery. KNIC argues that where the defense interposed by an answering defendant is not personal to himself, but common to all, or questions the merits of the validity of the plaintiff's cause of action in general, or questions plaintiff's right to sue, such defense inures to the benefit of any defaulting defendant both in actions at law and suits in equity, with the result that the eventual judgment must apply not merely to the answering defendant, as appropriate, but also any defaulting defendants.

Tonya argues that in pari delicto means "equal fault" and does not apply to the defendants in this case. The defendants in the cases cited by KNIC had defenses common to each other, but Tonya argues that KNIC and Brockman had adverse interests, as evidenced by KNIC's counterclaim. We agree with Tonya that there is no merit to KNIC's argument.

[23] See Hunt, 549 S.W.2d at 847.

Tonya's argument is supported by Hunt, where the Court held that the tortfeasor's statement that he had no insurance, which is the equivalent to Brockman's admission by law in this case, while hearsay, would be admissible as a statement against the tortfeasor's "pecuniary interest," because he was "personally liable for his tortious acts".[24] Further, "in most jurisdictions, any type of actual unavailability . . . is sufficient cause for the introduction of declarations against interest . . ." [citations omitted].[25] Thus, we conclude that Tonya met her burden of proof that Brockman was uninsured, and absent any evidence by KNIC rebutting this proof, it was proper for the trial court to in effect grant Tonya a summary judgment on the question of whether Brockman was uninsured.

STACKING ISSUE

"[Stacking] is a contractual issue, related solely to construing the insurance policies involved in light of their terms and of previous decisions of our Court related to similar questions in uninsured motorist insurance coverage cases."[26] Interpretation of a contract or a written instrument is a matter of law for court determination, subject to de novo review on

[24] Hunt, 549 S.W.2d at 847.

[25] Id.

[26] Coots, 853 S.W.2d at 903.

appeal,[27] and, thus, "without deference to the interpretation afforded by the [trial] court."[28] Thus, we give de novo review to KNIC's argument that the trial court misapplied the law regarding stacking.

There are three parts to KNIC's argument that the trial court improperly stacked coverages in awarding Tonya uninsured motorist benefits under the policy. First, KNIC argues the trial court misapplied the law to undisputed facts of the case. KNIC states that the trial court misunderstood KNIC'S judicial admission that Tonya was an "insured" under the policy. KNIC argues that its admitting Tonya was an insured was not an admission that she was a "named insured" under the policy and that it further qualified its admission that Tonya's insured status was dependent upon all terms and provisions of the insurance policy being fulfilled.[29] The policy language establishes that an insured is not limited to a named insured, and thus, KNIC's admission that Tonya was insured did not establish Tonya's rights as those of a named insured.

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[27] Cantrell Supply, Inc. v. Liberty Mutual Insurance Co., 94 S.W.3d 381, 385 (Ky.App. 2002). See also Cinelli v. Ward, 997 S.W.2d 474, 476 (Ky.App. 1998).

[28] Cinelli, 997 S.W.2d at 476.

[29] The trial court stated: "Each answer (of KNIC's admitting that Tonya was insured under the KNIC policy) was conditioned upon all the terms and provisions of the insurance contract being fulfilled."

The policy stated that "[t]hroughout this policy, 'you' and 'your' refer to: 1. The 'named insured' shown in the Declarations; and 2. The spouse if a resident of the same household." "Insured" is defined, in part, in the policy as (1) "You or any 'family member' for the ownership, maintenance or use of any auto or 'trailer'"; and (2) "Any person using 'your covered auto.'" "Family member" is defined under the policy as "a person related to you by blood, marriage or adoption who is a resident of your household."

Kentucky law distinguishes the rights of different insureds under an insurance policy; e.g., persons of the "first class" and persons of the "second class."

> 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.[30]

Thus, it is clear that the coverage of a "second class" insured is limited to damages from injury inflicted by an uninsured motorist while the second class insured is "'occupying an insured highway vehicle.'"[31] Accordingly, to determine if the

[30] Ohio Casualty Insurance Co. v. Stanfield, 581 S.W.2d 555, 557 (Ky. 1979); see also James v. James, 25 S.W.3d 110, 113, (Ky. 2000).

[31] Id. (citing Sturdy v. Allied Mutual Ins. Co., 457 P.2d 34 (Kan. 1969)).

trial court properly allowed Tonya to stack uninsured motorist coverages, this Court must determine her insured status under the policy.

Pursuant to Stanfield, for Tonya to be a first class insured, she must (1) be a named insured; (2) be a spouse of the named insured who is also a resident of the same household; or (3) be another member of the named insured's family who is also a resident of the same household.[32] Otherwise, Tonya would be a second class insured and she would not be allowed to stack coverages under the policy.[33]

The trial court stated in its order dated October 24, 2003, that Roy was the policyholder, and thus, a first class insured. KNIC contends that Roy was the only named insured under the policy and that he and Janice, his spouse who was a resident of the same household, were the only first class insureds under the policy. KNIC further contends that since Tonya was not listed as a named insured and was not a resident of Roy's household, but was a permissive user of a vehicle shown on the policy, she was a second class insured.

The insurance policy of record in this case is a "specimen" policy. The front page of the policy contains two

[32] There is no question that Tonya, as Roy's daughter, was a member of his family. However, it is undisputed that Tonya did not reside in the same household as Roy, so this option does not apply.

[33] Stanfield, 581 S.W.2d at 559.

boxes – one to identify the insured and one to identify the policy number. Both boxes on the specimen policy in the record are blank. The policy does not define the term "named insured," but in defining "you" and "your" it states "[t]he 'named insured' shown on the Declarations[.]"[34]

When considering the issue of an insured's reasonable expectations, the policy's declarations page has "signal importance" as it is "the one page of the policy tailored to the particular insured and not merely boiler plate."[35] In this case, the first page of the declaration has a place to enter "name and address" and Roy's name and address are listed there. The word "insured" is not present. On the second page of the declaration is the following section:

The following individuals have been reported as drivers on this policy:	Date of Birth	Assigned to Auto Number

[34] While "named insured" is not defined, other courts have held that the term "named insured" refers to the person named in the declaration of the policy. Waller v. Rocky Mountain Fire & Casualty Co., 535 P.2d 530, 534 (Or. 1975)(quoting 1 Long, Law of Liability Insurance 3-3, § 301 (1966) for the rule that "[w]herever the description 'named insured' is used, only the person named in the declarations of the policy is meant"); Adkins v. Inland Mutual Insurance Co., 20 S.E.2d 471, 473 (W.Va. 1942) (stating that "'named insured'" "can apply only to the person named as the insured"); Holthe v. Iskowitz, 197 P.2d 999, 1002 (Wash. 1948) (quoting 7 Appleman, Insurance Law & Practice, § 4354, that "[w]henever the term 'named insured' is employed, it refers only to the person specifically designated upon the face of the contract; but whenever the unqualified term 'insured' is used, it includes not only the named insured but such other persons as are protected by the omnibus clause. The owner of an automobile is not the named insured where another is so designated by the policy" [citations omitted]).

[35] Lehrhoff v. Aetna Casualty & Surety Co., 638 A.2d 889, 892 (N.J.Super. 1994).

Roy S. Fletcher	04/05/46	
Janice L. Fletcher	04/27/47	
Tonya L. Fletcher	02/19/72	3[36]

Since the only manner in which Tonya was listed on the policy was as a driver for the 1998 Chevrolet S-10 pickup, KNIC argues that under True v. Raines,[37] there was no ambiguity concerning whether she was a named insured for purposes of determining uninsured motorist coverages under the policy. We agree

In True, Raines was involved in an accident with True, whose insurance coverage did not cover all of Raines's accident-related expenses. Raines, who was driving her own vehicle at the time, was also identified on Rice's[38] automobile insurance policy as a driver "residing in your household,"[39] but Raines's vehicle was not a covered auto under the policy, nor was she a named insured on the policy. Raines sought underinsured motorist coverage under Rice's policy.[40] Our Supreme Court concluded "[b]ecause Rice's policy was clear and unambiguous in its UIM coverage, and Raines was neither a named insured nor otherwise covered by Rice's policy while driving her own

[36] This is covered auto number 3 on the front page of the policy, which is identified as a 1988 Chevrolet S-10 pickup. The 1995 Chevrolet Baretta is identified as covered auto number 1.

[37] 99 S.W.3d 439 (Ky. 2003).

[38] Raines and Rice were not married but they lived together as companions and jointly owned the home in which they lived. Id. at 441.

[39] No additional premium was charged for this listing. Id.

[40] Id. at 441.

automobile, we hold that Raines was not entitled to recover UIM benefits under Rice's policy."[41]

Tonya argues that there are factual distinctions between this case and True that make True inapplicable.[42] However, we conclude that the factual distinctions are not significant in determining the applicability of the holding in True to this case. The outcome of True did not turn on whether Raines and Rice had separate insurance policies.[43] Further, while Raines and Rice did not pay additional premiums for the coverages set out in their policy, in this case KNIC argues that

[41] True, 99 S.W.3d at 441.

[42] Further, Tonya argues that KNIC's argument that True lends support that the policy in this case is not ambiguous is irrelevant because the trial court did not find the policy ambiguous, but stated that it plainly showed Tonya was a named insured, and thus, a person of the first class and entitled to stacking. However, for the reasons stated above, we conclude Tonya is not a named insured under the policy.

[43] Tonya argues that she was a first class insured and that because separate premiums were paid for each vehicle, she was entitled to stack uninsured motorist coverages pursuant to the law in Meridian Mutual Insurance Co. v. Siddons, 451 S.W.2d 831 (Ky. 1970). Siddons was the first case to permit stacking of uninsured motorist coverages from several policies. Stanfield, 581 S.W.2d at 556. While this Court in Stanfield, made an argument similar to Tonya's that stacking should apply when separate premiums are paid on the policies, the Supreme Court of Kentucky concluded that this was not really the issue.

> It appears to us, however, that this rationale is incomplete because it neglects the significant element of the type of insured who is seeking to stack coverages. In the case under consideration an employee who did not pay the premium seeks to stack coverages contained in his employer's insurance policy. Siddons presented a case where the named insured who paid the premium charged sought to stack coverages.

Stanfield, 581 S.W.2d at 556. Similarly, we conclude that Siddons does not support Tonya's stacking argument in this case.

the additional premiums paid for the uninsured motorist coverages under Roy's policy did not cover Tonya. Tonya argues that a critical distinction between this case and True is that she was named as a driver under the policy but Raines was named as a driver residing in the same household. However, Tonya does not provide any support for how this distinction elevates her to a status higher than Raines under the respective policies.

One very important similarity between the two cases is that the policy language in this case has a striking resemblance to the language in the policy in True. The Supreme Court in True found no ambiguity in the policy's terms defining those entitled to underinsured motorist coverage. While the language at issue in this case concerns uninsured motorist coverage, in all other respects it is the same. In Coots, the Supreme Court stated that "UIM coverage serves the same purpose and follows the same pattern as UM coverage. While wording of the UIM statute is different from that of the UM statute, we can discern no fundamentally different insurance arrangement from that provided for under the UM statute."[44] Thus, the Supreme Court's analysis in True concerning underinsured coverage is also applicable to uninsured motorist coverage.

The Supreme Court in True stated that the "only connection" Raines had "to Rice's policy is her listing on the

[44] Coots, 853 S.W.2d at 898.

policy's declarations page as a driver of his covered automobile."[45] Raines argued to the Supreme Court that since she was listed as a driver but the term "driver" was not defined or explained in the policy, this omission created an ambiguity that implicates the reasonable expectations doctrine. The Supreme Court disagreed and concluded "that the policy's failure to define 'driver' does not constitute an ambiguity that reasonably permits Raines's interpretation of the policy's coverage."[46] Further, the Supreme Court indicated that a purpose for naming designated drivers on policy declaration pages is to eliminate "potential disputes as to whether the driver's use was permissive, so as to obligate the insurer to provide liability coverage under the policy in the event that person subsequently is involved in an accident in the insured vehicle."[47] We agree with KNIC that pursuant to True a listed or reported driver is not entitled to stack uninsured motorist coverages, and thus, Tonya is only entitled to the uninsured motorist coverage on the vehicle she was driving at the time of the accident.

Tonya also claims that she is entitled to stack coverages under the policy because she paid part of the policy

[45] True, 99 S.W.3d 444.

[46] Id.

[47] Id. at 445.

premium.[48] Tonya testified that since she and Roy jointly owned the 1995 Chevrolet Baretta and since she paid her proportional share of the policy premium, she expected to receive full and complete benefits under the policy. However, since Tonya is not a named insured and is only listed as a driver, pursuant to True the policy is unambiguous. Thus, Tonya's reasonable expectations are not relevant.[49]

KNIC's final argument regarding stacking is based on an insufficient opportunity to be heard on insurance issues after trial. It argues that it raised issues regarding coverage prior to voir dire, but was ordered to argue these issues at a later hearing. We conclude that Tonya's intent to stack was not apparent until the day of trial and that Tonya's counsel agreed that any stacking arguments would be reserved for a later date. Thus, KNIC was entitled to a hearing regarding the stacking coverages. However, based on the applicability of True to this case, it is unnecessary to remand the case to the trial court, as we have concluded as a matter of law that Tonya is a second class insured and not entitled to stacking.

[48] The only proof offered that Tonya made payments on the policy or that she owned the vehicle was not made a part of the record until April 10, 2003, and was based on her testimony. KNIC states that prior to April 10, 2003, it did not know that Tonya claimed to have paid a portion of the premiums, and further, the policy did not state that Tonya was paying part of the premiums.

[49] Woodson v. Manhattan Life Insurance Co. of New York, 743 S.W.2d 835, 839 (Ky. 1987).

For the foregoing reasons, we affirm that portion of the Jefferson Circuit Court's order finding Brockman was an uninsured motorist, and we reverse that portion of the trial court's order denying KNIC's motion for summary judgment, which allowed Tonya to stack uninsured motorist coverages under the policy and awarded her a judgment against KNIC in an amount in excess of $50,000.00, as Tonya as a matter of law is a second class insured and thus not entitled to stack coverages under the policy.

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