

RENDERED: OCTOBER 24, 2008; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-001184-MR

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NO. 06-CI-00215

VIRGINIA BUDDE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON AND DIXON, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

CLAYTON, JUDGE: This action comes before us on appeal from a decision of the McCracken Circuit Court granting summary judgment in favor of Appellee, Virginia Budde, on the issue of Underinsured Motorist Coverage (“UIM”).

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Appellant, State Farm Insurance (“State Farm”), contends that the trial judge erred in finding it liable under its policy of insurance with Ms. Budde.

### FACTUAL SUMMARY

Ms. Budde has been living with Jerry Jarrett for seven (7) years. The two share ownership of their home in Paducah, Kentucky. On May 7, 2005, they were involved in a motorcycle accident which was the fault of Mr. Jarrett. They were traveling on Mr. Jarrett’s Harley Davidson motorcycle at the time of the accident. Mr. Jarrett had insurance on his motorcycle and Ms. Budde has recovered the limits under his policy. Ms. Budde had insurance on her own automobile through State Farm.

Ms. Budde brought an action in McCracken Circuit Court asking for damages based on UIM, Uninsured Motorist Coverage (“UMC”) and No-Fault provisions in her contract of insurance with State Farm. The trial court granted summary judgment to State Farm on the issues of UMC and No-Fault, however, it granted summary judgment to Ms. Budde on the issue of UIM. State Farm appealed and, thus, the only question before us is whether State Farm is liable for benefits to Ms. Budde under the UIM provision of her insurance contract.

### STANDARD OF REVIEW

In reviewing the granting of summary judgment by the trial court, we must determine 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. In reviewing a summary judgment motion, a trial court must view

the evidence in the light most favorable to the nonmoving party and summary judgment should be granted only when it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor.

While the moving party bears the initial burden of proving that no genuine issue of material fact exists, the burden shifts to the party opposing summary judgment to present “at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Community Trust Bancorp, Inc. v. Mussetter*, 242 S.W.3d 690, 692 (Ky. App. 2007). Since summary judgment deals only with legal questions as there are no genuine issues of material fact, we need not defer to the trial court’s decision and must review the issue *de novo*. *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

Interpretation of insurance contracts is a matter of law for the court. Ambiguous terms are to be construed against the drafter and in favor of the insured, while giving a reasonable interpretation to the policy. *Stone v. Kentucky Farm Bureau Mut. Ins. Co.*, 34 S.W.3d 809-11 (Ky. App. 2000). With these standards in mind, we will examine the merits of State Farm’s appeal.

## DISCUSSION

State Farm begins its argument with the language of the insurance policy it had with Ms. Budde. The policy set forth that:

An underinsured motor vehicle does not include a land motor vehicle:

. . . .

2. furnished for the regular use of you, your spouse or any relative;

State Farm's policy at p. 21.

State Farm contends that Mr. Jarrett's motorcycle was such a vehicle. In support of its argument, State Farm points to Ms. Budde's deposition testimony wherein she stated that her vehicle was available for Mr. Jarrett's use should he choose to use it.

To begin, "regular use" exceptions in insurance policies are not against public policy. *See Motorists Mutual Insurance Co. v. Glass*, 996 S.W.2d 437 (Ky. 1997); *Pridham v. State Farm Mutual Insurance Co.*, 903 S.W.2d 909 (Ky. App. 1995). The "reason for the exclusion is that the named insured can avoid the fact of underinsurance by simply purchasing additional liability insurance coverage for his vehicle." *Murphy v. Kentucky Farm Bureau Mutual Insurance Co.*, 116 S.W.3d 500, 502 (Ky. App. 2002). Ms. Budde contends that the motorcycle in question, however, was not actually available for her "regular use" as she could not ride it alone and she only rode it a couple of times a year with

Mr. Jarrett. Ms. Budde does not have a motorcycle license and testified that she never rode the motorcycle except as a passenger.

The reasonable expectation of the average person who purchases UIM coverage is that she will be entitled to UIM benefits if she is struck by another driver whose liability limits are not sufficient to satisfy her damages.

*Windham v. Cunningham*, 902 S.W.2d 838, 841 (Ky. App. 1995).

“[T]he legislature intended to provide additional protection to a victim where the underinsured party was a separate individual, and not the victim herself.” *Id.* at p. 840 *interpreting* KRS 304.39-320(1). The question we must ask ourselves in determining whether or not Ms. Budde is entitled to UIM benefits, then, is whether she is recovering from her own insurance due to the limit of benefits provided by the tortfeasor, Mr. Jarrett, when she had no expectation of usage of the vehicle in question and, therefore, no reason to purchase additional insurance on the vehicle in question.

In this case, Mr. Jarrett and Ms. Budde were not married. While they cohabitated, they purchased separate policies of insurance for separate vehicles owned by each individually. To hold that Ms. Budde, who did not possess a motorcycle operator’s license, was not the co-owner of the motorcycle and who was not married to the owner of the motorcycle was nonetheless responsible for liability coverage limits on the vehicle would be unreasonable given the reasons for the enactment of KRS 304.39-320(1) and the interpretation of that policy by the courts of this Commonwealth. Thus, we find that the trial court’s granting of

summary judgment in favor of Ms. Budde on the issue of UIM coverage is not in error and we will affirm the decision.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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