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Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002158-MR

BRENSON DANIEL — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 07-CI-08602

METROPOLITAN DIRECT
PROPERTY AND CASUALTY
INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, MOORE AND VANMETER, JUDGES.

MOORE, JUDGE: Brenson Daniel appeals from a judgment of the Jefferson Circuit Court dismissing his claim for underinsured motorist coverage against Metropolitan Direct Property & Casualty Insurance Company. Because we find that the only named insureds under the Metropolitan policy were his parents, that

the policy unambiguously excluded Daniel from coverage under the circumstances of this case, and that Daniel's exclusion from coverage does not violate public policy, we affirm.

On or about April 15, 2007, Robert Grant operated a motor vehicle that collided with a vehicle operated by Brenson Daniel, allegedly causing injury through negligence. Daniel owned and was operating a 2004 Chevy Impala at the time of the accident. He maintained insurance, including underinsured motorist (UIM) coverage, on the vehicle through Allstate Insurance Company. Grant also maintained automobile insurance.

At the time of the accident, Daniel, then 25 years old, lived with his parents, William and Karen Daniel ("Mr. and Mrs. Daniel"). Mr. and Mrs. Daniel maintained motor vehicle insurance through Metropolitan Direct Property and Casualty Insurance Company for four vehicles. Although Daniel was listed as a driver for these vehicles, Daniel's Chevy Impala was not listed, nor was he personally listed as a named insured under Mr. and Mrs. Daniel's Metropolitan policy.

Mr. and Mrs. Daniel's Metropolitan policy provided "general definitions" for words and phrases repeatedly appearing in bold-face type throughout the policy. The relevant portions of the "general definitions" section read:

GENERAL DEFINITIONS

> The following words and phrases appear in bold-face type repeatedly through this policy. They have a special meaning and are to be given that meaning whenever used in connection with this policy and any endorsement which is part of this policy:
> . . . .
> "**RELATIVE**" means a person related to **you** by blood, marriage or adoption (including a ward or foster child) and who resides in **your** household.
>
> "**YOU**" and "**YOUR**" mean the person(s) named in the Declarations of this policy as named insured and the spouse of such person or persons if a resident of the same household.
>
> (Emphasis as appearing in policy.)

In addition, Mr. and Mrs. Daniel's policy consisted of several, separate components of coverage. These separate components consisted of "Automobile Liability," "Personal Injury Protection," "Automobile Medical Expense," and "Uninsured and Underinsured Motorists" coverage; of particular relevance, each separate component of coverage included its own "additional definitions," and qualified these additional definitions by stating that "[t]he following definitions apply to this coverage only[.]" The relevant portions of the Automobile Liability coverage read:

> **AUTOMOBILE LIABILITY**
>
> **ADDITIONAL DEFINITIONS FOR THIS COVERAGE**

> The following definitions apply to this coverage only:
> . . . .
>
> "**INSURED**" means:
>
> 1. with respect to a covered automobile:
> a. **you**;
> b. any **relative**; or
> c. any other person using it within the scope of **your** permission.
>
> 2. with respect to a **non-owned automobile**, **you** or any **relative**.

(Emphasis as appearing in policy.)

Notably, the separate component of the Uninsured and Underinsured Motorists coverage does not have an "additional definition" for the word "relative." The relevant portions of the Uninsured and Underinsured Motorists coverage read:

> **UNINSURED AND UNDERINSURED MOTORISTS**
>
> **ADDITIONAL DEFINITIONS FOR THESE COVERAGES**:
>
> The following definitions apply to these coverages only:
>
> "**COVERED AUTOMOBILE**" means:
> . . . .
> 4. a **motor vehicle**, while being operated by **you** or a **relative** with the owner's permission, which is not owned by, furnished to, or made available for the regular use to **you** or any **relative** in **your** household.

> EXCEPTION: A **motor vehicle** owned by, furnished to, or made available for regular use to any **relative** in **your** household is covered when operated by **you**.
>
> . . . .
>
> **COVERAGE EXCLUSIONS**
>
> **We** do not cover:
>
> . . . .
>
> G. a **relative** who owns, leases, or has available for their regular use, a **motor vehicle** not described in the Declarations.
>
> (Emphasis as appearing in policy.)

The exclusionary language found in "Coverage Exclusions," section "G," (Exclusion G) above, is the subject of the dispute before this Court.

Daniel has apparently recovered the benefit limits of Grant's policy as well as his own, but his demand for UIM benefits from Metropolitan was denied. Daniel filed his complaint in this litigation on September 4, 2007, alleging negligence on the part of Grant and breach of contract against Metropolitan. On January 4, 2008, Grant and Daniel entered into an Agreed Order dismissing the claim against Grant with prejudice. Metropolitan subsequently moved for summary judgment arguing that its policy unambiguously excluded coverage of Daniel and that this exclusion has been previously upheld and does not violate public policy. Daniel opposed Metropolitan's motion, contending that the exclusion was void.

On November 6, 2008, the trial court granted Metropolitan's motion and dismissed Daniel's complaint, holding that the language of Mr. and Mrs.

Daniel's policy unambiguously excluded Daniel from being considered an "insured," and that the exclusionary language found in "Coverage Exclusions," section "G," above, does not violate public policy. On appeal, Daniel contends that he does qualify as an "insured" under the Metropolitan policy, that the language excluding him from coverage under said policy was void, and that it was error for the trial court to hold otherwise.

"The standard of review on appeal of a 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." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Construction and interpretation of a contract are questions of law that are subject to *de novo* review. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998).

Daniel first contends that the trial court erred in holding that the language of the policy itself unambiguously excluded Daniel from coverage and that the plain language of the policy actually classifies him as an "insured." As a rule, "[w]here the terms of an insurance policy are clear and unambiguous, the policy will be enforced as written." *Kemper National Insurance Companies v. Heaven Hill Distilleries, Inc.*, 82 S.W.3d 869, 873 (Ky. 2002). "It is also the rule that where an insurance contract is ambiguous or susceptible of different meanings, it will be construed most strongly against the insurer who prepared it." *Senn's Adm'x v. Michigan Mut. Liability Co.*, 267 S.W.2d 526, 527 (Ky. 1954). However, "[o]nly actual ambiguities, not fanciful ones, are required to be construed against

the drafter." *Snow v. West American Ins. Co.*, 161 S.W.3d 338, 341 (Ky. App. 2004.) As such, "terms used in insurance contracts 'should be given their ordinary meaning as persons with the ordinary and usual understanding would construe them.'" *Motorists Mutual Insurance Company v. RSJ, Inc.*, 926 S.W.2d 679, 680 (Ky. App. 1996), quoting *City of Louisville v. McDonald*, 819 S.W.2d 319, 320 (Ky. App. 1991).

In the Metropolitan policy at issue in this case, the Underinsured Motorists Coverage component provides that "[Metropolitan] will pay damages for bodily injury sustained by: (1) [the insured] or a relative, caused by an accident arising out of the ownership, maintenance, or use of an underinsured motor vehicle, which [the insured] or a relative are legally entitled to collect from the owner or driver of an underinsured motor vehicle." This statement is qualified by "Exclusion G," contained in the UIM coverage component, which precludes coverage for "a relative who owns, leases, or has available for their regular use, a motor vehicle not described in the Declarations." Furthermore, the term "relative," contained in the policy's "general definitions" section, "means a person related to [the named insureds] by blood, marriage or adoption . . . and who resides in [the named insureds'] household." Here, the insureds named in the Metropolitan policy are Mr. and Mrs. Daniel; as their son, Daniel unquestionably qualifies as their "relative." Moreover, Daniel sustained his injuries from an underinsured vehicle while driving a motor vehicle that he owned, had insured under a separate policy, and which was not described in the declarations of Mr. and Mrs. Daniel's

Metropolitan policy. As such, the plain language of the policy clearly excludes Daniel from its coverage.

In spite of the plain language of the exclusion cited above, Daniel argues that his status as a "relative" still lends him coverage under the underinsured component of the Metropolitan policy. According to his interpretation, the Metropolitan policy classifies all "relatives" as "named insureds." Thus, he argues this should render Exclusion G contradictory and void. In support, Daniel looks beyond any provision contained in the Metropolitan policy's underinsured and uninsured motorist coverage component; instead, Daniel relies entirely upon the definition of the word "relative," located in the separate section in the Metropolitan policy regarding automobile liability coverage. There, the policy states:

> **AUTOMOBILE LIABILITY**
>
> **ADDITIONAL DEFINITIONS FOR THIS COVERAGE**
>
> The following definitions apply to this coverage only:
> . . . .
>
> "**INSURED**" means:
>
> 1. with respect to a covered automobile:
> a. **you**;
> b. any **relative**; or
> c. any other person using it within the scope of **your** permission.
>
> 2. with respect to a **non-owned automobile**, **you** or any **relative**.

(Emphasis as appearing in policy.)

Here, Daniel's theory of coverage labors under a misapprehension: namely that the definition of "insured" encompassing the word "relative," found in the section labeled "Automobile Liability," somehow carries over to the section labeled "Underinsured and Uninsured Motorists." This interpretation necessarily ignores the qualification located conspicuously under the headings of each section: "*The following definitions apply to this coverage only*." As no definition of "relative" is found in the section labeled "Underinsured and Uninsured Motorists" at all, let alone one equating a "relative" to a "named insured," the definition of the word "relative" as it appears in the "general definitions" section is instead controlling. "Relative," as defined in the "general definitions" section of the policy, does not mean "insured." Rather, it "means a person related to [the insured] by blood, marriage or adoption . . . and who resides in [the insured's] household." As such, we see no conflict between the language of Exclusion G in the UIM coverage section of the Metropolitan policy, and the language defining the word "relative," nor do we find this language susceptible to different meanings. Consequently, we find this language unambiguous. Thus, the policy cannot be construed to include Daniel as a "named insured," and the trial court did not err in this respect.

Next, Daniel contends that even if the language of Exclusion G does unambiguously preclude coverage for his injuries, Exclusion G is void because it is against public interest to allow an insurance carrier to exclude from coverage an

insured's relative, residing in the insured's house, who owns a motor vehicle not described in the declarations in the insured's policy. We disagree.

This Court previously held that an exclusion substantially similar to the one at issue in this case was valid as a matter of law. In *Brown v. Atlanta Casualty Company*, 875 S.W.2d 103 (Ky. App. 1994), at issue was an exclusion stating

> This coverage does not apply:
> (b) to bodily injury sustained by any relative while occupying any motor vehicle owned by such relative with respect to the security required by Kentucky Revised Statutes Chapter 304, subtitle 39, is not in effect.

Id. at 104. This Court enforced the above provision, which denied basic reparation benefits to an eighteen-year-old driving his own uninsured vehicle. Brown, the driver, sought recovery from his father's insurance carrier. The father's policy specifically excluded injuries sustained by a relative while occupying an uninsured vehicle owned by that relative. Brown argued that KRS 304.39-020(3) defines "basic reparation insured" to include "a relative residing in the same household with the named insured" and therefore the policy provision could not be enforced. This Court upheld the exclusion as totally consistent with the public policy embodied in the MVRA:

> We hold that the exclusion is valid as a matter of law. Kentucky's Motor Vehicle Reparations Act (Subtitle 39) (Act) was designed:
> "To require owners, registrants and operators of motor vehicles in the Commonwealth to procure insurance covering basic reparation benefits and legal liability arising out of ownership, operation or use of such motor

> vehicles." KRS 304.39-010(1). A more clear and emphatic expression of public policy cannot be imagined.

Id.

We noted that this pubic policy was effectuated by KRS 304.39-080(5) which provides in relevant part:

> [E]very owner of a motor vehicle registered in this Commonwealth or operated in this Commonwealth by him or with his permission, shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle.

Id. This Court reasoned that allowing an uninsured motorist driving his own uninsured vehicle to recover basic reparation benefits from a parent's policy would "circumvent the very purpose of the Act." *Id*. We refused to strike the challenged provision of the policy because to do so would undermine the public policy of requiring "every owner of a motor vehicle registered . . . or operated" in Kentucky to maintain insurance on such vehicle as security for basic reparation benefits and tort liability.

The *Brown* case is distinguishable from the two cases Daniel relies upon to support his contention that Exclusion G is void: *Chaffin v. Kentucky Farm Bureau Ins. Companies*, 789 S.W.2d 754 (Ky. 1990) and *Hamilton Mutual Insurance Company v. United States Fidelity & Guaranty Co.*, 926 S.W.2d 466

(Ky. 1996). In *Chaffin*, "the insurance coverage at issue [was] uninsured motorist coverage. . . a separate premium was paid for . . . three items of uninsured motorist coverage; the claimant was a named insured and had a reasonable expectation of multiple coverage; and the policy provision at issue had the effect of eliminating all but one item of such coverage." *Id*. at 756. The Supreme Court "concluded that uninsured motorist coverage is personal to the insured; that an insured who pays separate premiums for multiple items of the same coverage has a reasonable expectation that such coverage will be afforded; and that it is contrary to public policy to deprive an insured of purchased coverage, particularly when the offer of such is mandated by statute." *Id*.

Similarly, in *Hamilton Mutual Insurance Company*, this Court voided an exclusionary clause which stated:

> Exclusions.
>
> A. We do not provide Uninsured or Underinsured Motorists Coverage for "bodily injury" sustained by any person:
>
> 1. While "occupying," or when struck by, any motor vehicle owned by you or any "family member" which is not insured for this coverage under this policy.

Id. at 468. There, we concluded that considerations regarding uninsured and underinsured statutes "focus . . . upon the reasonable expectations of an insured who purchases separate items of coverage. Our Supreme Court has mandated that UM and UIM coverage is personal to the insured. . . ." *Id*. at 470.

In both *Chaffin* and *Hamilton*, the named insureds had purchased uninsured or underinsured liability coverage, but coverage was denied to those named insureds because of policy language which diminished or eliminated that purchased coverage, *i.e.*, coverage was excluded based upon whether a car used by the named insureds was specifically scheduled for coverage under the policy. As such, the provisions in question were voided because the named insureds had a reasonable expectation of coverage. However, neither *Chaffin* nor *Hamilton* addressed whether the same provision could validly exclude from an insured's policy a relative who owned his own car, insured his own car, and was injured driving his own car.

More applicable to the case at bar is *Brown*, where the insured did not own the vehicle in question, and the injured driver was not the insured. Rather, the injured driver was the insured's son, who never insured his own vehicle and then sought to extend his father's policy to that car on the basis that he was a relative still residing at home. This Court rejected Brown's proposition that public policy required an insurer to provide uninsured motorist coverage in such circumstances for a non-owned vehicle never listed on the policy because such an

> interpretation of KRS 304.38-020(3)(b) together with KRS 304.39-050(2) would allow uninsured motorists driving their own uninsured vehicles to recover BRBs and thereby circumvent the very purpose of the Act. The public policy behind the Act is to require insurance, and to that end uninsured motorists are not given the same protection as insured motorists.

Brown at 104.

This case presents a different scenario in that the owner of the vehicle, Daniel, was insured under his own policy in accordance with KRS 304.39-080(5). Despite this distinction, Daniel's interpretation of the Metropolitan policy is analogous to Brown's interpretation of KRS 304.39-320. Both interpretations would allow a motorist, injured while driving his own vehicle, to recover from another person's separate policy that excludes that motorist from coverage and does not contemplate that motorist as an insured. As in *Brown*, such a result would circumvent the very purpose of the Act. The public policy behind the Act is to require insurance, and to that end, if underinsured coverage were provided under Daniel's theory, there would be little, if any, incentive for a relative who owns one or more vehicles, residing with an insured, to insure any of them. To allow Daniel to recover pursuant to his parents' underinsured coverage through Metropolitan would, in effect, hold that public policy allows every person in Kentucky who owns an automobile to meet their insurance obligation simply by living at a relative's house, provided that relative has automobile insurance. Such a result would be untenable.

Throughout his brief, Daniel invokes the "reasonable expectations" doctrine which is only applicable where the policy at issue is ambiguous. *Simon v. Continental Ins. Co.*, 724 S.W.2d 210 (Ky. 1986). As stated above, we find nothing ambiguous in the policy language relevant to this appeal. In addition, where the reasonable expectations doctrine does apply, as we stated in *Estate of Swartz v. Metropolitan Property and Casualty Co.*, 949 S.W.2d 72, 76 (Ky. App.

1997), "[u]nder controlling Kentucky law, the proper area of inquiry is what [the insureds] could reasonably expect in light of what they actually paid for, not what they personally expected or whether those expectations could be ascertained." Here, Daniel could not have reasonably anticipated recovery for a claim against his parents' Metropolitan policy given that it unambiguously excluded him from coverage, it did not name him as an insured, and he paid nothing to be covered under it.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Timothy R. McCarthy, Esq.
Louisville, Kentucky

BRIEF FOR APPELLEE:

David K. Barnes
Kelly M. Stevens
Louisville, Kentucky