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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000732-MR

THOMAS PEACOCK — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 09-CI-006242

KENTUCKY FARM BUREAU MUTUAL INSURANCE COMPANY — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; CAPERTON AND TAYLOR, JUDGES.

CAPERTON, JUDGE: Thomas Peacock appeals from the trial court's entry of summary judgment in favor of Kentucky Farm Bureau Mutual Insurance Company, hereinafter "KFB," finding that Peacock was not entitled to uninsured motorist benefits because Peacock's injuries were due to the intentional actions of the unnamed tortfeasor and not an "accident." In light of this Court's recent

decision, *Stamper v. Hyden*, 334 S.W.3d 120 (Ky.App. 2011), we believe such conclusion to be in error. Accordingly, we reverse and remand this matter for further proceedings.

On July 1, 2006, Peacock and his brother, Millard Peacock, were standing in a parking lot of a restaurant and bar in Jefferson County, when an unidentified man began threatening Millard. According to Peacock, he asked the unidentified man to calm down in order to diffuse the situation, at which time the unidentified man struck Peacock with a baseball bat. Peacock was then grabbed by the unidentified man, pulled to the man's pickup truck, which the man then drove off, holding Peacock out of his driver's side door and dragging him three city blocks. Peacock sustained multiple injuries, including a head contusion from being hit with a baseball bat, and an ankle/leg injury from being dragged alongside the truck which culminated in the back wheel of the truck running over Peacock.

Peacock filed for uninsured motorist ("UM") coverage with his insurer, KFB (Kentucky Farm Bureau Mutual Insurance Company). KFB denied coverage, alleging that the unidentified man's conduct was intentional and not an "accident" under the policy. The trial court agreed with KFB and granted summary judgment on the ground that the unidentified man's conduct was intentional and not an "accident"; thus, Peacock was not entitled to UM benefits. It is from this order that Peacock now appeals.

At the outset, we note that the applicable 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). Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Kentucky Rules of Civil Procedure (CR) 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest v. Scansteel Service Center, Inc*., 807 S.W.2d 476, 480 (Ky. 1991).

Summary judgment is proper only "where the movant shows that the adverse party could not prevail under any circumstances." *Id.* However, "a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial." *Hubble v. Johnson,* 841 S.W.2d 169, 171 (Ky. 1992), citing *Steelvest, supra*. *See also O'Bryan v. Cave*, 202 S.W.3d 585, 587 (Ky. 2006); *Hallahan v. The Courier Journal,* 138 S.W.3d 699, 705 (Ky.App. 2004). Since summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue de novo. *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky.App. 2001). With this standard in mind we now turn to the parties' arguments.

On appeal Peacock presents four arguments, namely: (1) Peacock's injuries were caused by an "accident" for the purpose of uninsured motorist (UM) coverage; (2) Peacock's injuries arose out of "the ownership, maintenance or use of the uninsured vehicle" under the policy; (3) Peacock's injuries were the result of physical contact with the uninsured vehicle for the purpose of coverage; and (4) in the alternative, Peacock was denied an opportunity to complete discovery before entry of summary judgment.

In contrast, KFB presents four arguments, namely: (1) Peacock's injuries were not caused by an "accident"; (2) the tortfeasor's liability does not arise out of the "ownership, maintenance or use" of a motor vehicle; (3) the "minimum limits" case law does not apply to uninsured motorist benefits; and (4) conducting additional discovery would have had no effect on the trial court's summary judgment ruling.

After our review of the parties' arguments, we believe that the determinative issue on appeal is whether Peacock's injuries were caused by an "accident" for the purpose of uninsured motorist (UM) coverage in light of this Court's recent decision in *Stamper v. Hyden*, 334 S.W.3d 120.[1]

[1] We note that the UM policy language in *Stamper* and the case *sub judice* are identical and read as follows:

> A. We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury":
> 1. Sustained by an "insured"; and
> 2. Caused by an accident.
> The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle."

Recently, in *Stamper, supra,* this Court addressed whose point of view determines whether an accident occurred on a claim for UM benefits, the insured-victim or the perspective of the uninsured motorist (tortfeasor). In holding that "the protective purpose of the statute is achieved by interpreting "accident" from the perspective of the insured-victim…" this Court noted that "the legislative intent of KRS 304.20–020 is to make whole—to the extent possible—an injured party who would otherwise not receive compensation from an at-fault uninsured party." *Stamper* at 124 (internal citations omitted).

Sub judice, the trial court interpreted "accident" from the viewpoint of the unnamed tortfeasor; clearly such was in error in light of *Stamper* and necessitates reversal. On remand the trial court, in light of *Stamper*, will need to determine whether the facts support a finding that from Peacock's perspective an "accident" occurred for the purpose of UM coverage.

Last, we decline to address the parties' remaining arguments because the trial court solely based its order of summary judgment on its determination that Peacock's injuries were not accidental but rather the result of intentional conduct.

In light of the aforementioned, we reverse and remand for further proceedings.

ALL CONCUR.

See Stamper at 122; RA at 86.

BRIEFS FOR APPELLANT:

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