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TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001454-MR

TAMRA HOSKINS

APPELLANT

v. APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE JEFFREY T. BURDETTE, JUDGE  
ACTION NO. 10-CI-00490

KENTUCKY FARM BUREAU  
MUTUAL INSURANCE COMPANY

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: LAMBERT, NICKELL AND TAYLOR, JUDGES.

LAMBERT, JUDGE: Tamra Hoskins appeals from an order dismissing Kentucky Farm Bureau Mutual Insurance Company as a defendant in her action to recover damages for loss of spousal consortium. We reverse and remand for further proceedings.

Tamra and her husband Bernard are named insureds under an automobile insurance policy issued by Farm Bureau. On May 4, 2010, Bernard was struck by a dump truck while riding his motorcycle. His left leg was badly injured and had to be surgically amputated. Tamra was not a passenger on the motorcycle, nor was she present at the accident.

Tamra and Bernard filed suit against John Lewis, the dump truck driver, in Lincoln Circuit Court.<sup>1</sup> Tamra later amended the complaint to include Farm Bureau as a defendant to her spousal loss of consortium claim. She claimed that John Lewis was underinsured, and that she was entitled to benefits under the underinsured motorist (UIM) coverage of the automobile insurance policy. Tamra and Bernard did not dispute that Bernard is unable to recover any UIM benefits for his injury because there is a specific motorcycle exclusion in their policy. Tamra argued, however, that the motorcycle exclusion does not apply to her loss of consortium claim. The circuit court entered an order finding that Farm Bureau was entitled to summary judgment because Tamra's loss of consortium claim flows from Bernard's claim, and, as a matter of law, she cannot recover from injuries derived from a claim which is not of itself recoverable. This appeal followed.

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), *citing* Kentucky

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<sup>1</sup> They also filed suit against the Department of Highways, the owner of the truck, in the Court of Claims.

Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. *Id.*

The resolution of this appeal hinges on the interpretation of the Hoskins' Farm Bureau insurance policy. "[I]nterpretation of an insurance contract is a matter of law for the court." *Stone v. Kentucky Farm Bureau Mutual Ins. Co.*, 34 S.W.3d 809, 810 (Ky.App. 2000). "Terms of insurance contracts have no technical meaning in law and are to be interpreted according to the usage of the average man and as they would be read and understood by him in the light of the prevailing rule that uncertainties and ambiguities must be resolved in favor of the insured." *Kentucky Ass'n of Counties All Lines Fund Trust v. McClendon*, 157 S.W.3d 626, 630 (Ky. 2005) (citation omitted).

The UIM clause of the policy provides as follows:

A. We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an underinsured 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 underinsured motor vehicle.

The policy also contains the following exclusion from UIM coverage:

A. We do not provide Underinsured Motorists Coverage for bodily injury sustained by any insured:

...

4. While occupying or operating a motorcycle owned by any insured.

The policy defines “bodily injury” as “bodily harm, sickness or disease, including death that results.”

Tamra argues that the plain language of the insurance policy unambiguously provides UIM coverage for her claim, since the phrase “because of bodily injury” in the general UIM clause encompasses her claim, as distinguished from the “for bodily injury” language in the motorcycle clause that excludes Bernard’s claim. She disputes the trial court and Farm Bureau’s view that the viability of her claim for UIM coverage is dependent on Bernard’s claim, contending that she is entitled to recover because loss of consortium is an independent cause of action authorized by Kentucky Revised Statutes (KRS) 411.145(2). “A loss of consortium action can continue even when the injured spouse or the estate has settled or otherwise been excluded from an action, because there is not a ‘common and undivided interest’ in the spouse’s claim for loss of consortium and the underlying tort claim.” *Martin v. Ohio County Hosp. Corp.*, 295 S.W.3d 104, 109 (Ky. 2009).

Farm Bureau agrees that a loss of consortium claim is independent to the extent that a separate party may pursue the claim regardless of the settlement of the spouse’s direct injury claim, but that the loss of consortium claim is nonetheless derivative or based upon the spouse’s bodily injury for the purposes of the insurance policy limits and exclusions. Farm Bureau argues that because Tamra’s claim is based on an excluded injury, it is not covered under the policy.

We are well aware that “the existence of a cause of action for damages does not mean that those damages are *ipso facto* recoverable from a particular policy of insurance.” *Daley v. Reed*, 87 S.W.3d 247, 249 (Ky. 2002). Nonetheless, the plain language of the policy in this case provides that an insured (i.e. Tamra) may recover damages to which that insured is “legally entitled” to recover (i.e. damages for loss of consortium) because of bodily injury sustained by an insured (i.e. Bernard). The policy does not specify that the underlying bodily injury from which the loss of consortium claim is derived must be one that is covered under the terms of the policy. “[U]nsured motorist coverage applies whenever an insured person would be entitled to recover damages but for the uninsured status of the negligent motorist.” *Dupin v. Adkins*, 17 S.W.3d 538, 543 (Ky.App. 2000). “To be enforceable, Kentucky law requires a limitation of insurance coverage . . . to be clearly stated in order to apprise the insured of such limitations. [N]ot only is the exclusion to be carefully expressed, but . . . the operative terms clearly defined.” *Bidwell v. Shelter Mut. Ins. Co.*, 367 S.W.3d 585, 588-589 (Ky. 2012) (quotation and citation omitted). Farm Bureau was free to specify that derivative claims were included in the motorcycle exclusion, but did not do so. Although Tamra and Bernard’s claims derive from the same injury, there is no provision in the insurance agreement stating that recovery for loss of consortium or other derivative claims is barred if the underlying claim is excluded under the terms of the policy.

Farm Bureau’s reliance on the holdings of *Moore v. State Farm Mutual Ins. Co.*, 710 S.W.2d 225 (Ky. 1986), and *Daley v. Reed*, 87 S.W.3d 247 (Ky. 2002), is

misplaced. Those cases stand for the proposition that, under the specific terms of the insurance agreements at issue, an individual suffering bodily injury and a spouse (or child) suffering a consequential loss of consortium share the “each person” automobile insurance coverage limits, rather than the higher “each accident” coverage limits. The *Moore* and *Daley* courts were asked to determine whether the loss of consortium claim was part of the underlying claim for purposes of determining the maximum recovery available, not whether the derivative claim was excluded from coverage.

For the foregoing reasons, the order dismissing Farm Bureau as a defendant is reversed and the matter is remanded to the Lincoln Circuit Court for further proceedings.

NICKELL, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS.

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