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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000387-MR

DELISA BATCHELOR

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DARRYL S. LAVERY, JUDGE
ACTION NO. 17-CI-003285

ALLSTATE PROPERTY & CASUALTY
INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, NICKELL, AND K. THOMPSON, JUDGES.

MAZE, JUDGE: Delisa Batchelor (Batchelor) appeals from an order of the Jefferson Circuit Court granting summary judgment to the Appellee, Allstate Property & Casualty Insurance Company (Allstate). Finding no error, we affirm.

Background

This appeal arises out of an insurance dispute between Batchelor and Allstate regarding Batchelor's right to recover Personal Injury Protection (PIP) benefits. Batchelor was the sole owner and titleholder of her vehicle. However, the vehicle was insured by Allstate under a policy belonging to Anna Bailey (Bailey). Consequently, Allstate refused to pay PIP benefits to Batchelor because she was not privy to the policy as an insured and Bailey had no insurable interest in the subject property.

Based on the record, Batchelor and her boyfriend, Kenshawn Bailey (Kenshawn), lived with Kenshawn's mother, Bailey, from approximately 2010-2014. Further, Batchelor and Kenshawn provided Bailey with financial assistance. This financial assistance included making regular premium payments to Allstate for auto insurance covering Bailey's 2004 Buick LeSabre. Shortly prior to separating households, Bailey accompanied Batchelor to purchase a Pontiac Aztek. No evidence suggests that Bailey contributed to the payment thereof.

Bailey and Batchelor then contacted Allstate agent Terry Samuels. In an effort to consolidate their insurance payments, the two sought to add Batchelor to Bailey's Allstate auto policy. Subsequently, Samuels dictated a letter on Bailey's behalf in which she named Batchelor as her daughter-in-law and effectively granted Batchelor the authority to make changes to Bailey's policy.

Once Allstate effectuated these prescribed policy modifications, Batchelor and Kenshawn separated households from Bailey.

Batchelor testified at her deposition that she owned the Aztek until it was totaled in a collision with a drunk driver. Allstate paid Batchelor for property damage in accord with the policy coverage on the Aztek. Batchelor then used that payment to purchase the vehicle subject to this suit, a 2006 GMC Envoy. Bailey accompanied Batchelor to Approved Auto in Louisville to purchase the Envoy. Again, Bailey did not contribute to the purchase price of the vehicle. At the time of purchase, Bailey contacted Samuels to add the Envoy to her Allstate auto policy. Samuels faxed the proof of insurance reflecting a policy issued on November 21, 2016, to Approved Auto and Batchelor was transferred possession of the Envoy.

Sometime after this policy's issuance, Batchelor retrieved the proof of insurance card from Bailey's residence, as it had been mailed to that address. At this time, Batchelor realized that, although the Envoy had been added to the policy, she was not listed as an insured thereunder. Batchelor testified at her deposition that she called Samuels' office to modify the policy to add herself as an insured. However, because she was not listed as the policy holder, Allstate refused to entertain her requests. Batchelor further testified that Bailey took it upon herself to contact Samuels' office several times with the purpose of remedying this issue.

Ultimately, for reasons not discernable by the record here, no such modifications were ever made to Bailey's auto policy.

On December 20, 2016, Batchelor was involved in a motor vehicle accident while driving the Envoy. The police report identified Batchelor as the sole owner and operator of the vehicle. Immediately after the events of December 20, 2016, Batchelor sought PIP benefits from Allstate pursuant to Kentucky law. Allstate denied her those benefits because she was not listed as an insured under Bailey's policy and Bailey herself lacked an insurable interest in the Envoy. Consequently, Batchelor brought this action against Allstate in Jefferson Circuit Court. She did not name Samuels as a party to the original complaint. Rather, she only sought an award of PIP benefits under the Allstate policy, costs expended, and attorney fees, plus interest.

Following discovery, Allstate moved for summary judgment. After considering the motion and Batchelor's response, the trial court granted summary judgment to Allstate, finding Bailey to be without an insurable interest in the Envoy. In its opinion, the trial court explicitly advised that the facts of this case were better suited for a claim against Allstate and/or its agent. In response, Batchelor moved to amend her complaint so as to add Samuels as a party to the lawsuit on a negligence claim. A mere day after Batchelor's amended complaint was filed, she filed her notice of appeal.

Standard of Review

On appeal, Batchelor posits that the trial court erred by granting summary judgment in favor of Allstate. The standard of review of a summary judgment on appeal 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.” CR¹ 56.03. To make this determination, the court must view the record in the light most favorable to the nonmoving party. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) (citing *Steelvest, Inc. v. Scansteel Serv. Ctr.*, 807 S.W.2d 476, 480 (1991)). Accordingly, this Court will affirm an order granting summary judgment only where it appears that it would be impossible for the nonmoving party to present evidence at trial which might produce a judgment in her favor. *Id.*

Analysis

As a preliminary matter, we acknowledge Allstate’s concern surrounding Batchelor’s compliance with CR 76.12(4)(c)(iv)–(v)². Where an

¹ Kentucky Rules of Civil Procedure.

² CR 76.12(4)(c)(iv)-(v) states in pertinent part that an appellant’s brief must contain the following:

(iv) A “STATEMENT OF THE CASE” consisting of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or

appellant's brief fails to adequately cite the record with regard to factual assertions and issue preservation, this Court has discretion to strike the appeal or review the record for a manifest injustice. *Elwell v. Stone*, 799 S.W.2d 46, 48 (Ky. App. 1990). Here, Batchelor's brief makes scant reference to the record and under alternate circumstances, we might only review this case for manifest injustice. However, the citations that Batchelor does make to the record reference the trial court's opinion and order, wherein issues preserved for appeal are easily discernible. Further, the record in this case is not particularly lengthy. Thus, we find it of little issue to determine the facts and issues based on a review of the record in its entirety. Therefore, although counsel is cautioned to be mindful that any future noncompliance with CR 76.12 may well have dire consequences, we deem it appropriate here to adjudicate this case based on its merits.

In light of this determination, it is clear that Batchelor raises two issues on appeal, only one of which warrants a resolution by this Court. Batchelor argues that Bailey had an insurable interest in the Envoy to warrant the recovery of

audiotape recordings, or date and time in the case of all other untranscribed electronic recordings, supporting each of the statements narrated in the summary. (v) An "ARGUMENT" conforming to the statement of Points and Authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

PIP benefits under the Allstate auto policy pursuant to KRS³ 304.14-060. KRS 304.14-060 mandates that an insurance contract shall only be enforceable for the benefit of persons with an insurable interest in the things insured. Further, KRS 304.14-060 defines an insurable interest as “any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.” Accordingly, this analysis reiterates our stance as to what constitutes an insurable interest per the statute and determines whether Bailey possessed any such interest in the subject property here.

This Court has remained steadfast in its definition of what it means to possess an insurable interest. A party will be deemed to have an insurable interest in a subject property where she derives a clear pecuniary benefit from its preservation and, conversely, a pecuniary loss from its destruction. *Crabb v. Calvert Fire Ins. Co.*, 255 S.W.2d 990, 991 (Ky. 1953). One’s pecuniary interest is typically evidenced by an equitable interest in, or a collateral contractual obligation associated with the subject property. *Allstate Ins. Co. v. Kentucky Cent. Ins. Co.*, 700 S.W.2d 76, 77 (Ky. 1985).

Additionally, that pecuniary interest must exist at the time of contracting as well as at the time of the loss. *Crabb*, 255 S.W.2d at 991. Where no

³ Kentucky Revised Statutes.

such interest exists, an insurance contract is void from its inception. *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 126 (Ky. App. 2012). *Sparks* saw a titleholder to a motor vehicle attempting to recover insurance benefits under a policy listing her long-time companion as the sole insured thereunder. *Id.* at 123. Even though the titleholder and the insured were long-time companions, shared a household, and shared use of the vehicle, this Court found the insured in that case to be without an insurable interest. *Id.* at 125-26. As such, this Court concluded that the insurance policy was void *ab initio*. *Id.*

Similarly, Batchelor argues that Bailey assisted in making payments toward the GMC Envoy and often used it as a driver and passenger to meet her basic needs. Batchelor takes the position that these circumstances generated Bailey's insurable interest in the subject property. While there is some basis in the record for Bailey's use of the Envoy, the record does not reflect Bailey's financial stake therein. To the contrary, Batchelor's deposition testimony insinuates that she and Kenshawn supported Bailey financially. Furthermore, Bailey's use of the Envoy is a somewhat inconsequential factor, as she had a vehicle of her own. Ultimately, the subject property here, Batchelor's Envoy, was not financed by Bailey nor can it be rightly described as her primary mode of transportation. Since *Sparks* is not distinguishable from this case in any meaningful way, we are bound to follow the reasoning and the result of that case. Therefore, we find that Bailey's

association with the Envoy here does not rise to the level of an insurable interest. Accordingly, the trial court did not err in granting summary judgment on this issue.

Batchelor further argues that she would have been added to the insurance policy in question but for the negligence of Allstate's agent. Batchelor's amended complaint raises a negligence claim against Allstate agent, Samuels. However, she appears to argue in her brief that by virtue of Samuels' negligence, misrepresentations, or otherwise, Allstate is estopped from denying coverage here. Although this is a concerning issue, Batchelor did not argue to the trial court that Allstate was estopped to deny coverage. Likewise, Batchelor did not bring the negligence claim against Samuels until after the trial court granted summary judgment for Allstate. The trial court must be given an opportunity to rule on any issue before it is submitted for appellate review. *Elwell*, 799 S.W.2d at 48. Consequently, these issues are not properly presented on appeal and we decline to address the argument further. We offer no opinion on the merits of Batchelor's claim against Samuels, as it remains pending before the trial court.

Conclusion

Accordingly, we affirm the order of the Jefferson Circuit Court granting summary judgment to Allstate.

ALL CONCUR.

BRIEF FOR APPELLANT:
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BRIEF FOR APPELLEE:
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