

STATE OF MICHIGAN
COURT OF APPEALS

PHYLLIS McKENZIE,

UNPUBLISHED
February 18, 1997

Plaintiff-Appellant,

v

No. 193120

FARM BUREAU INSURANCE COMPANY,
HOME INSURANCE COMPANY, and EMPIRE
FIRE AND MARINE INSURANCE COMPANY,

Van Buren Circuit
LC No. 95-03998-NI

Defendants-Appellees.

Before: Sawyer, P.J., and Neff and A. L. Garbrecht,* JJ.

PER CURIAM.

Plaintiff Phyllis McKenzie appeals by right from a circuit court order granting summary disposition to defendants Farm Bureau Insurance Company (Farm Bureau), Home Insurance Company (Home), and Empire Fire and Marine Insurance Company (Empire), in plaintiff's action for personal protection insurance (PIP) benefits arising out of a single-vehicle accident with her Peterbilt semi-tractor in Indiana. We affirm.

I

Plaintiff, a Michigan resident, was driving her semi in Huntington, Indiana with a trailer loaded with freight when she rolled over the truck and trailer. Plaintiff sustained various injuries in the accident, and filed claims with defendants for the payment of PIP benefits under the Michigan no-fault act, MCL 500.3101 *et seq*; MSA 24.13101 *et seq*. When all three companies denied coverage, this case resulted.

On cross-motions for summary disposition, the trial court determined that defendant Farm Bureau insured plaintiff's personal vehicles, but not her semi. The court concluded that plaintiff had no

* Circuit judge, sitting on the Court of Appeals by assignment.

right to recover benefits for which no premium had been paid, and granted Farm Bureau's motion for summary disposition.

The court also found that defendant Empire had provided plaintiff "bobtail" insurance; that is, insurance for the semi when it was operated without a trailer. The trial court stated that because plaintiff was hauling a trailer loaded with freight when the accident occurred, PIP coverage was properly denied by the express language of the insurance contract. The court thus granted defendant Empire's cross-motion for summary disposition.

The court further determined that defendant Home provided federally mandated public liability insurance for Central States Trucking, for whom plaintiff was working when the accident occurred. The contract between Central States and defendant Home expressly provided that bodily injury to plaintiff was not covered. Therefore, the court granted defendant Home's cross-motion for summary disposition.

II

Plaintiff first argues that because defendant Empire sold bobtail insurance to plaintiff in Michigan, this state's no-fault act applies. Therefore, plaintiff posits, she is entitled to PIP benefits pursuant to MCL 500.3101(3); MSA 24.13101(3), which provides in relevant part:

Security may be provided under a policy issued by an insurer duly authorized to transact business in this state which affords insurance for the payment of benefits described in subsection (1). *A policy of insurance represented or sold as providing security shall be deemed to provide insurance for the payment of the benefits.* [emphasis added.]

According to plaintiff, she is entitled to PIP benefits under this "deemer clause" even though Empire did not include PIP coverage with the policy it sold her. We disagree.

Plaintiff presented no evidence that the bobtail policy was "represented or sold" as providing such security. Therefore, her reliance on the deemer clause is misplaced. Moreover, plaintiff's argument ignores the statutory requirement that she, as the owner of the semi, was required to maintain security for payment of PIP benefits. MCL 500.3101(1); MSA 24.13101(1). Because plaintiff did not fulfill her obligation to obtain PIP coverage, she is barred from receiving PIP benefits. MCL 500.3113(b); MSA 24.13113(b).

III

Plaintiff next argues that public policy requires the imposition of PIP coverage because of the tactics used by defendant Empire in selling the bobtail policy to plaintiff. We disagree.

Plaintiff executed a power of attorney which established her affiliation with Midwest Owner/Operators (Midwest), a Missouri organization of truck drivers that purchases non-trucking

policies for their members. In the power of attorney, plaintiff represented that her domicile for purposes of obtaining insurance was Missouri, and that any insurance coverage requested and entered into would be deemed to be entered into in the state of Missouri.

Plaintiff argues that, despite her representations to the contrary, defendant Empire knew or should have known that plaintiff's truck was registered in Michigan and that she lived in, and ran her business from, her Michigan home. Plaintiff contends that defendant Empire should not be allowed to come into Michigan to sell insurance and avoid the requirements of Michigan's no-fault insurance law by use of the power of attorney, a legal fiction. We do not share plaintiff's perspective.

There is no evidence from which we can conclude that Empire came into Michigan to sell insurance. To the contrary, it appears that plaintiff went to Missouri to obtain insurance from defendant Empire. Plaintiff affiliated herself with Midwest in an attempt to obtain insurance at rates lower than those available in Michigan. We therefore reject plaintiff's public policy argument.

IV

Plaintiff next claims that the trial court erred in not finding ambiguities in the Home and Empire policies. Again, we disagree.

An insurance contract is ambiguous if it fairly admits of more than one interpretation. *Allen v Auto Club Ins Ass'n*, 175 Mich App 206, 209-210; 437 NW2d 263 (1988). Moreover, under the rule of reasonable expectation, a court will examine whether a policyholder, upon reading the contract, was lead to a reasonable expectation of coverage. *Vanguard Ins Co v Clarke*, 438 Mich 463, 472; 475 NW2d 48 (1991). If so, coverage will be afforded. *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996).

A

Plaintiff signed a contract with Central States in which she agreed that, while Central States would insure her against liability for bodily injuries to others, Central States would not provide insurance for bodily injury to plaintiff herself. There is no evidence that plaintiff knew with which insurance company Central States contracted with, much less that plaintiff had received a copy of the policy and read it. Plaintiff had no reasonable expectation of PIP coverage from Home based on the contract she signed with Central States.

Moreover, plaintiff's claim of ambiguity based on the declarations sheet is without merit. On the bottom half of the declarations sheet is a chart which reflects all the various types of coverage, covered vehicles, and policy limits. The line referring to PIP benefits is entirely blank, in stark contrast to other types of coverage. We find no ambiguity here.

B

Plaintiff's claim that the Empire bobtail policy is ambiguous must also fail. The policy expressly states that it is a "non-trucking use" policy, and that fact is stated conspicuously several times throughout the policy. The term "non-trucking" is consistent with the fact that the Empire policy provided bobtail coverage, that is, coverage for when plaintiff was driving her semi-tractor without a trailer. Further, the endorsement/certificate of insurance plainly states that there is no coverage under the policy when plaintiff is carrying property for business purposes.

The Empire policy states that where a covered vehicle is away from the state in which it is licensed, defendant Empire will provide the minimum amounts and types of other coverage, such as no-fault, required of out-of-state vehicles by the jurisdiction where the vehicle is being used. However, this accident occurred in Indiana, which is not a no-fault state. Moreover, the declarations sheet expressly states that PIP benefits are "per endorsement," and no endorsement for PIP benefits exists.

In sum, we conclude that the trial court properly determined that the insurance policies at issue are not ambiguous.

V

Plaintiff's final argument is that the trial court erred when it held that defendant Farm Bureau had no liability for PIP benefits because it insured plaintiff's personal vehicles only. We disagree.

Plaintiff claims that under MCL 500.3111; MSA 24.13111, Farm Bureau, remains liable in the out-of-state accident. This statute provides as follows:

Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant *of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy* or has provided security approved by the secretary of state under subsection (4) of section 3101. [emphasis added]

This statute has been interpreted to require that the vehicle involved in the accident be insured under a PIP policy. See, e.g., *Rohlman v Hawkeye-Security Ins.*, 442 Mich 520, 527 n 6, 533-534 n 13; 502 NW2d 310 (1993); *Harwood v Auto Owners Ins Co*, 211 Mich App 249, 252; 535 NW2d 207 (1995). It is undisputed that plaintiff had not obtained PIP coverage for the semi. Accordingly, her reliance on §3111 avails her nothing.

Likewise, plaintiff's reliance on *Parks v DAIIE*, 426 Mich 191; 393 NW2d 833 (1986), is misplaced. In *Parks*, the Court held that the employee's personal insurer remains responsible for PIP benefits when the employee is injured while working in a vehicle that is not required to be registered in Michigan and is not subject to the Michigan no-fault act. *Id.* at 207.

In contrast, plaintiff's semi was both registered in Michigan and subject to the security provisions of the no-fault act. Nonetheless, plaintiff failed to obtain the requisite PIP coverage for the semi. Plaintiff is therefore barred from receiving PIP benefits, and her attempt to do so was properly denied by the circuit court. MCL 500.3113(b); MSA 24.13113(b).

Affirmed.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Allen L. Garbrecht