[J-124-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GLENN HOFFMAN AND SHERRY (ROBINSON) HOFFMAN,	:	No. 23 MAP 2003
Appellant	:	Appeal from the Order of the Superior Court entered April 16, 2002 at No. 711EDA2001 which Affirmed in Part, Vacated in Part and Remanded the
v.	:	Judgment entered of the Court of Common Pleas of Montgomery County, Civil Division, entered March 27, 2001 at
KATHLEEN Y. TRONCELLITI,	:	No. 97-20325.
Appellee	:	
	:	ARGUED: October 20, 2003

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: DECEMBER 30, 2003**

Because I believe the majority's interpretation of § 1705(b)(2) is improper, I dissent.

In interpreting the meaning of a statute, this Court must begin with the words of the statute, which, if unambiguous, govern the interpretation of this provision. See 1 Pa.C.S. § 1921(b). The statute being construed contains, as the majority discusses, two sentences dealing with two different scenarios. However, in interpreting the statute, the majority fails to acknowledge that the second sentence discusses the rights of "insureds," not "named insureds." Since Sherry is a "named insured" under her own policy, the second sentence cannot apply to her.

The General Assembly defined the term "insured" under the general definition section of the MVFRL. It states that the term "insured" includes:

(1) An individual identified by name as an insured in a policy of motor vehicle liability insurance.

(2) If residing in the household of the named insured:
(i) a spouse or other relative of the named insured; or
(ii) a minor in the custody of either the named insured or relative of the named insured.

75 Pa.C.S. § 1702. Generally, a "named insured" is also an "insured;" however, in § 1705, the General Assembly separated the above definition into two different definitions:

"Insured." Any individual residing in the household of the named insured who is:
(1) a spouse or other relative of the named insured; or
(2) a minor in the custody of either the named insured or relative of the named insured.
"Named Insured." Any individual identified by name as an insured in a policy of private passenger motor vehicle insurance.

Id., § 1705(f). Thus, in interpreting § 1705, these terms have very distinct meanings.

Applying the definitions provided in § 1705(f), Sherry was a "named insured" on the insurance policy that covered her own vehicle. When purchasing that policy, Sherry selected the limited tort option, which allows her to pay a lower premium in exchange for a limited recovery in case of an injury. See id., § 1705(d). Sherry is also an "insured" under her mother's full tort insurance policy because she resides in the household of the "named insured," her mother, and is a relative of that "named insured."

The second sentence of the statute, which the majority holds is applicable in this situation, states:

In the case where more than one private passenger motor vehicle policy is applicable to an insured and the policies have conflicting tort options, the insured is bound by the tort option of the policy associated with the private passenger motor vehicle in which the insured is an occupant at the time of

> the accident if he is an insured on that policy and bound by the full tort option otherwise.

Id., § 1705(b)(2). This language does not apply in Sherry's situation because she is not an "insured" under more than one policy. She is the "named insured" on one policy and an "insured" on a second policy, her mother's. The majority erroneously applies the generic definition of "insured" under § 1702 to this situation.

Sentence one applies to Sherry's situation. It states:

> The tort option elected by a named insured shall apply to all insureds under the private passenger motor vehicle policy who are not named insureds under another private passenger motor vehicle policy.

Id., § 1705(b)(2). Clearly, the tort option elected by Sherry's mother would apply to Sherry if she were not a "named insured" under her own policy. However, Sherry chose limited tort coverage for herself, and she should be bound by that decision.

The majority takes exception with this interpretation because it does not comport with the Superior Court's holding in Berger v. Rinaldi, 651 A.2d 553 (Pa. Super. 1994). In that case, an uninsured motorist was in an accident while driving his mother's car. The mother had elected full tort coverage; and, because he lived in her home, the son was an insured under his mother's policy. Pursuant to § 1705(a)(5), the son was deemed to have elected limited tort coverage because he was uninsured. 75 Pa.C.S. § 1705(a)(5). However, the Superior Court held he could recover under his mother's full tort policy because "Berger was an 'insured' for all intents and purposes; Berger's mother elected the full tort alternative; and Berger was not a named insured under any other policy of insurance." Berger, at 557 (emphasis added).

The Superior Court, in its opinion, stated that sentence one, "contrary to the dicta in Berger . . . resolves the instant controversy in direct and certain fashion." Hoffman v. Troncelliti, 799 A.2d 68, 70 (Pa. Super. 2002), appeal granted, 815 A.2d 1042 (Pa. 2003).

The language characterized as dicta, the same language the majority characterizes as a holding, states: "We construe Section 1705(b)(2) as describing two, mutually exclusive scenarios. Such an interpretation is necessary to avoid surplusage." See id., at n.1; see also Berger, at 557. The court continued by stating, "The latter portion of the section [sentence two] clearly applies to situations where there exists two insurance policies, containing conflicting tort options. In contrast, the former provision [sentence one] . . . applies to circumstances in which only one insurance policy is involved." Berger, at 557 (internal citations omitted). The majority mischaracterizes this language as a holding; it is clearly dicta, as the case called for the application and interpretation of sentence one, not sentence two, because there were not two conflicting insurance policies in question in Berger.

As the foregoing shows, the proper interpretation of the plain meaning of 75 Pa.C.S. § 1705(b)(2) results in Sherry being bound by the terms of her limited tort insurance policy. Thus, in order to recover, Sherry must prove that she sustained "serious injuries" in order to recover for non-monetary damages. See id., § 1705(d). I believe the Superior Court properly reversed Sherry's award of damages and remanded for a new hearing in order to determine if her injuries were serious in nature. As such, I respectfully offer my dissent.