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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 1998-CA-002486-MR

WESTFIELD INSURANCE COMPANY — APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
2000-SC-000310-DG

APPEAL FROM CHRISTIAN CIRCUIT COURT
v. HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 96-CI-1047

ROGER D. HANCOCK, JR. — APPELLEE

OPINION
REVERSING
AND
REMANDING

** ** ** ** **

BEFORE: BUCKINGHAM, JOHNSON, AND PAISLEY, JUDGES.

BUCKINGHAM, JUDGE: On December 17, 1999, this court rendered an opinion reversing and remanding. That opinion was subsequently withdrawn, and this court entered an opinion affirming on March 10, 2000. The Kentucky Supreme Court granted discretionary review and remanded the case for our further consideration in light of its decision in True v. Raines, Ky., 99 S.W.3d 439 (2003). Having given further consideration, we reverse and remand.

On April 22, 1994, a motor vehicle owned and operated by Roger D. Hancock, Jr., was struck by a motor vehicle negligently operated by Wendy Walker. As partial compensation for Hancock's injuries, Walker's liability insurer paid Hancock the limit of liability available under Walker's policy. Unfortunately, Hancock had no underinsured motorist (UIM) coverage available to him under his own policy. However, he made a claim for UIM coverage under an automobile liability insurance policy which had earlier been issued to Wesley Climer as the named insured and which listed Hancock and two other persons as the named "drivers." The issuer of the policy, Westfield Insurance Company, denied Hancock's claim for coverage. It maintained that the policy provided no coverage to Hancock while he was driving his own vehicle rather than Climer's vehicle.

The circuit court determined that the Westfield policy was reasonably susceptible of more than one meaning and was therefore ambiguous. Thus, the court concluded that the policy must be construed in favor of Hancock. Further, the court found that as a named "driver," Hancock was reasonably entitled to expect that he would be provided UIM coverage under the policy. The court entered a judgment holding that Westfield was required to provide UIM coverage for Hancock under the policy, and this appeal followed.

The Westfield policy covered a 1978 Chevrolet van. The declarations page indicated that there would be three "drivers" of the van, including Hancock, his spouse, and the named insured (Climer). The declarations page also indicated that a premium was being charged for UIM coverage and that all of form V1460 was applicable to that coverage. A review of that form, which included the policy's insuring agreement and applicable exclusions, clearly shows that it only applied to bodily injury sustained by an "insured."

Although each of the provided coverages in the policy separately defined an "insured" for purposes of that particular coverage, the endorsement providing UIM coverage defined the term as including "you or any family member," "any other person occupying your covered auto," and "any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in 1. or 2. above." The policy's general definitions section, applicable to the entire policy, defined "you" as the named insured shown in the declarations as well as the named insured's spouse if residing in the same household. It defined a "family member" as a person who was both a member of the named insured's household and related to the named insured by blood, marriage, or adoption. Neither the policy, the definitions therein, nor the UIM coverage section defined the word "driver." Thus, as we

stated in our original opinion in this case, the issue is whether, by merely listing on the declarations page all the persons who would regularly drive the covered van, Westfield created an ambiguity with respect to UIM coverage.

The Kentucky Supreme Court has remanded this case for our further consideration in light of its decision in True v. Raines, Ky., 99 S.W.3d 439 (2003). That case is factually similar to this case. Raines was injured in an automobile accident due to the negligence of the other driver, True. True had liability coverage of only $100,000. Raines, who was driving her own vehicle at the time of the accident, had UIM coverage of $50,000 under her own policy. Raines lived in a residence with Rice that was jointly owned by the two of them. Rice had a separate policy which had UIM coverage of $50,000. Although Rice's policy did not list Raines as a named insured, Raines was listed on Rice's policy as a driver "residing in your household." As in the case *sub judice*, the issue in that case was whether Raines was afforded UIM coverage under Rice's policy.

Rice's policy defined "insured" for the purpose of UIM coverage in exactly the same terms as the policy in this case. Further, Rice's policy defined "you" and "family member" in the same terms as in this case.

The Kentucky Supreme Court found the terms of Rice's policy to be clear and unambiguous. Id. at 444. Further, the court held that "because, at the time of the accident, Raines was not an 'insured,' 'named insured,' 'spouse,' nor 'family member,' nor was she 'occupying [the named insured's] covered auto,' Raines was not entitled to UIM coverage under the terms of Rice's Preferred Risk policy." Id. The court further stated, "we conclude that the policy's failure to define 'driver' does not constitute an ambiguity that reasonably permits Raines's interpretation of the policy's coverage." Id. In addition, the court held that the reasonable expectation doctrine was inapplicable due to the lack of ambiguity in the policy as to whether it extended UIM coverage to Raines. Id. at 443.

True v. Raines is on "all fours" with the case *sub judice*. As we held in our initial opinion rendered in this case on December 17, 1999, Westfield's policy was not ambiguous with regard to UIM coverage. Furthermore, the reasonable expectations doctrine is inapplicable due to the lack of ambiguity in the terms of the policy. In short, Hancock had no UIM coverage under Climer's policy with Westfield.

The judgment of the Christian Circuit Court is reversed, and this case is remanded for the entry of a judgment in favor of Westfield.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Al Miller Central City, Kentucky	Andrew C. Self Hopkinsville, Kentucky