

RENDERED: SEPTEMBER 5, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000223-MR

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE G. CLAYTON, JUDGE
ACTION NO. 01-CI-006663

CITY OF LOUISVILLE;
AND DANIEL P. ALPIGER

APPELLEES

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: COMBS AND McANULTY, JUDGES; MILLER, SENIOR JUDGE.¹

McANULTY, JUDGE. Appellant State Farm Mutual Automobile Insurance Company (hereinafter State Farm) appeals the order of the Jefferson Circuit Court which granted partial summary

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

judgment to appellees, the City of Louisville and Daniel P. Alpiger, a Louisville police officer. The trial court found as a matter of law that State Farm could not recover from appellees the basic reparations benefits it paid on behalf of Jerald L. Owen. We reverse and remand.

While State Farm agrees that the issue is one of law, it alleges that the trial court did not correctly apply the standard for a summary judgment. State Farm does not identify any factual issues which must be resolved, but instead alleges that the trial court erred in determining that it was not entitled to subrogation from the City. State Farm asserts that the court erred in concluding that the vehicle owned by the City was a secured vehicle under the Kentucky Motor Vehicle Reparations Act.

The standard of review on appeal of the grant of summary judgment is whether the trial court correctly found that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996). Since factual findings are not at issue, there is no requirement that the appellate court defer to the trial court. Id. at 781, citing Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 381 (1992). Therefore, we review the trial court's

conclusions to determine whether the court correctly applied the law in this case.

The issue is whether State Farm, as a reparations obligor, may recover in a subrogation action basic reparations benefits it paid to its insured from the City. That determination is a matter of construing the applicable statutes of the Kentucky Motor Vehicle Reparations Act. The subrogation provisions applicable to this case are in Kentucky Revised Statutes (KRS) 304.39-070, as follows:

(1) "Secured person" means the owner, operator or occupant of a secured motor vehicle, and any other person or organization legally responsible for the acts or omissions of such owner, operator or occupant.

(2) A reparation obligor which has paid or may become obligated to pay basic reparation benefits shall be subrogated to the extent of its obligations to all of the rights of the person suffering the injury against any person or organization other than a secured person.

(3) A reparation obligor shall have the right to recover basic reparation benefits paid to or for the benefit of a person suffering the injury from the reparation obligor of a secured person as provided in this subsection, except as provided in KRS 304.39-140(3). . . . (Emphasis added.)

The parties' main point of contention is whether the motor vehicle owned by the City and driven by Alpiger was a secured vehicle. If the operator and vehicle were not secured, State

Farm is left to proceed under KRS 304.39-070(2). If the operator and vehicle are secured, KRS 304.39-070(3) is the applicable provision. And, under that subsection, State Farm may only recover from the City if it may be considered a "reparation obligor."

According to the above statute, a secured person is the owner, operator or occupant of a secured motor vehicle. "Security covering the vehicle" is defined as "the insurance or other security so provided." KRS 304.39-080(1). Further, that statute states in subsection (6): "Security may be provided by a contract of insurance or by qualifying as a self-insurer or obligated government in compliance with this subtitle." The City has no contract of insurance, nor is it a qualifying self-insurer or "obligated government" under the Act. The city states that the KMVRA provides that municipal corporations and political subdivisions *may* provide security for basic reparations benefits, KRS 304.39-080(3), and the City has elected not to become subject to that provision.

Nevertheless, the City argues that the vehicle operated by Alpiger was a secured vehicle because the City provided "other security" under KRS 304.39-080(1). "Security" is defined in KRS 304.39-020(17) as "any continuing undertaking complying with this subtitle, for payment of tort liabilities, basic reparation benefits, and all other obligations imposed by

this subtitle." The City contends that although it is exempt from no-fault obligations, the City is not unsecured but provides other security by having a fund available for payment of liabilities. In their brief, appellees state: "On an annual basis, the City appropriates certain funds for automobile liability claims adjustments and expenses, thus providing a continuing undertaking for the payment of its tort liabilities." The City cites KRS 65.2001 et seq., which deals with claims against local governments, and Louisville Codified Ordinances 34.082, and 36.160 et seq.

The statute above does not impose any specifics as to what "other security" may be. We agree that the appropriation of funds for tort liabilities carried out by the City qualifies as a continuing undertaking under the statute. However, it is not for the purpose of providing all of the obligations under the subtitle, which is a requirement for other security. The appropriation of the funds is only concerned with tort liabilities, but is not for the payment of basic reparations benefits or "all other obligations," such as subrogation. Therefore, we do not agree that it is "other security" as contemplated by the MVRA.

Additionally, the City argues that it is not required to repay State Farm for the basic reparations paid because it is not a reparations obligor as defined in KRS 304.39-020(13).

Therein, "reparation obligor" is defined as "an insurer, self-insurer, or obligated government providing basic or added reparation benefits under this subtitle." The City is not an insurer, under the common meaning of that term, and it has already been established that the City is not a self-insurer or obligated government.

From the foregoing, we believe that the vehicle driven by Alpiger and owned by the City was not a secured vehicle under the meaning of the KMVRA. We believe that the case should properly have proceeded under KRS 304.39-080(2) above. Therefore, we find that the grant of summary judgment in this case was improper. We reverse and remand for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kenneth E. Dunn
Barnett, Porter & Dunn
Louisville, Kentucky

BRIEF FOR APPELLEE:

William C. Stone
Gregory Scott Gowen
Angela Turner Dunham
Carrie Pearson Hall
Louisville, Kentucky