

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000518-MR

KENTUCKY FARM BUREAU  
MUTUAL INSURANCE COMPANY

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT  
HONORABLE SAMUEL T. WRIGHT, III, JUDGE  
ACTION NO. 96-CI-00187

DONALD COLLINS AND KIM COLLINS,  
INDIVIDUALLY, AND AS CO-ADMINISTRATORS  
OF THE ESTATE OF DANIEL METCALF

APPELLEES

OPINION  
REVERSING AND REMANDING  
\*\* \*\*

BEFORE: HUDDLESTON, PAISLEY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Kentucky Farm Bureau Mutual Insurance Company  
appeals from a summary judgment entered in favor of the  
plaintiffs in this action, Donald Collins and Kim Collins,  
individually and as administrators of the estate of Daniel  
Metcalf. Kentucky Farm Bureau (KFB) argues on appeal that the  
court erred by ruling that its insurance policy was vague and  
capable of more than one construction, and therefore construing  
the policy to provide underinsured motorist coverage for

Metcalf. We agree, and reverse the judgment of the Letcher Circuit Court.

Metcalf was killed in a car accident while a passenger in a vehicle driven by a friend, Brian Adkins. Metcalf's estate settled a claim against Adkins for the limits of Adkins' policy, and also settled an underinsured motorist coverage claim with KFB under a policy held by the Collins family. The family then attempted to make a claim under the policy of the late Eulah Maggard, Metcalf's grandmother, who had died approximately five months before, but had prepaid her insurance for six months just prior to her death.

It is not disputed that at the time of her death, Metcalf was living in Maggard's household. What is rather hotly contested is the effect of the death of Maggard on the availability of her UIM coverage for Metcalf, who was not a passenger in the covered automobile at the time of the accident, which involved a vehicle driven by a third party, Adkins. After KFB denied coverage under Maggard's policy, the Collins family filed this action against KFB. The Letcher Circuit Court granted summary judgment in favor of the plaintiffs, holding that the KFB policy was subject to more than one interpretation, and, under the rules of construction, must therefore be construed against the drafter of the policy, KFB. KFB attempted an appeal to this Court, but this Court held that the judgment

was not a final and appealable order because the order appealed from did not contain the appropriate language. The circuit court modified its order to include the required language, and this appeal followed.

KFB argues on appeal that the language of the policy restricts coverage after the death of the insured to the executrix of the estate when on estate business only. The language that KFB relies on reads as follows:

- "A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:
  - 1. The surviving spouse, if resident in the same household at the time of death . . . ; and
  - 2. The legal representative of the deceased person as if a named insured shown in the declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto.**
  
- B. Coverage will only be provided until the end of the policy period." Vol. II, TR p. 177 at 196. (emphasis in original.)

KFB claims the effect of this language is to limit coverage only to the executrix of Maggard's estate when performing her duties as an executrix, as Maggard's husband was already deceased. Metcalf was not in the class of covered

individuals, and as the language of the policy is clear regarding the effect of the death of the named insured, KFB argues that the circuit court erred in granting summary judgment in favor of the Collins family. We agree, and reverse the judgment of the circuit court.

The circuit court relied on Grimes v. Nationwide Mutual Insurance Company, Ky. App., 705 S.W.2d 925 (1986), and State Automobile Mutual Insurance Company v. Ellis, Ky. App., 700 S.W.2d 801 (1985), in finding that the policy was vague and that the policy must therefore be construed against KFB to provide coverage. We disagree with the circuit court's conclusion that the policy is vague about the limits of coverage upon the death of the named insured. In the Ellis case, an exclusion of coverage for any person "using a vehicle without a reasonable belief that that person is entitled to do so" was held to conflict with the definition of "covered person", which included "any family member". In that case, the named insured's 14-year-old daughter used the insured's vehicle without his permission and was involved in an accident. This Court held that the specific inclusion of "any family member" overrides the general exclusion of unauthorized drivers. The Grimes case is a rather unusual case of little precedential value, involving an exclusion from coverage of a semi-trailer being used on business, and an insurer who declined the duty to defend its

insured. Clearly neither Ellis nor Grimes is factually similar to this case, which involves the death of an insured and a provision in the policy that is plainly triggered upon the death of the insured, limiting coverage.

As KFB points out, the “cardinal rule” of construction that applies to this case is that in the absence of ambiguity, a written instrument must be enforced according to its terms and the words of the agreement given their plain meaning. Grey v. Wilson, Ky. App., 554 S.W.2d 867, 869 (1977). It is simply unmistakable to the reader of the plain language of the policy that upon the death of the insured, coverage is limited to the surviving spouse or to the executor in the course of estate business. The Collins family argues that the policy must be interpreted to afford UIM coverage to Metcalf. While we are not without sympathy for Daniel Metcalf’s family, we also do not find the arguments advanced in favor of such an interpretation to be persuasive.

The essence of the Collins family’s argument is that the UIM coverage for all family members could not have ceased on the death of the insured, because the insured pre-paid for the coverage. We are not persuaded that such an interpretation is correct under Kentucky law. While Collins cites Dupin v. Adkins, Ky. App., 17 S.W.3d 538 (2000), for the proposition that UIM coverage is personal to the insured and not connected to a

particular vehicle, we are not persuaded that the Dupin case applies to this case in the way suggested by Collins. Collins' brief states, "Why this longstanding rule would simply cease to apply simply because Mrs. Collins was substituted on the policy for Mrs. Maggard is something Farm Bureau has neglected to explain." Appellee's brief at 14. However, we must point out that Collins was not "substituted" for Maggard, by the terms of the policy. Collins' interpretation of this policy conveniently overlooks the exclusions contained in the above-quoted section of the policy. Upon the death of the insured, coverage only existed for Collins, personally, while operating the insured vehicle, and only while on the business of the estate. This provision clearly overrides any and all other provisions of the policy. We do not believe that any other reasonable interpretation can be reached, given the plain language of the policy.

Collins also argues that KFB is estopped from denying coverage. Collins claims that KFB admitted that coverage existed, then later denied coverage. The issue was not raised in the circuit court, and the circuit court made no findings of fact regarding any alleged admission by KFB. As this issue was not raised in the circuit court, we decline to address it here. However, we note that the circuit court is not precluded from considering this issue on remand.

For the foregoing reasons, the judgment of the Letcher Circuit Court is reversed and the matter remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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