

RENDERED: January 24, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000821-MR

WILLIAM B. STRIEGEL

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NO. 01-CI-004628

STATE FARM INSURANCE COMPANY

APPELLEE

OPINION AFFIRMING

* * * * *

BEFORE: COMBS AND PAISLEY, JUDGES; and JOHN D. MILLER, Special Judge.¹

PAISLEY, JUDGE: This appeal is from a summary judgment entered by the Jefferson Circuit Court. In light of the recent Kentucky Supreme Court opinion in Daley v. Reed, Ky., 87 S.W.3d 247 (2002), we affirm.

On July 9, 2000 in Grapevine, Texas, appellant and his wife were traveling in a vehicle driven by their son when they were involved in an auto accident caused by the negligence of another driver. Both appellant and his wife sustained personal injuries, hers being permanent and more severe. Part of the

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

compensation which they received for these injuries derived from underinsured motorist coverage provided by their policy with appellee.

Appellant made a claim to appellee for loss of consortium resulting from the injuries sustained by his wife. Appellee denied this claim on the ground that it had already paid the applicable "each person" policy limits for the wife's injuries. At the time of the accident, appellant's policy provided for a \$100,000 "each person" limit with an aggregate limit of \$300,000 "each accident." Appellant argues that his claim for loss of consortium is not subject to the "each person" limit, but that the "each accident" limit instead should apply.

The insurance policy in question states:

Limits of Liability - Underinsured Motor Vehicle -
Coverage W

Under "each person" is the amount of coverage for all damages due to bodily injury to one person. "Bodily injury to one person" includes all injury and damages to others resulting from this bodily injury. Under "each accident" is the total amount of coverage, subject to the amount shown under "each person", for all damages due to bodily injury to two or more persons in the same accident. (emphasis omitted.)

The issue of which limits apply to a loss of consortium claim was first decided in Moore v. State Farm Mutual Insurance Company, Ky., 710 S.W.2d 225 (1986), wherein the Kentucky Supreme Court held that a claim for loss of consortium is subject to the "each person" policy limits. Appellant argues that Moore, supra, was essentially overruled by Giuliani v. Guiler, Ky., 951 S.W.2d

318 (1997), which held that children have an independent loss of consortium claim for the wrongful death of their parent. However, the recent decision of Daley v. Reed, Ky., 87 S.W.3d 247 (2002), clarified the extent of this holding. Specifically, Daley stated that Giuliani was “construing statutory and common law rights of action, not insurance policies” and that the court “did not intend by that language to change the law applicable to insurance coverage for loss of consortium.” 87 S.W.3d at ___. In addition, “[the] existence of a cause of action for damages does not mean that those damages are ipso facto recoverable from a particular policy of insurance.” Id. at ___.

Further, a different result is not compelled by the fact that the policy fails to define the term “damages.” The definition for “bodily injury” in the policy herein was nearly identical to the one at issue in Daley. As noted in Daley, a loss of consortium claim such as the one before us is derivative of the initial injury, with the result that the relevant policy language relates to the definition of “bodily injury” and not “damages.” Clearly, under the authority of Daley, appellant is not entitled to relief.

The judgment is affirmed.

ALL CONCUR.

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