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Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000952-MR

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM JACKSON CIRCUIT COURT
HONORABLE R. CLETUS MARICLE, JUDGE
ACTION NO. 00-CI-00016

ADRIAN S. YORK; AND
ANGELA PREWITT — APPELLEES

OPINION

REVERSING AND REMANDING

** ** ** ** **

BEFORE: HUDDLESTON, PAISLEY AND TACKETT, JUDGES.

PAISLEY, JUDGE. Kentucky Farm Bureau Mutual Insurance Company appeals from a summary judgment entered by the Jackson Circuit Court which found that Farm Bureau was obligated to provide liability coverage to its insured, appellee Adrian S. York, for an auto accident that occurred while York was driving a non-owned vehicle over the express objection of the vehicle's owner. Farm Bureau argues that the nonpermissive user exclusion

contained in its policy relieves it of any obligation to provide York with liability coverage under these circumstances, and that the trial court should have granted summary judgment to it rather than to York. For the reasons stated hereafter, we agree. Therefore, we reverse and remand this matter for further proceedings.

On October 13, 1998, James Neeley and appellee, Angela Prewitt, were driving in Neeley's 1994 Camaro when they saw some of their friends in the parking lot of the "Chat & Chew", a restaurant in Jackson County. Neeley pulled into the lot, and both he and Prewitt got out of the car to socialize with their friends. Prewitt soon became cold and returned to the front passenger seat of Neeley's car. Appellee, Adrian S. York, who was among the group in the parking lot, approached the vehicle and leaned into the driver's side window in order to view the interior. He then opened the car door and sat in the driver's seat next to Prewitt. York indicated to Neeley that he wanted to drive the car, but Neeley absolutely refused. However, in complete defiance of Neeley's wishes, York started the vehicle and drove away with Prewitt still inside. York traveled a few miles down the road and then turned back in the direction of the "Chat & Chew". Just as York sped past the restaurant, he wrecked the vehicle causing various injuries to Prewitt. York

later pled guilty to reckless driving and to an amended charge of unlawful operation of a vehicle.

Prewitt filed a claim against York seeking compensation for the injuries that she sustained in the accident. At the time, Farm Bureau provided insurance coverage to Neeley and to York, who was a listed driver on an automobile insurance policy owned by his father. Both policies contained identical exclusions which precluded coverage for any person using a vehicle without a reasonable belief that he or she is entitled to do so. Farm Bureau, asserting that the exclusion was applicable, filed a declaratory judgment action to determine whether it was obligated to provide coverage for the accident. Although York stipulated that coverage was precluded under Neeley's insurance policy, he argued that the exclusion in his father's policy was inapplicable to him, and Farm Bureau was therefore still obligated to defend and indemnify him with respect to Prewitt's claim. Both Farm Bureau and York moved for summary judgment, and the court ultimately denied Farm Bureau's motion and granted York's. This appeal followed.

As the underlying facts of this case are undisputed, the only issue with which we are concerned is whether the trial court erred by finding as a matter of law that Farm Bureau's nonpermissive user exclusion is inapplicable to preclude coverage under the circumstances of this accident. Consistent

with the general rule that "[i]nterpretation and construction of an insurance contract is a matter of law for the court," we review this issue *de novo*. Kemper National Insurance Companies v. Heaven Hill Distilleries, Inc., Ky., 82 S.W.3d 869, 871 (2002)(citing Morganfield National Bank v. Damien Elder & Sons, Ky., 836 S.W.2d 893, 895 (1992); Stone v. Kentucky Farm Bureau Mutual Insurance Co., Ky. App., 34 S.W.3d 809, 810 (2000)).

The policy language at issue in this case is as follows:

> B. We do not provide Liability Coverage for any person:
>
> . . .
>
> 4. Using a vehicle without a reasonable belief that that person is entitled to do so.

Farm Bureau argues that this language is clear and unambiguous, and that when this provision is applied to the facts of this case, York is clearly excluded from coverage because at the time of the accident he was a "person" driving a non-owned vehicle without a "reasonable belief" that he was entitled to do so.

Both appellees, on the other hand, argue that the judgment of the trial court was correct but for somewhat differing reasons that shall be addressed as if argued collectively. First, they argue that the plain language of the policy excludes coverage of "any person" under circumstances

similar to those now before us, but it does not expressly exclude "insureds" such as York. In addition, if the exclusion was intended to apply to "insureds", then this should have been specifically stated in the policy, and therefore, the exclusion does not apply to York because he is an "insured." However, our review of the record shows that the insurance policy neither defines the term "any person", nor does it use the term in an exclusive fashion. Given the fact that it is well established that, "[t]he words employed in insurance policies, if clear and unambiguous, should be given their plain and ordinary meaning," Nationwide Mutual Insurance Company v. Nolan, Ky., 10 S.W.3d 129, 131 (1999) (citations omitted), we are compelled to conclude that in the absence of any evidence to show that the policy's use of the term "any person" is intended to have a special meaning different from that which is usually associated with this term, "any person" clearly encompasses all persons, including "insureds," such as York.

Appellees further argue that the trial court reached the right result because applicable Kentucky precedents support interpreting the policy so as to find coverage of the claim against York. Appellees rely heavily on State Automobile Mutual Insurance Co. v. Ellis, Ky. App., 700 S.W.2d 801 (1985), in which it was held that a nonpermissive user exclusion, identical to the one at issue here, was inapplicable to exclude coverage

of an auto accident caused by a 14-year-old girl after she took her father's vehicle without his express permission. The court reasoned that the exclusion was ambiguous in that situation because "[t]he policy does not offer guidance as to what constitutes a 'reasonable belief,' nor does it specify whether 'entitled' means simply obtaining permission from the owner of the vehicle or whether a valid license from the applicable state would also be required to avoid exclusion from coverage." Id. at 802.

The situation in Ellis is inherently different from that of York in that it involved a covered family vehicle that was driven by a family member, and the court found that there was an ambiguity as to whether that family member was a nonpermissive user. Here, by contrast, the vehicle in question was wholly foreign to York, who not only admitted that he lacked express permission to drive the car, but also that Neeley repeatedly directed him to stop and exit the vehicle. A non-existent ambiguity should not be utilized to construe a policy against the insurance company. Meyers v. Kentucky Medical Insurance Co., Ky. App., 982 S.W.2d 203, 208 (1997). As it is clear that there was no real dispute that York knowingly drove the vehicle without permission, it follows as a matter of law that there was no ambiguity as to whether he was using the vehicle "without a reasonable belief" that he was "entitled to

do so." We therefore conclude that coverage is precluded under the clear language of the policy.

We are also not persuaded by appellees' argument that the specific policy language that includes York within the policy's coverage controls over the general exclusion that precludes coverage for nonpermissive use of a vehicle, or by their argument that the reasonable expectations of the parties would require coverage of the accident in this case. These arguments are only applicable if there is an ambiguity in the policy language that is in need of resolution. Meyers v. Kentucky Medical Insurance Co., 982 S.W.2d at 209; State Automobile Mutual Insurance Co. v. Ellis, 700 S.W.2d at 803. Having already concluded that such an ambiguity is non-existent in this case, both of these arguments must fail.

Finally, appellees argue that public policy considerations require a finding of coverage in this case because the victim, Prewitt, is an innocent third party. "It is axiomatic that 'the terms of an insurance contract must control unless [they] contravene[e] public policy or a statute.'" Meyers v. Kentucky Medical Insurance Co., 982 S.W.2d at 209 (citation omitted). Although the legislature could require drivers of non-owned vehicles to carry liability insurance, KRS 304.39-080(5) instead simply states:

> Except for entities described in subsections (3) and (4), every owner of a motor vehicle registered in this Commonwealth or operated in this Commonwealth by him or with his permission shall continuously provide with respect to the motor vehicle while it is either present or registered in this Commonwealth, and any other person may provide with respect to any motor vehicle, by a contract of insurance or by qualifying as a self-insurer, security for the payment of basic reparation benefits in accordance with this subtitle and security for payment of tort liabilities, arising from maintenance or use of the motor vehicle. The owner of a motor vehicle who fails to maintain security on a motor vehicle in accordance with this subsection shall have his or her motor vehicle registration revoked in accordance with KRS 186A.040. (Emphasis added.)

Clearly, under the statute, liability coverage for non-owned vehicles is permissive rather than mandatory, and although we support the worthy purpose of the Motor Vehicle Reparations Act as discussed in Progressive Northern Insurance Co. v. Corder, Ky., 15 S.W.3d 381, 383 (2000), we do not believe that public policy considerations should be used as a means to require a higher liability insurance standard with regard to this issue than that which is reflected in KRS 304.39-080(5). See also Consolidated American Insurance Co. v. Anderson, Ky. App., 964 S.W.2d 811, 814 (1997). Therefore, the plain language of the policy exclusion clearly precludes coverage under circumstances such as these, and Farm Bureau is not obligated to provide a defense to York or to indemnify him for this accident.

The judgment is reversed and this case is remanded to the trial court for entry of an order granting summary judgment in favor of Farm Bureau.

ALL CONCUR.

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