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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001455-MR

DAVID BENTLEY

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 01-CI-00586

MEGAN BENTLEY; AND
AMERICAN INTERNATIONAL SOUTH
INSURANCE COMPANY

APPELLEES

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: PAISLEY AND TACKETT, JUDGES; AND HUDDLESTON, SENIOR
JUDGE.¹

PAISLEY, JUDGE. This is an appeal from an order entered by the
Greenup Circuit Court dismissing appellant's tort action. For

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580. This opinion was prepared and concurred in prior to the expiration of the Special Judge assignment on November 25, 2003.

the reasons stated hereafter, we reverse and remand for further proceedings.

Appellant David Bentley was injured as a result of a collision which occurred while he was riding in a vehicle driven by his unemancipated minor daughter, appellee Megan Bentley, who evidently was at fault in the collision. It is undisputed that Megan resided with both parents and that the vehicle was insured by her mother, to minimum statutory limits, through appellee American International South Insurance Company (AIG).

Some fifteen months after the collision David filed a complaint against Megan and AIG alleging that as a direct and proximate result of Megan's negligence, he had incurred permanent disfigurement as well as past and future medical expenses, pain and suffering, lost wages, and impaired ability to earn income. David asserted that AIG had erroneously relied on abolished Kentucky case law and doctrine in refusing to provide him with "one penny" of insurance coverage. The trial court ultimately agreed with AIG and dismissed the action, holding that under Thompson v. Thompson, Ky., 264 S.W.2d 667 (1954), David was precluded from coverage because "a parent cannot maintain an action for tort against a minor child." This appeal followed.

The concerns which traditionally justified the doctrine that parents and unemancipated minor children may not

sue one another in tort were set out in Thurman v. Etherton, Ky., 459 S.W.2d 402, 403 (1970), as follows:

"(1) Public interest in maintaining family harmony and tranquility.

(2) Maintenance of parental authority and discipline.

(3) Prevention of fraud and collusion.

(4) Preservation of equal distribution of the family exchequer.

(5) Avoidance of useless litigation in that the parent may, in the event of the death of the child, inherit any money which the child may have recovered from the parent.

(6) Prevention of assertion of stale claims of minors on their reaching majority."

(Citation omitted.) However, in Harlan National Bank v. Gross, Ky., 346 S.W.2d 482, 484 (1961), Kentucky's highest court recognized that because public policy concerns regarding the disruption of family relationships become moot if an injured child dies, "the administrator of a deceased infant's estate has a cause of action against its parent for wrongful death caused by the latter's negligence." Similarly, in Thurman, 459 S.W.2d 402, the court held that the doctrine of parental immunity did not bar an action by unemancipated minors to recover damages from their father's estate for the personal injuries which they sustained in the collision which resulted in their father's death.

Next, in Rigdon v. Rigdon, Ky., 465 S.W.2d 921 (1970), Kentucky's highest court considered a situation in which a young child was severely and permanently injured when his mother's vehicle collided with another. The court summarized the history of family immunity, stating:

In matters concerning property, causes of action seem always to have been fully recognized on the part of either parent or child. However, beginning with Hewlett v. George, 68 Miss. 703, 9 So. 885, in 1891, the American courts have adopted a general rule refusing to allow actions between parent and child for personal torts.

Notwithstanding the Kentucky Married Woman's Act of 1897, KRS 404.020, until about 1953 this court followed the rule of family immunity.

In 1953, this court started to chisel away at the family immunity rule by permitting the wife to sue the husband in tort for negligent operation of an automobile.

In 1961, the rule received another blow in Harlan National Bank v. Gross, Ky., 346 S.W.2d 482, upholding the right of the personal representative of a deceased child to sue the parent of that child to recover damages resulting from the negligence of the parent.

More recently in Thurman v. Etherton, Ky., 459 S.W.2d 402 . . . , the rule was further eroded by this court's holding that an unemancipated child could sue the estate of a deceased parent in tort. . . .

. . . .

Our early cases justify the common law rule of family immunity on the theory that (1) the "domestic peace and felicity" are promoted, (2) its abrogation would open the door to "fraudulent

and fictitious claims," and (3) the rule of "stare decisis" applies.

In the light of modern social and economic conditions, the reasons for the rule no longer outweigh the justifications favoring its abrogation.

465 S.W.2d at 922-23 (citations omitted). After considering the arguments regarding the parental immunity rule and "the obvious tendency of our recent cases to erode the rule," the Rigdon court abrogated the rule except

(1) where the negligent act relied on for a recovery involves the reasonable exercise of parental authority over the child, and (2) where the alleged negligent act involves the exercise of ordinary parental discretion with respect to provisions for the care and necessities of the child.

Id. at 923.

Next, in Bishop v. Allstate Insurance Co., Ky., 623 S.W.2d 865 (1981), the supreme court found that family member exclusion clauses in automobile insurance policies were void and unenforceable to the extent they eliminated the minimum tort liability coverage required by the Motor Vehicle Reparations Act (MVRA). The holding in Bishop was expanded in Lewis v. West American Insurance Co., Ky., 927 S.W.2d 829 (1996), wherein the supreme court invalidated an automobile liability policy which, although purchased to include additional liability coverage, limited coverage to the minimum statutory amount whenever the injured person was the named insured or the named insured's

family member. The court objected to the fact that the exclusion provided no practical method by which family members could modify their activities in order to avoid exposure to the risks of riding with persons who were uninsured as to them, as well as to the fact that since motor vehicle insurance policies are largely contracts of adhesion, there was no practical way under the policy for the insured to avoid exposure to risk despite purchasing and reasonably expecting additional liability coverage. The court stated:

The over inclusiveness of the family exclusion clause is socially destructive and corrosive to our citizenry's confidence in our system of justice. The family exclusion operates to bar all valid claims of injured family members in order to preclude the possibility of collusion. We cannot lock our Commonwealth's courthouse doors to the many who are injured and maimed because of a suspicion that a few members of this class might advance an exaggerated claim.

. . . .

Without fraud or collusion as a basis for the family exclusion, there is no reason to exclude family members from the full benefits of a liability insurance policy.

. . . .

In Bishop v. Allstate Ins. Co., Ky., 623 S.W.2d 865 (1981), we took the first step toward determining family exclusion clauses violate public policy. We found that a family exclusion provision which completely excluded liability coverage was invalid to the extent it diluted or eliminated the minimum tort liability coverage required by law. We came to this conclusion because the Motor Vehicle Reparations Act

mandates payment of tort liability for personal injuries and property damage. Prior to the enactment of the MVRA, we upheld family exclusion provisions in insurance contracts. "However, when the legislature stated the policy behind the MVRA and set forth its requirements it specified no exclusions from minimum coverage." Bishop at 866. . . .

. . . .

Because neither our Constitution or statutes address family exclusions, we turn to the decisions of this court to determine the public policy of our Commonwealth. The fair compensation for injuries received by innocent victims of another's negligence is the controlling policy consideration underlying both our abrogation of intrafamily immunities and the doctrine of reasonable expectations. Family exclusions are injurious to a substantial segment of the citizens of our Commonwealth. They deny injured persons the ability to rely upon the insurance coverage purchased by the policyholder. As a result, seriously injured accident victims will suffer financial hardship if family exclusion clauses are validated. Almost every member of the public is potentially a member of this excluded class. The exclusion is overly broad, based upon surmise, and against the public good.

It is time for us to take the next logical step from Bishop. Thus, we hold that family exclusion provisions in liability insurance contracts violate the public policy of this Commonwealth and are unenforceable. Accordingly, . . . cases which uphold the validity of the family exclusion are overruled.

927 S.W.2d at 834-36 (emphasis added).

Although our courts have never specifically overruled Thompson, in the years since its 1954 rendition public policy clearly has evolved in ways which abrogate the principles

underlying the family tort immunity rules. As noted above, since 1954 our courts have discarded tort liability limitations pertaining to parents' actions against their deceased children's estates, children's actions against their deceased parents' estates, injured children's actions against their living parents pertaining to motor vehicle accidents, and family member exclusion provisions in automobile liability policies. Clearly, Thompson is no longer in line with the case law and public policy considerations which have developed over the years.

Moreover, Thompson's viability must be considered in light of the Kentucky General Assembly's 1974 enactment of the MVRA, which clearly and unequivocally is intended to promote automobile insurance reform by requiring "owners, registrants and operators of motor vehicles in the Commonwealth to procure insurance covering basic reparation benefits and legal liability arising out of ownership, operation or use of such motor vehicles." KRS 304.39.010(1). "Every person" who suffers a loss from injury arising out of a motor vehicle's maintenance or use in Kentucky has a right to receive basic reparation benefits (BRB) unless he or she has rejected that limitation upon tort rights. KRS 304.39-030(1). Such BRB "shall be paid without regard to fault," and "without regard to immunity from liability or suit which might otherwise be applicable." KRS 304.39-040(1)

and (2). Finally, required minimum tort liability insurance amounts are specified in KRS 304.39-110(1).

Here, the insurance policy in question provided the required minimum amounts of BRB and tort liability coverage. It is clear, in light of subsequent legislation and case law, that Thompson is no longer good law, at least insofar as it would preclude a parent from suing an unemancipated minor child in tort for damages up to the statutorily required minimum amounts of BRB and tort liability coverage, as the legislature's adoption of the MVRA and minimum tort liability insurance requirements compels a finding that there can be no authorized exclusions from minimum coverage. See Bishop, supra, and Lewis, supra. That being so, it is clear that the trial court erred by determining that pursuant to Thompson, David Bentley was not entitled to the benefit of the minimum insurance coverage required by the statute and provided by the policy which was in effect at the time of the collision.

The court's order is reversed and this matter is remanded for further proceedings consistent with the views stated herein.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bruce W. MacDonald
Greenup, Kentucky

BRIEF FOR APPELLEES:

Robert L. Steinmetz
Louisville, Kentucky

Diane Rose Conley
Lexington, Kentucky