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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001827-MR

JOEL HALL — APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 01-CI-01008

ESTATE OF ROBIN LAWSON
and NATIONAL
GENERAL INSURANCE COMPANY — APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: BAKER, COMBS, and SCHRODER, Judges.

COMBS, JUDGE. Joel Hall appeals from an order of the Boyd Circuit Court dismissing his complaint against his automobile insurer, the appellee, National General Insurance Company. Hall was injured in a motor vehicle accident caused by an uninsured driver. He contends that the trial court erred in determining that National General is not liable to him for uninsured or underinsured motorist benefits (UM/UIM) provided by his policy. We agree that the trial court erred as a matter of law in

dismissing Hall's claim for UM benefits against National General. Therefore, we vacate and remand.

The facts leading to this appeal are not in dispute. Hall was injured in an accident when the truck that he was driving collided with a vehicle driven by Robin Lawson, who died from the injuries she sustained. Lawson did not have liability insurance covering her vehicle. At the time of the accident, Hall owned two vehicles. General Security Insurance Company carried the insurance on the truck involved in the accident, a 1992 Freightliner. Hall also owned a 1999 Mazda pick-up truck that was insured by National General; that policy provided UM/UIM benefits with limits of $50,000 per person, $100,000 per accident.

On October 17, 2001, Hall filed a lawsuit naming as defendants the estate of Robin M. Lawson and both of his insurers, National General and General Security. National General moved for summary judgment, arguing that it was not liable for UM or UIM benefits based on the following provision in Hall's policy excluding coverage under the circumstances presented:

> We do not provide Uninsured Motorist Coverage for "bodily injury" sustained:
>
> 1. By an "insured" while occupying, or when struck by, any motor vehicle owned by the "insured" which is not insured

by this coverage under this policy.

In support of its motion for summary judgment, National General relied on Safeco Insurance Co. of America v. Hubbard, Ky., 578 S.W.2d 49 (1979), and MFA Insurance Co. v. Whitlock, Ky., 572 S.W.2d 856 (1978), cases which it characterized as "accurate reflections of the current state of the law in Kentucky." Hall argued that the law with respect to stacking of UM had been superseded and altered by Chaffin v. Kentucky Farm Bureau Insurance Co., Ky., 789 S.W.2d 754 (1980). National General, however, responded by arguing that Chaffin did not encompass the right to stack policies written by different insurers. It also contended that public policy concerns should prevail to forbid insureds from stacking UM or UIM benefits on multiple vehicles insured by different insurance carriers.

On June 13, 2002, the trial court granted the motion of National General for summary judgment, concluding that National General was entitled to judgment as a matter of law. The judgment contained the recitals of CR[1] 54.02 rendering the judgment final and appealable. This appeal followed. Hall's claims against the estate of Robin Lawson and his other automobile insurer, General Security, remain pending in the trial court.

[1] Kentucky Rules of Civil Procedure.

Hall argues on appeal that UM coverage is personal in nature and should be available to compensate him for his damages regardless of which vehicle he was operating at the time of the collision. He contends that the exclusion relied upon by National General is unenforceable pursuant to the precedent established by Chaffin and its progeny.

National General argues that its policy effectively excludes coverage for UM or UIM benefits when an insured is operating any vehicle not insured under its policy. It also argues that it would violate public policy to allow Hall to collect benefits under its policy:

> Mr. Hall contracted with [National General] to provide UM coverage for his personal truck, and the parties never bargained to provide insurance benefits for the freightliner in question. Mr. Hall's arguments are a basic endorsement of providing "something for nothing" to him. These arguments are offensive to basic contract law. . . . Allowing Mr. Hall to collect UM benefits for injuries sustained in an accident where he was driving a vehicle he chose not to cover under his [National General] policy would promote insurers meeting their insurance obligation by insuring only one vehicle. Consumers would never insure multiple cars with the same insurer, but could instead insure one vehicle with one insurance company, pay a premium for UM benefits with one insurer, and then collect those benefits after suffering any injury resulting from the operation of any vehicle owned by the insured. (Appellee's brief at p. 18.)

National General relies on Consolidated American Insurance Co. v. Anderson, Ky.App., 964 S.W.2d 811 (1997), a case involving the availability of liability coverage, to support its argument that it is not liable for UM/UIM benefits for damages sustained while its insured is driving a vehicle that it has not insured.

Kentucky case law has examined various ramifications of the issues presented here. Since the Chaffin decision was rendered, UM and UIM coverages –- as distinguished from liability coverage -- have been held to be personal to the insured and not assigned to a specific vehicle. In Dupin v. Adkins, Ky.App., 17 S.W.3d 538, 643 (2000), we held that:

> UIM is personal insurance which must follow the insured regardless of whether the insured is injured as a motorist, a passenger in a private or public vehicle, or a pedestrian, and is only limited by the actual, valid exclusions of each insurance policy.

Id. (citations omitted). The specific exclusion of "owned but not listed for coverage" relating to UM and UIM protection has been held unreasonable and unenforceable. Chaffin, supra, and Hamilton Mutual Insurance Company v. United States Fidelity & Guaranty Company, Ky.App., 926 S.W.2d 466 (1996).

In Hamilton, this Court addressed the same issues raised in this appeal. The relevant facts in Hamilton are identical to those before us now. The only distinction involves the number of vehicles. In Hamilton, the insured, Dr. Ray Allen

Gibson, owned three motor vehicles which were insured by three different carriers. The vehicle involved in the collision was registered in the name of Dr. Gibson's professional service corporation and was insured by USF&G. His other vehicles were registered in his own name and were insured by United Services Automobile Association (USAA) and Hamilton Mutual.

Mrs. Gibson was driving the vehicle registered in the name of the PSC with her daughter as a passenger when she was involved in an accident with an underinsured vehicle. Both Mrs. Gibson and her daughter were injured. The Gibsons sought to recover under the UIM provisions of all three insurance policies. Hamilton and USAA relied on policy exclusions very similar to National General's exclusion, which disclaimed their liability for UM or UIM benefits to any person injured while occupying a vehicle not listed for such coverage under their policy.

The trial court in Hamilton held that **all three policies** provided coverage for the Gibsons' damages that exceeded the liability coverage of the tortfeasor. Our opinion affirming the decision of the trial court in Hamilton addresses every argument made by National General. Therefore, we shall reiterate in some detail the reasoning developed in that case and based upon the Chaffin precedent:

In Chaffin v. Kentucky Farm Bureau Ins. Co., Ky., 789 S.W.2d 754 (1990), our Supreme Court held that Farm Bureau owed uninsured motorist (UM) coverage to its insured under three separate policies issued by Farm Bureau covering three separate vehicles. In doing so, the Court determined that the "owned but not scheduled for coverage" clause in the Farm Bureau policies was "nearly incapable of rational construction" and "so broadly drawn as to obfuscate its purpose in prevention of fraud, if indeed such is its primary purpose." . . .

Although we are presented with a situation in which three separate carriers insured the three vehicles for UIM, as well as UM, the foregoing rationale applies as forcefully in this case as it did in Chaffin. Quite simply, had the Gibsons been injured while riding as a passenger in another's vehicle, there would be no dispute that coverage would be available from all three carriers. We must conclude that the "owned but not scheduled for coverage" provisions in Hamilton's and USAA's policies are unreasonable as well.

Hamilton and USAA urge this Court to refrain from expanding the concept of "stacking" where three policies of coverage were issued by three different insurance companies. Unfortunately, given the logic and reasoning thus espoused by our Supreme Court, we are unable to conclude that the instant case presents a distinction with a difference. If a different result is to come from these differences, our Supreme Court must direct it. The public policy of Kentucky regarding stacking was first enunciated in Meridian Mut. Ins. Co. v. Siddons, Ky., 451 S.W.2d 831 (1970), in which the Supreme Court held that stacking of UM coverage by the named insured was permitted where there were separate policies for each vehicle insured and where the named insured had not rejected coverage in writing. A litany of cases

> followed in which the Supreme Court consistently reiterated its reliance upon the personal nature of UM coverage, the reasonable expectation that payment of separate premiums results in separate coverages, and the public policy against provisions which deny such coverage.
>
> . . .
>
> Hamilton points out that Chaffin and [Allstate Ins. Co. v.] Dicke [Ky., 862 S.W.2d 327 (1993)] are distinguishable in that the both involved a single carrier. Nonetheless, based upon the current public policy supporting stacking, it is evident that the identity and number of carriers is irrelevant. The considerations thus far focus solely upon the reasonable expectations of an insured who purchases separate items of coverage. Our Supreme Court has mandated that UM and UIM coverage is personal to the insured and, once provided, it cannot be taken away through the use of anti-stacking provisions. Therefore, we must conclude that the trial court was correct in finding that the Gibsons had available to them UIM coverage from USF&G, Hamilton, and USAA. If anything, we find even more reason for allowing multiple UIM coverage from three separate policies rather than from one policy by one company covering three vehicles. (Some citations omitted; emphasis added.)

Id. at 468-470.

We are compelled to hold that the trial court erred as a matter of law in upholding the policy exclusion of National General and that Kentucky law permits Hall to stack the UM/UIM provisions of the National General and General Security policies.

The judgment of the Boyd Circuit Court is vacated, and the matter is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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