

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001927-MR

PATRICIA MOORE and
POLLY ANN RICE

APPELLANTS

v. APPEAL FROM CLAY CIRCUIT COURT
HONORABLE R. CLETUS MARICLE, JUDGE
ACTION NO. 97-CI-00284

GLOBE AMERICAN CASUALTY COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY, AND VANMETER, JUDGES.

McANULTY, JUDGE: Patricia Moore (Moore) and Polly Ann Rice (Rice) appeal from two orders of the Clay Circuit Court pertaining to insurance coverage in an automobile collision case. The first order granted summary judgment in favor of Moore's insurer, Globe American Casualty Company (Globe American). The second order denied Moore and Rice's motion to amend, alter or vacate summary judgment. This case raises a public policy issue concerning the automobile insurance

application of Globe American. Moore and Rice argue that the application did not accurately state that uninsured motorist coverage is mandatory in Kentucky. Had the application comported with the law in Kentucky, Moore would not have rejected such coverage. Thus, she is entitled to uninsured motorist coverage as a matter of law. However, because Kentucky law is clear that an insured may reject uninsured motorist coverage and Moore rejected uninsured motorist coverage in writing on her insurance application, we affirm.

On October 19, 1995, a vehicle driven by Ralph Wayne Morgan hit Moore's vehicle head-on. Rice was a passenger in Moore's vehicle at the time of the accident.

As a result of the collision, Moore and Rice made claims for uninsured motorist benefits against Moore's automobile insurance policy with Globe American. Globe American denied coverage, however, because Moore had rejected uninsured motorist coverage in her application for the policy.

Less than two years after the accident, Moore and Rice filed a complaint against Ralph Wayne Morgan, Michael Moore (the owner of the vehicle that Morgan was driving), F.D. Sams d/b/a Dell Sams Insurance Agency (the agent that issued the Globe American policy), and Globe American. Eventually, Globe American made a motion for summary judgment on the basis that Moore rejected uninsured motorist coverage on the insurance

application. The trial court found that Moore had rejected the coverage and granted Globe American's motion for summary judgment.

Two days after the trial court granted Globe American's motion for summary judgment, Moore and Rice filed a motion to alter, amend or vacate the findings of fact, conclusions of law and judgment of the trial court. In support, Moore and Rice argued that the judgment did not address any of the issues that they raised as the basis for their claim for uninsured motorist coverage. In addition, they contended that the court's findings of fact were insufficient to address the issues that they raised. In their motion, Moore and Rice reiterated that their claim for uninsured motorist benefits was founded on a policy argument. That argument was and continues to be that the insurance policy that Moore obtained from Globe American did not follow the requirements of Kentucky law as it applies to uninsured motorist coverage. Because the failure to comply with the law occurred as a result of Globe American's actions, Moore must be deemed as a matter of law to have uninsured motorist coverage. The trial court denied this motion, and Moore and Rice filed this appeal.

"The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the

moving party was entitled to judgment as a matter of law.”
Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky.App. 1996) (citing
Kentucky Rules of Civil Procedure (CR) 56.03).

Moore and Rice’s fundamental argument on appeal is
based on KRS 304.20-020(1), which is as follows:

No automobile liability or motor vehicle
liability policy of insurance insuring
against loss resulting from liability
imposed by law for bodily injury or death
suffered by any person arising out of the
ownership, maintenance or use of a motor
vehicle shall be delivered or issued for
delivery in this state with respect to any
motor vehicle registered or principally
garaged in this state unless coverage is
provided therein or supplemental thereto, in
limits for bodily injury or death set forth
in KRS 304.39-110 under provisions approved
by the commissioner, for the protection of
persons insured thereunder who are legally
entitled to recover damages from owners or
operators of uninsured motor vehicles
because of bodily injury, sickness or
disease, including death, resulting
therefrom; provided that the named insured
shall have the right to reject in writing
such coverage . . .

The application for insurance that Moore completed
with Globe American offered Moore uninsured motorist coverage in
the following provision:

**OFFER TO PROVIDE UNINSURED MOTORISTS AND
UNDERINSURED MOTORISTS BODILY INJURY
COVERAGES.**

You have the right to purchase Uninsured
Motorists and Underinsured Motorists
Coverages. These coverages may be purchased

in amounts not greater than your limit(s) of Bodily Injury Liability Coverage.

Your state law may limit your right to choose among these coverages. If you do not understand your choices, please ask your agent to explain them to you.

Please check the appropriate block to indicate your choice:

I hereby reject both of the above coverages.

I want only the coverages and limits shown on the front of this application.

Moore checked the first block, which indicated she was rejecting both uninsured and underinsured motorist coverage. In addition to checking the block, Moore signed and dated her rejection of that coverage in the space provided on the application.

Based on the language of KRS 304.20-020(1), Moore argues that the application misled her to believe that she had already purchased all the insurance that was required by law and that uninsured motorist coverage was nothing but another type of add-on coverage that she could buy at her option -- like the underinsured motorist coverage that was lumped into the same provision in the application. But under KRS 304.20-020(1), uninsured motorist coverage is mandatory, not optional. Thus, the application constituted a false explanation. And the question of whether or not Moore would have purchased uninsured motorist coverage had she not been given this false explanation

is an issue of fact that should be determined by a jury.

Appellant believes that because genuine issues of material fact remain, the trial court erred in granting summary judgment to Globe American.

Although raised in a different context, Moore's argument that the mandatory language in the statute does not authorize an insurance company to present uninsured motorist coverage as extra coverage is not unlike the insurer/appellant's argument in Allstate Ins. Co. v. Dickie, 862 S.W.2d 327, 329 (Ky. 1993) (holding that anti-stacking provision in automobile insurance policy was void with regard to underinsured motorist insurance). The Kentucky Supreme Court held that in substance, the distinction between the uninsured and underinsured statutes was more illusory than real. See id. As the Dickie court interpreted the uninsured motorist statute (KRS 304.20-020), the insured must receive the coverage unless it is rejected. And under the underinsured motorist statute (KRS 304.39-320), the insured must get the coverage if it is requested. See id. In either case, the decision to obtain uninsured or underinsured coverage rests exclusively with the insured.

In this case, the application offered both uninsured and underinsured motorist coverage in the same provision. But we do not believe this runs afoul of the statutory framework. When offered uninsured motorist coverage, Moore rejected it as

she had the right to do under the statute. She will not be permitted in this appeal to avoid her unequivocal, written rejection by arguing that she would not have rejected the coverage had she known it was mandatory. See Midwest Mut. Ins. Co. v. Wireman, 54 S.W.3d 177, 182 (Ky.App. 2001) (holding that an insured who waived uninsured motorist coverage could not rely on parol evidence to avoid the effect of his waiver once he decided he needed the coverage).

Having concluded that Moore's written rejection of uninsured motorist coverage means she was entitled to no uninsured motorist benefits, we see no need to address Moore's additional arguments pertaining to (1) deceptive business practices, or (2) whether the trial court failed to give proper weight to or mischaracterized Moore's arguments below.

We affirm the trial court's summary judgment in favor of Globe American.

ALL CONCUR.

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