

RENDERED: JANUARY 28, 2005; 2:00 p.m.
TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002661-MR

DEBRA DOWELL AND TAMATHA HASTING

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 02-CI-004636

SAFE AUTO INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TACKETT, JUDGE: Debra Dowell and Tamatha Hasting appeal from an order of the Jefferson Circuit Court granting summary judgment in favor of Safe Auto Insurance Company. At issue is whether Safe Auto is obligated to provide insurance coverage for a hit and run accident under Dowell's policy which includes uninsured motorist coverage. Because the policy does not specifically

cover accidents involving unidentified drivers and the Kentucky Motor Vehicle Reparations Act does not require insurers to provide coverage for hit and run accidents, we affirm the trial court's decision.

Dowell's vehicle was rear-ended by a Chevy Blazer as she was driving along Preston Highway in Louisville with Hasting in the passenger seat. Initially, the Blazer's driver got out and asked whether Dowell and Hasting were hurt. He then fled the scene of the collision before the police arrived. Dowell and Hasting were both seriously injured in the accident. The driver of the Blazer was never identified.

Dowell submitted an insurance claim to Safe Auto under her uninsured motorist coverage. Safe Auto denied the claim on the grounds that its policy did not cover hit and run accidents. Dowell and Hasting sued the insurance company. Safe Auto made a motion for summary judgment on the basis of its argument that no coverage existed for hit and run accidents. The trial court agreed, and this appeal followed.

Summary judgment is only appropriate where there is no genuine issue of material fact. Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476 (Ky. 1991). Dowell and Hasting argue that Safe Auto's policy should cover a hit and run accident because such coverage is not specifically excluded from the section governing uninsured motorist coverage, that any

ambiguity in the policy must be construed in their favor, and that public policy mandates that Safe Auto cover such accidents. Kentucky Revised Statute (KRS) 304.20-020 outlines the coverage which automobile insurers are legally required to provide as follows:

(1) 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; and provided further that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein

because of insolvency; an insured motor vehicle with respect to which the amounts provided, under the bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, are less than the limits described in KRS 304.39-110; and an insured motor vehicle to the extent that the amounts provided in the liability coverage applicable at the time of the accident is denied by the insurer writing the same.

Dowell had not rejected uninsured motorist coverage; indeed, Safe Auto agrees that its policy provided uninsured motorist coverage. Nevertheless, the statute does not define "uninsured motorist" to include the driver of a hit and run vehicle. Further, Safe Auto's policy defines "uninsured motor vehicle" as a vehicle to which no insurance policy "applies at the time of the accident." No mention of hit and run vehicles is made.

The Kentucky Supreme Court has previously considered whether public policy requires auto insurers to extend coverage beyond the policy limits. Burton v. Farm Bureau Insurance Company, 116 S.W.3d 475 (Ky. 2003), involved an insurance policy which specifically covered hit and run accidents, but required physical contact between the insured's car and the unidentified motor vehicle. The plaintiff in Burton drove his vehicle into a ditch while taking evasive action to avoid an unidentified vehicle. Since there was no contact between the vehicles, the

insurance company asserted that it had no obligation to provide coverage. The Court agreed, stating as follows:

"KRS 304.20-020(1) does not require coverage for damages caused by an "unidentified motor vehicle," e.g., a "hit and run" vehicle, whose insurance status is unknown, and KRS 304.20-020(2) does not include such a vehicle within the additional definitions of an "uninsured motor vehicle." . . . However, the statute does recognize that individual insurers may, by contractual definitions, provide coverages and terms and conditions in addition to those required by the statute.

Burton at 478. Although there is a distinction to be made between the facts in Burton and those in the case at hand, the Court's reasoning applies to Dowell's argument that public policy requires Safe Auto to provide coverage for hit and run accidents. In addressing the public policy argument presented by the plaintiff in Burton, the Court concluded

Uninsured motorists coverage is a public policy mandated by statute. KRS 304.20-020 has remained virtually unchanged since 1966. It requires coverage for accidents caused by uninsured vehicles, but not by unidentified vehicles whose insurance status is unknown. The inclusion of "hit and run" vehicles within the UM coverage of a particular insurance policy is a voluntary contractual extension of the statutory definition of an "uninsured motor vehicle" that can be "subject to the terms and conditions of such coverage" per KRS 304.20-020(2).

Burton at 479. Thus, Dowell and Hasting fail to demonstrate that Safe Auto is required, as a matter of public policy, to cover hit and run accidents.

The United States District Court for the Western District of Kentucky has already reviewed the issue of whether the language in Safe Auto's policy regarding uninsured motorist coverage is ambiguous. Allen v. Safe Auto Insurance Company, 332 F.Supp.2d 1044 (W.D.Ky., 2004), involved a plaintiff who had purchased a car insurance policy from Safe Auto which included uninsured motorist coverage. Allen was involved in a hit and run accident and Safe Auto argued that its policy did not cover such an accident. The language in Allen's policy was identical to the language in Dowell's policy. Both defined "uninsured motor vehicle" as a vehicle to which "no coverage applies" at the time of the accident. Neither policy mentioned hit and run accidents. The Court held that Safe Auto had "narrowly tailored its coverage to include only the minimum requirements under KRS 304.20-020, and its definition of "uninsured motor vehicle" does not include motor vehicles for which insurance status cannot be determined. As set forth in Kentucky case law, this court should not presume that an unidentified driver has no insurance." Allen at 1047. The Allen court found no ambiguities in Safe Auto's policy language. Its reasoning, in part, was based on its interpretation of the Burton decision. The Kentucky Supreme Court in Burton recognized that the doctrine of reasonable expectations only applies when there are ambiguities in a contract. Thus, Allen was not entitled to

recover for her hit and run accident under Safe Auto's policy. We agree with the reasoning of the United States District Court. Consequently, we hold the Jefferson Circuit Court correctly determined that there was no genuine issue of material fact regarding the failure of the Safe Auto's policy to provide coverage for hit and run accidents.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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