

RENDERED: DECEMBER 16, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001756-MR

PAULA GRIMES

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 00-CI-007074

CONNIE SMITH and
NATIONWIDE MUTUAL INSURANCE COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KNOPF AND TACKETT, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

ROSENBLUM, SENIOR JUDGE: At issue in this appeal is the summary dismissal of appellant's complaint against appellee Nationwide Mutual Insurance Company on the basis that appellee Connie Smith did not fall within the definition of "insured" under a homeowner's policy Nationwide issued to Smith's mother, Betty

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Tincher. The trial judge concluded that under the undisputed facts of the case and unambiguous language of the policy in question Connie Smith was not an insured to which coverage extended as she was not a member of Ms. Tincher's household at the time of the incident which precipitated this appeal. Finding no error in that determination, we affirm the trial court's summary judgment in this case.

Ms. Tincher owns a residence located at 14045 Dixie Highway in Louisville, Kentucky where she lived with Ms. Smith, her adult daughter, until she moved to a separate residence sometime in 1998. After her relocation, Ms. Tincher allowed her daughter to continue living at the Dixie Highway residence without a specific term of occupancy or being required to pay rent. In March, 2000, while Ms. Smith was living at the Dixie Highway address with her ex-boyfriend and another gentleman, Larry Keys, appellant Paula Grimes was bitten by Ms. Smith's dog "Fred" during a visit with Mr. Keys at that residence.

Prior to this incident, appellee Nationwide Mutual Insurance Company had issued a homeowner's insurance policy to Ms. Tincher which was in effect on the date the dog bite occurred. In the course of litigation filed to recover damages she allegedly sustained from the dog bite, Ms. Grimes pursued a claim against Nationwide alleging that Ms. Smith was an "insured" under the homeowner's policy and that Nationwide

therefore had an obligation to indemnify her for any liability which might be imposed upon her by reason of the litigation. The trial judge subsequently granted Nationwide's motion for summary judgment, concurring in its contention that because Ms. Smith could not be construed to be a member of Ms. Tincher's household she did not fall within the policy's description of "insured" and thus no coverage would be afforded her under the contract. We find no error in the trial judge's thorough and well-reasoned analysis supporting that conclusion.

As noted by the trial judge, in the absence of ambiguities which call the meaning of the policy into question or a statute to the contrary, the terms of a policy of insurance are to be enforced as written. Goodman v. Horace Mann Insurance Company, 100 S.W.3d 769 (Ky.App. 2003). Unless the terms employed in the policy have acquired a technical meaning in law, they are to be interpreted "according to the usage of the average man and as they would be read and understood by him in light of the prevailing rule that uncertainties must be resolved in favor of the insured." Fryman v. Pilot Life Insurance Company, 704 S.W.2d 205, 206 (Ky. 1986). The policy at issue in this appeal focuses upon the following definition of "insured":

3. "**Insured:** means you and the following who live in your household:

a. your relatives

Appellant takes the position that she is a member of Ms. Tincher's household merely because she resides at the insured location. We agree with the trial court that such an interpretation is at odds not only with the ordinary meaning of "household" as used in the homeowner's policy, but with well-established caselaw interpreting that term.

In Sutton v. Shelter Mutual Insurance Company, 971 S.W.2d 807 (Ky.App. 1997), this Court had occasion to address a similar argument concerning the meaning of the term "household." The trial judge in that case determined that a 26-year-old son of the policyholder who lived in a mobile home on his father's land was not a member of the father's household. In affirming that conclusion, the Sutton court offered the following analysis which we find dispositive of this appeal:

In our opinion, the term "household" is unambiguous and easily enough understood. The mere fact that the appellants attempt to muddy the water and create some question of interpretation does not necessarily create an ambiguity. Terms used within insurance contracts "should be given their ordinary meaning as persons with the ordinary and usual understanding would construe them." *City of Louisville v. McDonald*, Ky.App., 819 S.W.2d 319 (1991). The 1981 New College Edition of *The American Heritage Dictionary of the English Language* defines household as "a domestic establishment including the members of a family and others living under the same roof." Further, *Black's Law Dictionary* 666 (5th ed.1979) defines household as "[a] family living together. [Cite omitted.] Those who dwell under the

same roof and compose a family.... Term 'household' is generally synonymous with 'family' for insurance purposes, and includes those who dwell together as a family under the same roof. [Cite omitted.]" The trial court's determination is in keeping with cases in which this Court has defined "household" as "persons dwelling together as a family under the same roof." *Napier*, 641 S.W.2d at 48; *Gray*, 814 S.W.2d at 929.

Based on the undisputed facts, to find that Kelly was a member of Elliot's household would require us to abandon common sense. "[C]ourts should not make a different insurance contract for the parties by enlarging the risk contrary to the natural and obvious meaning of the existing contract." *Pierce v. West American Insurance Co.*, Ky.App., 655 S.W.2d 34, 36 (1983). Thus, we adjudge that summary judgment in favor of Shelter was proper. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476 (1991).

971 S.W.2d at 808-09. It is equally clear from the undisputed facts of the instant case that Ms. Smith was not living together with her mother under the same roof, but was merely occupying a separate residence owned by her mother. We find this situation indistinguishable from the rationale expressed in Sutton. The facts as alleged by appellant require us to concur in the trial judge's assessment that Ms. Tincher and Ms. Smith had established separate households in separate locations and therefore they were not living as a family under the same roof. To conclude otherwise would require us to "abandon common sense."

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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