

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001797-MR

BRENDA MOLLETT

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE DANIEL R. SPARKS, JUDGE
ACTION NO. 02-CI-00061

DEAN W. WRIGHT AND
GRANGE INDEMNITY INSURANCE COMPANY

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE, JOHNSON AND McANULTY, JUDGES.

McANULTY, JUDGE: This is an appeal from the summary judgment granted in favor of Grange Indemnity Insurance Company (Grange) by the Johnson Circuit Court. In granting summary judgment, the trial court determined that underinsured motorist coverage was not available for Brenda Mollett (Brenda) for an automobile accident in which she was involved while driving a car owned by her son. Because we conclude that Brenda was plainly not an insured as defined by the terms of her son's underinsured motorist contract, we affirm.

The facts of this case are simple and undisputed. The accident occurred on December 7, 2001, in Johnson City, Kentucky. Brenda was driving a 1995 Mazda vehicle that her son, Casey Mollett (Casey), owned and that she had permission to drive. An automobile driven by Dean W. Wright (Wright) struck the 1995 Mazda, injuring Brenda. At the time of the accident, Brenda did not live with Casey.

Brenda filed suit against Wright. About eight months later, she amended her complaint to name Grange, the insurer with whom Casey had underinsured motorist coverage. Brenda named Grange as a defendant because she believed that Wright's insurance policy would be insufficient to compensate her for her damages.

Eventually, Wright's insurance company paid its policy limits to Brenda, which left the underinsured motorist claim against Grange as the only claim to be resolved. The Johnson Circuit Court granted summary judgment to Grange, and Brenda filed this appeal.

The only question raised in this appeal is whether the trial court correctly found that Brenda was not entitled to underinsured motorist benefits under Casey's auto insurance policy.

The standard of review of a trial court's granting of 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). Interpretation and construction of an insurance contract is a matter of law for the court. See Stone v. Kentucky Farm Bureau Mutual Ins. Co., 34 S.W.3d 809, 810 (Ky. App. 2000).

In interpreting the language of the insurance contract at issue in this case, we are guided by some basic insurance law principles. First, ambiguous terms within the policy must be construed in favor of the purported insured. See id. at 810-811. Second, the policy must be given a reasonable interpretation in accordance with the average person's understanding. See id. at 811. Third, there is no requirement that every doubt be resolved against the insurer. See id. Fourth, exclusions shall be strictly construed to make insurance effective. See Transport Ins. Co. v. Ford, 886 S.W.2d 901, 904 (Ky. App. 1994). Fifth, in construing an insurance policy, the policy shall be read as a whole. See Sun Life Ins. Co. v. Taylor, 108 Ky. 408, 56 S.W. 668 (1900). Sixth, endorsements attached to the contract are part of the contract, and the endorsements and the policy must be construed together. See Bobich v. Oja, 104 N.W.2d 19, 24-5 (Minn. 1960).

The first step in resolving our issue is to examine the language of the insurance policy. The provisions pertaining

to underinsured motorist coverage are provided in an endorsement to the policy:

Insuring Agreement

- A. We will pay damages which an **insured** is legally entitled to recover from an **underinsured motorist** because of **bodily injury**:
1. Sustained by an **insured**; and
 2. Caused by a motor vehicle accident.

We will pay under this coverage only after the **underinsured motorist's** limits of liability under all applicable bodily injury liability bonds or policies have been exhausted by payment of a judgment.

Damages payable under this coverage are compensatory damages; they do not include punitive or exemplary damages.

- B. **"Insured"** as used in this endorsement means you or any **family member**.

The term "family member" is defined in the auto policy agreement as follows:

"Family member" means a person related to you by blood, marriage or adoption and whose principal residence is at the location shown in the Declarations.

Brenda argues that under KRS 304.39-320, that section of the Motor Vehicle Reparations Act pertaining to underinsured motorist coverage, underinsured motorist coverage was not properly excluded in this case because the endorsement impermissibly changed the definition of "insured" as the term

applies to underinsured motorist coverage. Brenda contends that this switch is confusing and ambiguous. As such, the language should be construed against Grange and in favor of coverage for Brenda. In addition, Brenda argues that construing the underinsured motorist endorsement against coverage for her violates public policy because she is an innocent victim of another's negligence, and she is not being fairly compensated.

A plain reading of the underinsured motorist endorsement and the policy, however, shows that underinsured motorist coverage does not apply to Brenda. The endorsement is simply not ambiguous or confusing. Although Brenda is related to Casey by blood, she does not reside with him, and the trial court properly granted summary judgment to Grange. Moreover, this result does not violate public policy because an insurance company has a right to base the premiums it charges -- in this case, \$20.00 for a six-month period -- on the number of persons who will drive any covered vehicle.

For the foregoing reasons, the order of the Johnson Circuit Court granting summary judgment to Grange is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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INDEMNITY INSURANCE COMPANY:

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