

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-000694-MR

KEVIN GILL

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 03-CI-01902

SPECIALTY NATIONAL INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, HENRY, AND KNOPF, JUDGES.

KNOPF, JUDGE: Kevin Gill, a police officer for the city of Independence, appeals from a summary judgment of the Kenton Circuit Court, entered February 11, 2005, dismissing his claim for underinsured motorist (UIM) insurance benefits against the city's automobile insurer, Specialty National Insurance Company. Because we agree with the trial court that Gill was not covered by the city's Specialty National policy, we affirm.

In August 2001, a passing motorist struck and injured Gill while he was directing traffic on Mills Road in

Independence near the entrance to Mills Road Park. When the tortfeasor's insurance limits failed to cover Gill's damages, Gill brought suit against Specialty National and sought UIM benefits under the city's liability policy covering the cruiser assigned to him at the time of his injury. The policy's UIM endorsement provided in pertinent part as follows:

B. Who Is An Insured

1. You.
2. If you are an individual, any "family member."
3. Anyone else "occupying" a covered "auto."

. . .

F. Additional Definitions

As used [in] this endorsement

. . .

2. "Occupying" means in, upon, getting in, on, out or off.

The policy also provided that "[t]hroughout this policy the words 'you' and 'your' refer to the Named Insured shown in the Declarations." The named insured was the City of Independence.

Gill contends that UIM coverage extends to him either because he should be deemed a named insured or because he was occupying a covered auto. In Ohio Casualty Insurance Company v. Stanfield,¹ however, our Supreme Court indicated that a similar policy issued to a corporate employer did not include employees within the class of named insureds. Employees were covered, rather, only if injured while occupying a covered vehicle.

¹ 581 S.W.2d 555 (Ky. 1979).

Philadelphia Indemnity Insurance Company v. Morris,² on which Gill relies, is not to the contrary. In Morris our Supreme Court invalidated a business policy UIM provision that in effect excluded employees from coverage to the extent of their workers' compensation benefits. This exclusion rendered the UIM coverage largely illusory, the Court explained, because the employees rather than the corporate named insured were the only ones who could benefit from personal injury coverage. Without the secondary employee coverage, therefore, the policy provided virtually no coverage at all. Morris did not hold, however, that the employees must be deemed named insureds or that secondary coverage could not be limited to persons injured while occupying covered autos. It did not, that is to say, overrule Stanfield. To the extent that Gill argues to the contrary, he is simply mistaken. The trial court did not err, therefore, by ruling that Gill was not covered under the city's policy as a named insured.

Nor did the trial court err by ruling that Gill was not occupying his vehicle at the time he was injured and thus was not covered under the city's policy as a secondary insured. To "occupy" a vehicle for the purposes of insurance provisions such as this one, our Supreme Court held in Kentucky Farm Bureau

² 990 S.W.2d 621 (Ky. 1999).

Mutual Insurance Company v. McKinney,³ the injured person must satisfy the following criteria:

(1) There must be a causal relation or connection between the injury and the use of the insured vehicle; (2) The person asserting coverage must be in a reasonably close geographic proximity to the insured vehicle, although the person need not be actually touching it; (3) The person must be vehicle oriented rather than highway or sidewalk oriented at the time; and, (4) The person must also be engaged in a transaction essential to the use of the vehicle at the time.⁴

Here Gill was in the roadway exposed to traffic not because of his vehicle, but rather because of his non-vehicle-related job. He was not vehicle oriented; i.e., he was not entering or exiting the vehicle or attempting to service or secure it. He was, rather, oriented toward the highway and the traffic he was trying to control. And he was not engaged in a transaction essential to the use of the vehicle, but had rather, in the unusual circumstances of police work, parked his vehicle in the roadway while he performed duties that had nothing to do with securing its future use. We agree with the trial court, therefore, that Gill cannot be deemed to have been occupying his vehicle at the time he was injured, and thus he was not covered

³ 831 S.W.2d 164 (Ky. 1992).

⁴ 831 S.W.2d at 168.

under the UIM provision of the city's Specialty National policy.⁵
There being no material factual dispute and Specialty National
being entitled to judgment as a matter of law,⁶ we affirm the
February 11, 2005, summary judgment of the Kenton Circuit Court.

ALL CONCUR.

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⁵ *Cf.* Petika v. Transcontinental Insurance Company, 855 A.2d 85 (Pa.Super. 2004) and Curry v. Huron Insurance Company, 781 A.2d 1255 (Pa.Super. 2001) (applying the same four factors to similar circumstances in which the injured person was job rather than vehicle oriented).

⁶ Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).