

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000469-MR

GRANGE MUTUAL CASUALTY COMPANY

APPELLANT

v. APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
ACTION NO. 02-CI-00462

SUSIE DAVIS HALCOMB

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: ACREE AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

ACREE, JUDGE: This is an appeal from a Judgment of the Letcher Circuit Court for underinsured motorists (UIM) damages based upon the circuit court's finding that the UIM policy's non-household-resident exclusion did not apply to the driver. We conclude that the driver, Susie Davis Halcomb (Halcomb) was not insured as defined by the terms of her mother's UIM contract and thus, we reverse the circuit court's judgment.

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

Halcomb's accident occurred on November 9, 2000, in Whitesburg, Kentucky. A vehicle operated by Richard Marsee (Marsee) struck the vehicle Halcomb was driving, a vehicle owned by Halcomb's mother, Gertrude Davis (Davis). Halcomb had borrowed her mother's vehicle to attend a medical appointment. At the time of the accident, Halcomb did not live with Davis. Approximately one and a half years prior to the accident, Halcomb married Patrick Halcomb. The couple lived together about a mile away from Davis.

On November 7, 2002, Halcomb filed suit against Marsee and Grange Mutual Casualty Company (Grange), the insurer with whom Davis had UIM coverage. Halcomb sought UIM damages from Grange alleging she was insured under her mother's policy.

Halcomb settled with Marsee and Grange moved for summary judgment and/or a judgment upon the pleadings on the basis that Halcomb was not living in Davis' household at the time of the collision. The insurance agreement between Davis and Grange provided an exclusion for UIM coverage for persons who were not members of the insured's household. The circuit court denied Grange's motion noting that questions of fact remained unresolved.

Grange renewed its motion and the circuit court again denied Grange's motion and noted that it was of the opinion that UIM coverage was available under Davis' policy. The Court granted Halcomb's motion for summary judgment as to liability, and the issue of damages was tried to a jury on October 10, 2005. The jury

awarded Halcomb \$35,371.30. Grange moved to set aside the judgment and was denied. This appeal followed.

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. *Id.* at 810-11. Second, the policy must be given a reasonable interpretation in accordance with the average person's understanding. *Id.* at 811. Third, there is no requirement that every doubt be resolved against the insurer. *Id.* Fourth, exclusions shall be strictly construed to make insurance effective. *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. *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. *Bobich v. Oja*, 104 N.W.2d 19, 24-5 (Minn. 1960).

The first step in resolving this issue is to examine the language of the insurance policy, reading as follows. The provisions pertaining to underinsured motorist coverage are provided in an endorsement to the policy, reading as follows:

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 terms "you" and "family member" are defined in the auto policy agreement as follows:

- A. Throughout this policy, "you" and "your" refer to:
 - 1. The "named insured" shown in the Declarations; and
 - 2. The spouse if a resident of the same household.
- . . .
- F. "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.

On the declarations page of the policy, Halcomb is listed under her unmarried name as a driver, but not as the named insured. Halcomb notes that on several occasions her mother contacted her local Grange insurance agent to notify him that Halcomb had married and to see what, if any, changes needed to be made to her policy. Davis testified in her deposition that her agent always told her that her policy was fine and that he would take care of any necessary changes. Halcomb continued to be listed in the section of the policy labeled "Drivers."

The insurance agreement at issue was between Grange and Davis. Davis is listed in the declarations as the named insured. The fact that Halcomb is listed on the declaration page as a potential driver of one of Davis' insured automobiles is irrelevant.

Our Supreme Court clarified the purpose of listing potential drivers in the insurance policy in *True v. Raines*, 99 S.W.3d 439 (Ky.2003), stating:

It is not unusual for a liability insurance company to list on a policy's declarations sheet those persons who, in addition to the named insured, will be driving the insured vehicle. This not only serves an underwriting purpose, but it also eliminates potential disputes as to whether the driver's use was permissive, so as to obligate the insurer to provide liability coverage under the policy in the event that person subsequently is involved in an accident in the insured vehicle.

True, 99 S.W.3d at 444-445 (citation omitted).

As a non-household-resident, Halcomb was specifically and unambiguously excluded from the UIM portion of the policy. Halcomb simply did not meet the terms for coverage under the UIM portion of the policy on the date of the accident and should not be covered under Davis' policy for UIM coverage.

For the foregoing reasons, we reverse the judgment of the Letcher Circuit Court and remand for entry of a new order consistent with this opinion.

ALL CONCUR.

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