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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001521-MR

LINDA ANGEL, ADMINISTRATOR OF
THE ESTATE OF MIKEL D. ANGEL

APPELLANT

v.

APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 04-CI-00262

METROPOLITAN PROPERTY AND
CASUALTY INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, DIXON AND TAYLOR, JUDGES.

ACREE, JUDGE: Linda Angel, Administrator of the Estate of Mikel Angel,
appeals from the partial summary judgment order entered by the Clark Circuit
Court in favor of Metropolitan Direct Property and Casualty Insurance Company.
Finding no error, we affirm.

Linda and her late husband, Mikel, were involved in a vehicle collision with another motorist, Mark King. Both Linda and Mikel suffered injuries as a result of the accident, Linda's injuries being more severe than Mikel's. Linda settled her claim and that claim itself is not relevant to the issue before us.

Mikel's bodily injuries consisted of a concussion, headaches, lacerations to his arm and forehead, numerous contusions, and a shoulder injury, and he suffered from neck, back and right arm pain.

Five months after the accident, Mikel was diagnosed with Post Traumatic Stress Disorder (PTSD). The diagnosis was based on Mikel's nightmares and flashbacks of witnessing his injured wife and believing her to be dead. Mikel experienced substantial emotional instability during his treatment for PTSD and blamed himself for his wife's injuries.

At the time of the accident, the Angels had an automobile insurance policy with Metropolitan. The Angels purchased underinsured motorist (UIM) coverage, with policy limits of \$100,000.00 per person and \$300,000.00 per accident.

Mikel died of an injury unrelated to the accident in this case and Linda was appointed as administrator of his estate. Linda initiated suit filed this litigation seeking damages against King and his insurer, Kentucky Farm Bureau. Linda subsequently amended her complaint to assert a claim against Metropolitan for UIM benefits.

Metropolitan then filed a motion for partial summary judgment seeking to dismiss the claim Linda asserted on Mikel's behalf for damages based on Mikel's PTSD. Metropolitan argued the PTSD was not compensable under the policy. The trial court granted the motion on that basis. All remaining issues were tried before a jury in April 2007 and a judgment was entered on June 29, 2007. This appeal followed.

The sole issue before us is whether the trial court erred in excluding Mikel's claim for damages relating to his PTSD. We hold it did not.

Interpretation of an insurance policy is a question of law which we review *de novo*. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky.App. 1998). The goal of any court in interpreting a contract is to ascertain and to carry out the original intentions of the parties, *Wilcox v. Wilcox*, 406 S.W.2d 152, 153 (Ky. 1966), and to interpret the terms employed, in light of the usage and understanding of the average person. *Fryman v. Pilot Life Insurance Co.*, 704 S.W.2d 205, 206 (Ky. 1986). Unless the terms contained in an insurance policy have acquired a technical meaning in law, they "must be interpreted according to the usage of the average man and as they would be read and understood by him in the light of the prevailing rule that uncertainties and ambiguities must be resolved in favor of the insured." *Id.*; *Stone v. Kentucky Farm Bureau Mut. Ins. Co.*, 34 S.W.3d 809, 811 (Ky.App. 2000). Furthermore, under the "doctrine of reasonable expectations," an insured is entitled to all the coverage he may reasonably expect to be provided according to the terms of the policy. *Hendrix v. Fireman's Fund Ins. Co.*, 823 S.W.2d 937, 938

(Ky.App. 1991); *Woodson v. Manhattan Life Ins. Co.*, 743 S.W.2d 835, 839 (Ky. 1987).

Moreover, a policy of insurance is to be construed liberally in favor of the insured and if, from the language of the policy, there is doubt or uncertainty as to its meaning, and is susceptible to two interpretations, one favorable to the insured and the other favorable to the insurer, the former will be adopted. *St. Paul Fire & Marine Ins. Co. v. Powell-Walton-Milward, Inc.*, 870 S.W.2d 223, 227 (Ky. 1994). But, in the absence of ambiguities or of a statute to the contrary, the terms of an insurance policy will be enforced as drawn. *Osborne v. Unigard Indemnity Co.*, 719 S.W.2d 737, 740 (Ky.App. 1986); *Woodard v. Calvert Fire Ins. Co.*, 239 S.W.2d 267, 269 (Ky. 1951). Although restrictive interpretation of a standardized “adhesion” contract is not favored, neither is it the function of the courts to make a new contract for the parties to an insurance contract. *Moore v. Commonwealth Life Ins. Co.*, 759 S.W.2d 598, 599 (Ky.App. 1988).

With respect to the UIM coverage, the Angel’s policy with Metropolitan stated in relevant part:

We will pay damages for bodily injury sustained by:

1. you or a relative, caused by an accident arising out of the ownership, maintenance, or use of an underinsured highway vehicle, which you or a relative are legally entitled to collect from the owner or driver of an underinsured highway vehicle;

The policy defines bodily injury as:

“bodily injury” means any bodily injury, sickness, or disease sustained by any person. The term includes death of any person if it is a result of covered bodily injury, sickness, or disease.

Although there are no Kentucky cases on point, the trial court relied on a Washington Supreme Court case, *Daley v. Allstate Ins. Co.*, 958 P.2d 990 (Wash. 1998), in concluding PTSD was not covered under the Angel’s UIM policy. In *Daley*, the Washington Supreme Court interpreted a UIM provision similar to the one in this case and held that “ the term ‘bodily injury’ does not encompass recovery for purely emotional injuries.” *Id.* at 994. The plaintiff in *Daley*, a sheriff’s deputy, was assisting a stranded motorcyclist when a car struck him and another officer at the scene. *Id.* The other officer later died from his injuries, but Daley suffered only bruises, swelling, and lacerations on his arm and leg. *Id.* Over a year after the accident, Daley was diagnosed with depression and late-onset PTSD. *Id.* Daley’s emotional distress was attributable in part to “the guilt and emotional trauma related to witnessing [the other officer’s] fatal injuries in addition to the emotional trauma of the accident itself.” *Id.* at 993. The court concluded that Daley’s “purely emotional distress,” which was unaccompanied by physical symptoms, did not qualify as a “bodily injury” under his UIM policy. *Id.* at 995.

Later, in *Trinh v. Allstate Ins. Co.*, 37 P.3d 1259 (Wash.App. 2002), the Washington Court of Appeals held that bodily injury does include emotional injuries that are accompanied by physical manifestations. In *Trinh*, the insured

witnessed the death of her best friend when he was hit by a drunk driver while helping the insured change her flat tire. *Id.* Trinh was diagnosed with PTSD and sought coverage under the UIM provisions of her automobile insurance policy. *Id.* The insurer claimed PTSD was not a bodily injury under the insured's coverage. *Id.* However, unlike the plaintiff in *Daley*, Trinh alleged her PTSD was accompanied by physical injuries, which included weight loss, hair loss, fragile fingernails, loss of sleep, headaches, stomach pains, and muscle aches. The court held that when there are physical manifestations of PTSD, it qualifies as bodily injury under such a UIM policy. *Id.* at 937.

We conclude that the UIM provision at issue in this case clearly excludes coverage of PTSD in the absence of physicals manifestations. Unlike the insured in *Trihn*, Linda alleged no physical injuries that accompanied Mikel's PTSD. The language of the UIM policy is clear. We find no reasonable reading of the provision that would cover purely emotional injuries. Therefore, we conclude that the trial court did not err in construing the policy as not covering PTSD.

Linda also argues that Metropolitan's interpretation of the UIM policy violates public policy and should not be enforced. However, this argument was not raised before the trial court and therefore is not properly before this court.

Regional Jail Authority v. Tackett, 770 S.W.2d 225, 228 (Ky. 1989) ("The Court of Appeals is without authority to review issues not raised in or decided by the trial court."). We therefore decline to entertain Linda's public policy argument.

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

ALL CONCUR.

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