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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000381-MR

HOME-OWNERS INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM JACKSON CIRCUIT COURT
HONORABLE OSCAR G. HOUSE, JUDGE
ACTION NO. 15-CI-00034

TABATHA COLLETT, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF FRANKLIN SIZEMORE,
DECEASED; BENTLEY ALLEN BERNARD
SIZEMORE, A MINOR, BY AND
THROUGH TABATHA COLLETT, HIS PARENT
AND NEXT FRIEND; FRANKLIN
PARKER LEE SIZEMORE, A MINOR,
BY AND THROUGH TABATHA COLLETT,
HIS PARENT AND NEXT FRIEND;
DANA E. MCQUEEN, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF JERRY MCQUEEN, DECEASED;
GOVERNMENT EMPLOYERS INSURANCE
COMPANY (GEICO); KATHLEEN NICK;
AND DORA SIZEMORE — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; GOODWINE AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: On December 16, 2014, Franklin Sizemore was operating a 1998 Buick LeSabre and Jerry McQueen was operating a 2002 Chevrolet Silverado when the two vehicles collided, killing Franklin and Jerry. Approximately one week prior to the accident, physical possession of the Buick had been transferred from Kathleen Nick, a Michigan resident, to Dora Sizemore, who is Franklin's mother and Kathleen's sister. The issue presented is whether Kathleen was the owner of the Buick at the time of the accident so that a car insurance policy issued to her by Home-Owners Insurance Company provides coverage for the accident.

Kathleen had an insurance policy issued in the state of Michigan by Home-Owners that identified Kathleen as the only "insured" and expressly identified the Buick as an insured vehicle. At the time of the accident, Dora had a policy of insurance issued by Government Employers Insurance Company (GEICO) and, after taking possession of the Buick, she insured it under that policy.

When physical possession of the Buick was given to Dora, Kathleen and Dora signed the Michigan certificate of title. However, the Michigan

certificate of title did not provide for notarization of signatures and the odometer section of the certificate of title was left blank. At the time of the accident, no documents had been filed in Kentucky to transfer title from Kathleen to Dora.

Following the accident, but prior to when the underlying action was filed, Home-Owners took Dora's and Kathleen's recorded statements.[1] Pertinent parts of Dora's statement are as follows:

> Q. Can you just kinda walk me through how you got the vehicle and what happened in the accident?
>
> A. Ok, we, my sister give it to me in Michigan. She brought it down. I was to have it inspected and signed, and then notarized and all that, but I was going to go back the following day, the following Monday, and have it, go ahead and have it put into my name. I had insurance on it and she did, too. I had already done that, but my son was in an accident in the morning of the day that I was going to go ahead and transfer it into my name. And the car was totaled.
>
> Q. Ok. And do you know at what point your sister Kathleen was going to cancel her insurance?
>
> A. Just as soon as I put it into my name. I mean just as soon as, you know, I had got the title, and everything done.

Kathleen was asked similar questions about the transfer of the Buick to Dora and answered:

[1] The parties relied upon these statements in the trial court with no objection being made to their use.

> I purchased the vehicle, so I could give it to my sister. In turn she was going to give her older vehicle to her son. In the, before she got the vehicle into her name, she did have insurance on it, but had not gotten to the Secretary of State or whatever, DMV, or whatever it is called down there because she had broken her foot and went to the doctor. She was waiting for my nephew to get home from work that day, so she could go, the paperwork of the vehicle and everything was in the car at the time of the wreck.
>
> Q. Ok. Did you keep your insurance in place or did you cancel it at that point?
>
> A. No, I kept my insurance in place and was waiting for her to get the car legally in her name. She hadn't made it aware to me that she had already had the insurance on it, so I was just waiting for her to call and say, yes, I got it all in my name, and then I would call and cancel with [Home]-Owners.

For reasons not readily apparent, there are two applications for Kentucky Certificate of Title or Registration (VTR) of the Buick, both partially completed on December 9, 2014. One contains the printed names and addresses of Kathleen and Dora; their notarized signatures and the vehicle identification section is completed. However, all other sections are blank, including the certified inspection section.

The second application contains Kathleen's signature as the seller and her signature was notarized on December 14, 2014. On that VTR, the certified inspection section was completed by Denny Peyman of Jackson County on December 9, 2014. However, all other sections on the second VTR are blank,

including the vehicle identification section and the name and address of the buyer. It also does not contain Dora's signature.

The underlying action was filed on April 1, 2015, by Tabatha Collett, individually and as personal representative of Franklin's estate, Bentley Allen Bernard Sizemore, a minor, by and through Tabatha Collett, his parent and next friend, and Franklin Parker Lee Sizemore, a minor, by and through Tabatha Collett, his parent and next friend (collectively "the Colletts"). As defendants, the Colletts named Dana as the personal representative of Jerry's estate, GEICO, and Home-Owners.[2] The Colletts allege that Jerry's negligence caused the accident, that the Buick was underinsured, and that they are entitled to recover underinsured motorist benefits under the Home-Owners policy issued to Kathleen and the GEICO policy issued to Dora.

Home-Owners filed its answer along with a counterclaim/cross-claim for declaratory judgment. Home-Owners sought a judgment declaring: (1) the rights and obligations of each of the parties in the action; (2) there is no coverage under the Home-Owners policy for any claims arising from the accident; and (3) Home-Owners has no obligation to defend and/or indemnify as to any claims arising from the accident.

[2] The original complaint named Auto-Owners Insurance Company as a defendant. That complaint was amended on May 13, 2015, and Home-Owners was substituted for Auto-Owners as a defendant.

On July 8, 2015, Dana, individually and as the personal representative of Jerry's estate, was granted leave to file a cross-claim and counterclaim alleging that Jerry's injuries and death were caused by Franklin's negligence. In her cross-claim against Home-Owners, Dana sought a declaration that the Home-Owners policy provides coverage.

Home-Owners was granted leave to file an amended counterclaim/cross-claim to add Dana, individually, and Kathleen and Dora as parties to the declaratory judgment action.

On September 11, 2015, Dana filed a motion for summary judgment against Home-Owners arguing that there was no transfer of ownership of the Buick from Kathleen to Dora under Kentucky law and, therefore, at the time of the accident, the Buick was covered under the Home-Owners policy. Home-Owners argued that ownership had been transferred to Dora prior to the accident and denied coverage.

Dora was served with summons and the amended counterclaim/cross-claim on August 20, 2015. After Dora did not respond to Home-Owners' counterclaim/cross-claim, on September 28, 2015, Home-Owners filed a motion for default judgment against Dora. After Kathleen did not respond to Home-Owners' amended counterclaim/cross-claim, Home-Owners filed a motion for default judgment against Kathleen on November 20, 2015.

The motions for summary judgment and default judgment were heard by the court. The trial court concluded that the Buick had not been transferred to Dora in accordance with Kentucky Revised Statutes (KRS) 186A.215 and, therefore, the Home-Owners policy issued to Kathleen provided coverage. The trial court reasoned that because the odometer disclosure statement was not completed on the title document, Kathleen did not effectuate a transfer of title to the Buick. The trial court also concluded that Dora insured the Buick with GEICO and that policy provided coverage as well.[3] The trial court denied Home-Owners' motions for default judgments against Dora and Kathleen finding the claims upon which Home-Owners sought default were essentially the same as had been litigated on the merits in the same case.

"In cases where a summary judgment has been granted in a declaratory judgment action and no bench trial held, the standard of review for summary judgments is utilized." *Ladd v. Ladd*, 323 S.W.3d 772, 776 (Ky.App. 2010) (citation omitted). "The standard of review on appeal of a 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

[3] GEICO did not appeal from the trial court's declaratory judgment and order. Consequently, we make no determination as to the coverage afforded under the policy issued to Dora by GEICO.

a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996) (citation omitted).

The facts pertinent to this appeal are undisputed so this Court is tasked only with determining whether Home-Owners is entitled to judgment as a matter of law. Matters of law, including the interpretation of statutes and insurance contracts, are subject to *de novo* review. *Doyle v. Doyle*, 549 S.W.3d 450, 454 (Ky. 2018); *Hugenberg v. West American Ins. Co./Ohio Cas. Group*, 249 S.W.3d 174, 185 (Ky.App. 2006).

"Kentucky is a certificate of title state for the purposes of determining ownership of a motor vehicle and requiring liability insurance coverage." *Potts v. Draper*, 864 S.W.2d 896, 898 (Ky. 1993) (citations omitted). Under KRS 186.010(7)(a), an "[o]wner" is "a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest."

KRS 186A.215(1) governs how legal title to a motor vehicle is transferred between individuals and, therefore, who is the owner. That statute provides:

> If an owner transfers his interest in a vehicle, he shall, at the time of the delivery of the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title, except if the space provided therefor on the owner's certificate of title fails to meet the Kentucky requirements for lawful

> conveyance of title or if the space provided therefor on the owner's certificate of title fails to meet the requirements for the owner to execute an odometer disclosure statement as required by federal law in effect at the time transferor executes an assignment and warranty of title. Pursuant to the exceptions provided by this subsection and in other cases where applicable, the transferor shall execute an assignment and warranty of title to the transferee by executing the application as provided by the Department of Vehicle Regulation and available from the county clerk. The transferor shall cause the application with the certificate of title attached to be delivered to the transferee.

The purpose of KRS 186A.215 "is to require the seller of a motor vehicle to take statutory steps to properly complete the sale and until this is done the seller will be considered the owner for the purposes of liability insurance." *Nantz v. Lexington Lincoln Mercury Subaru*, 947 S.W.2d 36, 38 (Ky. 1997) (quoting *Potts*, 864 S.W.2d at 899-900).

In *Nantz*, the Kentucky Supreme Court further explained the requirements to properly transfer ownership in a vehicle:

> KRS 186A.215 . . . delineate[s] the procedure to be followed when ownership to a motor vehicle is transferred. KRS 186A.215(1), the general requirements for transfer of vehicle ownership, provides that one may transfer title to a motor vehicle simply by *completing* the assignment and warranty of title portion of the certificate of title form and by filling in the federally-required odometer statement. . . .
>
> Thus, according to KRS 186A.215, a transfer of title takes place when the seller *completes and signs* the

> assignment of title section of the title certificate and delivers it to the buyer.

Id. at 37 (emphasis added).

Nantz involved a car dealer sale but its holding that KRS 186A.215 requires a completed and signed assignment on the title certificate applies equally to sales between individual sellers and buyers. As stated in *Graham v. Rogers*, 277 S.W.3d 251, 253-54 (Ky.App. 2008):

> [D]espite the fact that the seller in *Nantz* was a dealer, *Nantz* applies to both individual sellers and dealers as it relates to the first three requirements of KRS 186A.215. Therefore, an individual seller and buyer must sign the title document (KRS 186A.215(1)), complete the certificate of title form (KRS 186A.215(2)), and promptly file the documents with the county clerk. KRS 186A.215(3).

In *Graham*, Brandon Loudon sold his 1989 Chevrolet to Angel Rogers. Loudon signed the back of the vehicle's "title in the 'Transfer of Title by Owner' section and the 'Application of Title/Affidavit of Total Consideration' section." *Id*. at 252. Notably, the signatures *were witnessed and attested by a notary*. *Id*. Loudon delivered the documents and possession of the vehicle to Rogers. An accident occurred before Rogers applied for a new title. *Id*.

Although the title documents had not been filed with the clerk prior to the accident, the Court concluded that Rogers was the vehicle's owner. *Id*. at 254-55. The Court emphasized that "transfer of title to a motor vehicle takes place

when the seller completes the certificate of title form, and provides it to the buyer." *Id*. at 253.

This Court again addressed KRS 186A.215 in *Franklin v. Safe Auto Insurance Company*, 290 S.W.3d 69 (Ky.App. 2009). As in *Rogers*, this Court held that the filing of the transfer papers with the clerk was not determinative of ownership. "[T]itle to a vehicle transfers upon seller's and buyer's completion of the transfer of title and odometer statement on the certificate of title and delivery of the completed form to the buyer." *Id*. at 73-74. In *Franklin*, the transfer of title had been completed and delivered to the buyer, which was sufficient to transfer ownership. *Id*. at 74.

The facts here are readily distinguishable from those in *Graham* and *Franklin*. In those cases, the documents necessary to transfer title were completed and the only formal requirement left was the filing of the title documents with the clerk. In this case, the documents were far from complete.

There were numerous omissions on the certificate of title, including an odometer statement. The trial court concluded that because the odometer disclosure section was not completed, Kathleen remained the owner of the Buick at the time of the accident.

Home-Owners argues that the trial court's conclusion was wrong because KRS 186A.215 provides that the odometer disclosure statement is only

necessary as required by federal law. It points out that 49 Code of Federal Regulations 580.17 exempts from the disclosure requirement a vehicle manufactured in or before the 2010 model year and transferred at least ten years before January 1 of the calendar year of its model year. Because the Buick is a 1998 model vehicle, the completion of the odometer disclosure statement was not required.

We may affirm a lower court for any reason supported by the record. *Kentucky Spirit Health Plan, Inc. v. Commonwealth Fin. & Admin. Cabinet*, 462 S.W.3d 723, 729 (Ky.App. 2015). While there may be some merit to Home-Owners' argument, we find reasons to affirm on other grounds.

The facts are undisputed that the odometer disclosure statement was not all that was missing on the Michigan certificate of title. Also missing was the following information: (1) the printed name of the purchaser; (2) date of sale; (3) selling price; and (4) purchaser's street address, city, state, and zip code. Therefore, there was not a completed Michigan certificate of title or a completed assignment and warranty of title as required by Kentucky law.

Moreover, Kentucky's certificate of title contains an area for notarization. It is true that KRS 186A.215(1) does not explicitly state that the buyer's and seller's signatures must be notarized. However, the statute states that to transfer ownership of a vehicle, the owner "shall, at the time of the delivery of

the vehicle, execute an assignment and warranty of title to the transferee in the space provided therefor on the certificate of title[.]" *Id*. That space requires notarization.

KRS 186A.215(1) further provides that if "the owner's certificate of title fails to meet the Kentucky requirements for lawful conveyance of title or … the owner's certificate of title fails to meet the requirements for the owner to execute an odometer disclosure statement as required by federal law[,]" the transferor must further complete and deliver a VTR. The partially completed VTRs do not satisfy the completion requirement. The missing information in the VTRs ranges from no completion of the certified inspection section, incomplete vehicle identification section, no signature of the buyer, and the names and addresses of the buyer and seller. Although Home-Owners argues that a VTR was not required because the Michigan certificate of title meets Kentucky's requirement for lawful conveyance, this argument ignores that there is simply no document executed by Kathleen and Dora that transferred ownership of the Buick.

We conclude that Kathleen was the owner of the Buick at the time of the accident. As the owner, she had an insurable interest as defined in KRS 304.14-060(2) and paid a premium to Home-Owners for insurance coverage on the Buick.

Home-Owners argues that regardless of the insurance coverage issue, it was entitled to default judgments against Kathleen and Dora because they did not timely respond to its amended counterclaim/cross-claim for declaratory judgment. We disagree.

"[D]efault judgments are not looked upon with favor as it is the policy of the law to have every case decided on its merits." *Dressler v. Barlow*, 729 S.W.2d 464, 465 (Ky.App. 1987) (citations omitted). A trial court has broad discretion to grant or deny a default judgment. *S.R. Blanton Development, Inc. v. Investors Realty and Management Co., Inc*., 819 S.W.2d 727, 730 (Ky.App. 1991).

In its proposed orders for default judgments, Home-Owners sought to have Kathleen and Dora deemed to have admitted that Dora owned the Buick at the time of the accident and that there is no coverage under the Home-Owners policy. The trial court denied the default judgment concluding that "[t]his case especially disfavors default judgment, as the claims upon which the Defendant Home-Owners seeks default are essentially the claims that Home-Owners itself has litigated on the merits in the same case." We agree with its reasoning and conclude that the trial court did not abuse its broad discretion.

For the reasons stated, the declaratory judgment and order of the Jackson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Luke A. Wingfield
Lexington, Kentucky

BRIEF FOR APPELLEE BENTLEY ALLEN BERNARD SIZEMORE, A MINOR, BY AND THROUGH TABATHA COLLETT, HIS PARENT AND NEXT FRIEND, AND FRANKLIN PARKER LEE SIZEMORE, A MINOR, BY AND THROUGH TABATHA COLLETT, HIS PARENT AND NEXT FRIEND:

Kevin Johnson
Hazard, Kentucky

BRIEF FOR APPELLEE DANA E. MCQUEEN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JERRY MCQUEEN, DECEASED:

David F. Fessler
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