RENDERED: NOVEMBER 22, 1996; 2:00 P.M.
NOT TO BE PUBLISHED

95-CA-0646-MR

LARRY MACK THOMPSON, JR. APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 94-CI-90003

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY APPELLEE

OPINION AFFIRMING

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BEFORE: WILHOIT, Chief Judge; EMBERTON and JOHNSTONE, Judges.

WILHOIT, CHIEF JUDGE. The appellant, Larry Mack Thompson, Jr., sustained severe injuries in a single-car accident. He filed a personal injury action against Jonathan Cassidy, the operator of the vehicle, and Jonathan Cassidy's parents, Lloyd and Nancy Cassidy. He subsequently filed an amended complaint which asked for a declaration of rights as to what insurance coverage was afforded under the insurance policies of the parties.

The vehicle involved in the accident, a 1986 Camaro, was paid for by Jonathan but titled and registered in the name of Nancy Cassidy. Nancy and Lloyd Cassidy insured the car through

Omni Insurance Company with Jonathan Cassidy as a permissive user under the policy. The appellee, State Farm Mutual Automobile Insurance Company, insured Lloyd and Nancy Cassidy. The circuit court granted State Farm's motion for summary judgment, holding that it had no liability for damages from the accident. This appeal followed. The alleged insureds under the appellee's policy, Lloyd, Nancy, and Jonathan Cassidy, did not appeal.

The appellant first contends that the circuit court abused its discretion in denying his motion for default judgment against the appellee. After the appellee failed to timely answer the amended complaint, the appellant filed a motion for default judgment. The appellee filed a motion for leave to file a late answer, stating in its unverified motion that "the legal papers apparently were misdirected and misfiled upon receipt by State Farm without forwarding to appropriate parties to take action and such failure constitutes excusable neglect." The appellant contends that the appellee failed to show excusable neglect for its failure to timely answer the amended complaint. The appellant has failed to show this court how this argument was preserved for appellate review. See CR 76.12(4)(c)(iv). Although the appellant filed a motion for default judgment, he did not respond to the appellee's subsequently-filed motion for leave to file a late answer. In any event, the trial court's ruling on the appellee's motion for leave to file a late answer rested within its sound discretion, and the appellant has failed to demonstrate that the court misused its discretion. On the

other hand, the trial court very well might have abused its discretion had it denied the appellee's motion for leave to file a late answer and granted the motion for default judgment. Cf. Dressler v. Barlow, Ky. App., 729 S.W.2d 464, 465 (1987), citing Childress v. Childress, Ky., 335 S.W.2d 351, 354 (1960).

Insurance covering the car involved in the accident was issued by Omni Insurance Company to Lloyd and Nancy Cassidy with Jonathan Cassidy being a covered driver, and it provided for bodily injury and underinsured motorist coverage. Neither party filed the insurance policy issued by the appellee in the record; however, the parties do not dispute the relevant provisions. The declarations page of the policy issued by the appellee did not list the automobile involved in the accident. The policy provided coverage for the automobile listed on the declaration page, which was a 1988 Oldsmobile, and also for a newly-acquired car, a temporary substitute car, and a non-owned car.

The appellant contends that the automobile involved in the accident was covered by the appellee's policy because it was a "non-owned car," as defined by the policy. This argument was not presented to the circuit court; the appellant maintained in the circuit court that "[t]he car in this case is clearly not a non-owned vehicle." We agree with the position advocated by the appellant before the trial court. The car involved in the accident was regularly driven by Jonathan Cassidy and owned by the named insured, Nancy Cassidy. The car does not fall within the non-owned car provision as defined by the insurance contract.

The appellant asserts that the non-owned car provision is invalid as against public policy. He contends that the non-owned car provision is an attempt to create another vehicle exclusion as was held to be unenforceable in Chaffin v. Kentucky Farm Bureau Ins. Companies, Ky., 789 S.W.2d 754 (1990), and he maintains that the provision attempts to exclude from coverage a permissive user. The appellant asserts that the provision contravenes KRS 304.39-080(5), which requires a permissive user to have the same coverage for basic reparations benefits and security for payment of tort liabilities as the vehicle's owner. The appellee contends that the non-owned car provision is not an exclusion from coverage, but an extension of coverage, and that since the car driven by Cassidy was owned by the named insured, Nancy Cassidy, and was not included in the policy, no coverage exists for the car.

Chaffin held unenforceable an antistacking provision which stated that uninsured motorist benefits were not provided for an insured's bodily injuries sustained when occupying or struck by a vehicle owned by the insured or member of the insured's family which was not insured under the policy. The supreme court in Chaffin was not persuaded by the insurer's argument that the antistacking provision was necessary to prevent fraud or collusion. The court held that the provision was contrary to public policy as "the coverage bought, paid for and reasonably expected is illusory." Chaffin, 789 S.W.2d at 757.

In this case, the Camaro involved in the accident was regularly driven by Jonathan Cassidy, although titled and registered in Nancy Cassidy's name. It was not listed as a covered auto in the appellee's policy but was insured through Omni Insurance Company. Nancy Cassidy had no reasonable expectation that she or a permissive user of the Camaro would be covered by the appellee's policy covering the Oldsmobile owned by Nancy and Lloyd. Nancy or Lloyd Cassidy's rights to uninsured motorists coverage is not implicated in this case. Extending coverage in this situation would provide benefits which were not paid for or reasonably expected by Nancy or Lloyd Cassidy or their son. Chaffin lends no support to the appellant's argument. Insurers have the right to impose reasonable conditions and limitations on their insurance coverage. Jones v. Bituminous Cas. Corp., Ky., 821 S.W.2d 798, 802 (1991). There is no contention that the requirements of the Motor Vehicle Reparations Act were not met by the Omni policy. We find nothing in Bishop v. Allstate Ins. Co., Ky., 623 S.W.2d 865 (1981), or Lewis v. West Am. Ins. Co., Ky., 927 S.W.2d 829, (1996), to require the appellee to provide coverage for the accident.

It is unnecessary to address the named driver exclusion in view of our conclusion that the appellee's policy affords no coverage for the accident causing the appellant's injuries.

The circuit court judgment is affirmed.

ALL CONCUR.

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