

RENDERED: October 4, 1996; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 95-CA-1640-MR

SEAN LEFTWICH

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE WILLIAM E. McANULTY, JR., JUDGE
ACTION NO. 94-CI-4859

ALLSTATE INSURANCE COMPANY

APPELLEE

OPINION AFFIRMING

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BEFORE: DYCHE, GUDGEL, and HUDDLESTON, Judges.

DYCHE, JUDGE. Sean Leftwich was a passenger severely injured in a one-car automobile accident; the vehicle was not covered by any liability insurance. Sean's mother owned a vehicle insured by appellee Allstate Insurance Company, including uninsured and underinsured vehicle coverages. Sean qualified for coverage under that policy as a resident of her household. Allstate paid to Sean the limits of its uninsured coverage (\$100,000), but refused to pay any amount under the underinsured coverage. Litigation ensued, resulting in a summary judgment (CR 56) in favor of appellee, dismissing appellant's action against it. This appeal followed.

Appellant argues that the summary judgment was inappropriate in this case as there are many issues of material fact which have yet to be decided. We disagree. The facts are not in issue. The question is simply whether one can collect under both the uninsured **and** underinsured coverages as a result of a one-car accident in an uninsured vehicle.

KRS 304.39-320 defines an "underinsured motorist" as "a party *with* motor vehicle liability insurance coverage in an amount less than a judgment recovered against that party for damages on account of injury due to a motor vehicle accident." (Emphasis added.) The policy in this case makes an almost identical definition. There is no factual question concerning the existence of liability insurance on the sole vehicle involved in the accident which injured appellant; there was none. There can be no claim under the policy or under the statute authorizing the availability of underinsured motorist coverage.

Appellant's arguments concerning "reasonable expectations" do not come into play, as there is no ambiguity in the policy. Simon v. Continental Insurance Company, Ky., 724 S.W.2d 210 (1986).

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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