RENDERED: October 23, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

# Court Of Appeals

NO. 1997-CA-001567-MR

KENTUCKY FARM BUREAU
MUTUAL INSURANCE CO. APPELLANT

v.

APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE DANIEL J. VENTERS, JUDGE
ACTION NO. 92-CI-000219

ERIC S. CROMER; SHELTER INSURANCE COMPANY;
ESTHER GAIL ANDERSON, Individually and as
Administratrix of the Estate of Johnny Allen
Ballard, Deceased; and KATHERINE BALLARD,
Individually and as Administratrix of the
Estate of William Keith Ballard, Deceased APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: COMBS, DYCHE, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment determining that appellee insurance company properly denied coverage on an automobile where the insured, who purchased a policy on the auto, sold and transferred title of the auto (without notice to the insurer) to her son who was not living with her at the time he

wrecked the auto. Upon review of appellant's arguments in light of the record herein and the applicable law, we affirm.

On September 10, 1991, Margie Wilson sold her 1977 Ford Mustang to her son, appellee, Eric Cromer. The car was registered in Eric's name at the Madison County Courthouse on that date, and the title was issued to Eric on September 21, 1991. When the Mustang was transferred to him, Eric did not purchase liability insurance because it was too expensive given his age, the sporty nature of a Ford Mustang, and his driving record (several moving violations).

On January 18, 1992, Eric wrecked the Mustang in a single-car accident which killed his two passengers. At the time of the accident, Eric was almost twenty (20) years old. He was married, but separated from his wife. It was not disputed that Eric was not living with his mother at the time of the accident and had not lived with her for a year and a half.

Margie Wilson had purchased the Mustang at issue in January 1991 and purchased liability insurance coverage therefor from appellee, Shelter Mutual Insurance Company ("Shelter Mutual"), on January 19, 1991. The policy on the Mustang was renewed on October 24, 1991, along with a policy on a 1980 Buick that belonged to Wilson. Those policies ran from October 24, 1991 to January 29, 1992. Wilson had purchased auto insurance from Shelter Mutual since 1990 and at no time did she ever list Eric as a driver or a member of her household. At trial, Wilson testified that she advised her agent at Shelter Mutual about the transfer of the Mustang title. However, the trial court found

from testimony to the contrary that Wilson never gave such notice to Shelter Mutual.

On October 12, 1992, the estates of the two passengers killed in the accident brought the personal injury action herein against Eric Cromer, Shelter Mutual, and Kentucky Farm Bureau Mutual Insurance Company ("Farm Bureau"). Plaintiffs allege that Shelter Mutual insured the Mustang at the time of the accident and, thus, they are entitled to no-fault benefits as well as liability coverage. The action was also brought against Farm Bureau because the decedents' step-father, with whom the decedents resided at the time of the accident, had an auto insurance policy with Farm Bureau which included uninsured motorist coverage.

By agreement of the parties, a bench trial was held to determine whether Shelter Mutual had primary liability for PIP coverage and other damages arising from the accident. Shelter Mutual denied coverage on the ground that Eric Cromer was not an insured under Margie Wilson's policy on the Mustang. In its findings of fact, conclusions of law and judgment, the trial court found that Eric was not an "insured" under Margie Wilson's policy on the Mustang and that the transfer of title of the Mustang from Margie to Eric terminated the Shelter Mutual policy on the Mustang. Thus, Shelter Mutual had no liability coverage for Eric Cromer regarding the accident. Farm Bureau now appeals.

Farm Bureau first argues that the trial court erred in ruling that Margie Wilson's policy with Shelter Mutual on the Mustang was terminated by the transfer to Eric Cromer. While we agree that the trial court erred in ruling in its order on the

motion to amend that Margie Wilson's policy on the Mustang was terminated by the transfer to Eric, there was nevertheless no coverage under said policy when Eric was driving the vehicle.

Construction of insurance contract provisions are questions of law for the court unless disputed facts are involved. Hanover Ins. Co. v. American Engineering Co., 33 F.3d 727 (6th Cir. 1994). From our review of the policy at issue, there is no requirement that the insured must own the auto covered under the policy, nor does the policy state that the insured must give notice to the insurer if the car is transferred. Thus, the Mustang would still have been covered under Margie Wilson's policy after she sold the car if she, as the named insured, or any of the other "persons insured" under the policy were driving the car. As to who are the "persons insured" under the policy, the policy provides:

> As used in this Part, Insured means:
>
> (1) With respect to the described auto,
> (a) You,
> (b) Your relatives,
> (c) Any other person using the auto if its use is within the scope of your permission, and
> (d) Any other person or organization liable for the use of the auto by one of the above[.]

As to subsection (a), "You" is defined in the policy as "the insured named in the Declarations and spouse." Margie Wilson was the named insured in the Declarations, and Eric Cromer was never a named insured. As to subsection (b), "Relative" is defined in the policy as:

> a person related to you by blood, marriage, or adoption and who is a resident of and actually living in your household, provided

> neither the relative nor the relative's spouse owns, in whole or in part, an auto..Relative includes your unmarried and unemancipated child away at school who is a resident of your household.

It is undisputed that Eric does not meet the definition of relative as he was not living with Margie Wilson at the time of the accident. As to subsection (c), we reject Farm Bureau's argument that the transfer of the vehicle gave Eric unfettered permission to drive the car. In our view, the trial court correctly determined in its first judgment that, after the transfer, Margie Wilson could not give permission to drive a car she no longer owned. As the trial court so aptly stated:

> Having sold the Mustang to Eric four months before the wreck, Margie had no authority to issue any permission for its use. The vehicle was entirely beyond her control. She had not expressly authorized or commissioned its use for the particular occasion when the wreck occurred, nor did she generally have a "scope of permission" with respect to the operation of the Mustang in January of 1992. The fact that Eric is Margie's adult son has no bearing on her legal ability to give permission for the use of the car which she transferred to him and which she no longer owned. If this provision of the policy applied as Kentucky Farm Bureau urges, any purchaser of a vehicle would always be covered by the seller's insurance. The transfer of ownership of the Mustang to Eric totally divested Margie of any ability to give permission to operate the vehicle. Section C can apply only to a vehicle owned by the insured at the time that its operation is called into question.

Thus, although the policy was still in effect after the transfer, the transfer, in effect, nullified subsection (c).

Our interpretation is consistent with the testimony of Butch McCord, Shelter Mutual's adjuster, who stated that the

policy on the Mustang covered Margie Wilson, but did not apply to Eric Cromer. Our interpretation is also consistent with the fact that Shelter Mutual did not cancel or annul the policy and refund the premium when it learned of the transfer.

Farm Bureau also argues that the trial court erred in ruling that the Shelter Mutual policy provided no coverage for Eric because it's clear that Margie intended to provide coverage for Eric because she renewed the policy after she sold and transferred the car to Eric. Regardless of Margie's intent, the fact remains that Eric was never a named insured on the policy and did not fit within the definition of "insured" under the policy. The testimony of Eric revealed that he did not have his own insurance because of the expense due to his age, driving record, and the car. He could not obtain coverage through Margie simply because he was her son, when he did not live with her. See Kelly Contracting Co. v. State Automobile Mutual Ins. Co., Ky., 240 S.W.2d 60 (1951).

Finally, Farm Bureau argues that Eric met the definition of an "insured" under the no-fault portion of the Shelter Mutual policy. For purposes of no-fault coverage, "insured" is defined as:

> (1) you or any relative;
> (a) occupying a motor vehicle; or
> (b) struck as a pedestrian by a motor vehicle, or
> (2) any other person occupying or struck as a pedestrian by a motor vehicle insured under liability and no-fault coverages of this policy. (Emphasis added.)

Farm Bureau contends that Eric meets the no-fault definition of "insured" under section (2) because he was occupying the insured

vehicle. From our reading of section (2), the person must also meet the definition of an "insured" under the liability portion of the policy, which, as we have already determined, he does not. Hence, there was likewise no no-fault coverage for Eric.

For the reasons stated above, the judgment of the Rockcastle Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carl R. Clontz
Mt. Vernon, Kentucky

BRIEF FOR APPELLEE:

Martha L. Brown
London, Kentucky