RENDERED: October 11, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001775-MR

AIMEE SMITH — APPELLANT

v.

APPEAL FROM WOODFORD CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 00-CI-00025

MATTHEW DOSS AND STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY — APPELLEES

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

BEFORE: COMBS, DYCHE, AND KNOPF, JUDGES.

KNOPF, JUDGE: While visiting his parents in Woodford County in October 1999, twenty-three-year-old Matthew Doss negligently caused a two-car accident in which Aimee Smith, the other driver, suffered serious injuries. Matthew was driving his parents' car and was insured as a permissive user of that car under a policy issued to his father, Paul Doss, by the State Farm Mutual Automobile Insurance Company. Matthew was also insured as the owner of another vehicle under a second State-Farm policy issued to him and his father as coinsureds. Both policies provided liability coverage up to $100,000.00 per person and both included the following anti-stacking provision:

> If two or more vehicle liability policies issued by us to you, . . . apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

In January 2000, Smith brought suit for damages and in conjunction with her suit sought a declaration that State Farm was liable for as much as $200,000.00 of her losses, the combined limits of both policies. The anti-stacking clause did not apply, she argued, because the policies had been issued to different insureds. By order entered January 30, 2001, the trial court ruled that Paul Doss was referred to as a named insured under both policies and that the anti-stacking clause therefore did apply. It limited State Farm's liability, accordingly, to $100,000.00. It is from that ruling that Smith has appealed. She contends that the trial court misapplied the anti-stacking clause to what is not, in fact, a stacking situation. We disagree.

The parties do not dispute the pertinent facts. On the one hand, as Smith notes, the accident occurred about five months after Matthew graduated from Tulane University in New Orleans, Louisiana. He had remained in New Orleans following his graduation and neither he nor his parents considered him any longer to be a resident of his parents' household. The car insured in his and his father's names, furthermore, was titled and registered in Matthew's name. Both he and his parents considered it his car. In light of these facts, Smith contends that the two policies applicable to the accident were effectively issued to different insureds; one was issued to Matthew, the real

intended insured of the policy covering his car, and the other was issued to his father. Smith thus contends that there were not "two or more" policies issued to a single insured, and therefore that the anti-stacking clause does not apply.

State Farm, on the other hand, notes that Paul Doss purchased the policy covering Matthew's car in his own name as well as his son's and that he did so in conjunction with the purchase of policies covering two other family cars. All of these policies were renewals of policies first purchased during Matthew's matriculation (when Matthew could be considered a resident of his parents' household), and, indeed, the renewal in effect at the time of the accident was also purchased prior to Matthew's graduation. In light of these facts, State Farm contends (and the trial court agreed) that both policies applying to the accident were issued to "you"--Paul Doss--and thus that the anti-stacking clause must be given effect.

As the parties acknowledge, insurance contracts are subject to the ordinary rules of contract construction; to the extent that they do not violate public policy or include ambiguous terms, courts will enforce them according to the parties' expressed intentions.[1] Insurance clauses limiting the stacking of liability coverage do not violate Kentucky's public policy.[2] Nor are the terms of the anti-stacking clause at issue

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[1]Shipley v. Kentucky Farm Bureau Insurance Company, Ky., 747 S.W.2d 596 (1988); Weaver v. National Fidelity Insurance Company, Ky., 377 S.W.2d 73 (1963).

[2]Stevenson ex rel. Stevenson v. Anthem Casualty Insurance Group, Ky., 15 S.W.3d 720 (1999).

ambiguous.[3] We agree with the trial court, furthermore, that the policy covering Matthew's vehicle was issued primarily to Paul Doss and was intended to be an extension to that vehicle of the Dosses' family coverage, not a separate policy for Matthew. This was plainly the intention when the policy was first purchased, and it remained the intention, we believe, at the time of the last renewal, while Matthew was still in school albeit close to graduation. Matthew's policy address remained that of his parents, and Paul continued to be a named insured. The coverage provided for Matthew's vehicle was essentially identical to that provided for the Dosses' other vehicles. The anti-stacking clauses in all of the policies makes it clear that the multiple policies were intended to broaden the Dosses' coverage to all of their vehicles, but not to deepen it.[4]

Against this conclusion, Smith contends that the policy covering Matthew's vehicle should not be construed as having been issued to Paul because Paul did not have an insurable interest in that vehicle. She correctly notes that under Kentucky law an automobile liability insurance policy must be grounded in an insurable interest.[5] The only interest necessary for such a grounding, however, "is that the insured may incur liability

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[3] *Cf.* State Farm Mutual Automobile Insurance Company v. Moorer, 496 S. E. 2d 875 (S.C. App. 1998); Georgia Farm Bureau Mutual Insurance Company v. Shook, 449 S. E. 2d 658 (Ga. App. 1994); Equibank v. State Farm Mutual Automobile Insurance Company, 626 A. 2d 1243 (Pa. Super. 1993); State Farm Mutual Automobile Insurance Company v. Tiedman, 450 N. W. 2d 13 (Mich. App. 1989).

[4] *Cf.* Emick v Dairyland Insurance Company, 519 F. 2d 1317 (4th Cir. 1975).

[5] Kelly Contracting Company v. State Automobile Mutual Insurance Company, Ky., 240 S.W.2d 60 (1951).

because of the operation or use of the automobile."[6] We believe that Paul had such an interest at the time this policy was issued (when Matthew could arguably have been deemed a resident of Paul's household), if only to provide coverage for his own use of Matthew's vehicle during Matthew's visits home.[7]

In sum, we are persuaded that both of the policies applicable to this accident were validly issued to Paul Doss. We agree with the trial court, therefore, that the policies' anti-stacking clause applies and that under that clause State Farm's liability to Aimee Smith is limited to $100,000.00. Accordingly, we affirm the January 30, 2001, order of the Woodford Circuit Court.

COMBS, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

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[6]Western Casualty and Surety Company v. Herman, 318 F. 2d 50, 54 (8th Cir. 1963).

[7]*Cf.* DiGerolamo v. Liberty Mutual Insurance Company, 364 So. 2d 939 (La. 1978); Home Insurance Company v. Randolph, 256 A. 2d 81 (N.J. Super. 1969).