

RENDERED: OCTOBER 20, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001646-MR

SANFORD WILLIAMS, ADMINISTRATOR
OF THE ESTATE OF PAUL WILLIAMS

APPELLANT

v. APPEAL FROM MENIFEE CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 04-CI-90087

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND VANMETER, JUDGES; EMBERTON,¹ SENIOR JUDGE.

EMBERTON, SENIOR JUDGE: This case arises from a fatal automobile accident that killed two brothers, Paul and Aaron Williams, the sons of Sanford Williams. The substantive issue raised on appeal is whether the State Farm Mutual Automobile Insurance Company's policy issued to Sanford Williams and his wife, Patty, excluded underinsured motorist coverage to the estate of Paul Williams, a passenger in the automobile operated

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by Aaron. The circuit court held that coverage was excluded and dismissed the action.

In addition to the coverage issue, as a threshold appellate issue, State Farm contends that the appeal was not timely filed. We considered this same argument in State Farm's previously filed motion to dismiss which we denied on October 19, 2005. We decline to now reconsider that issue and hold that the appeal was timely filed.²

FACTS

The tragic accident occurred on Christmas Eve 2004, when Aaron, operating a 1987 Toyota pickup truck, lost control of the automobile. It is the use and ownership of the pickup truck that is at the center of the present controversy.

In 2002, with his own money, Aaron purchased the Toyota pickup truck. But because the dealership would not title the truck in only a minor's name, Sanford's name was also on the title. Aaron purchased a State Farm automobile policy listing him as the only named insured, and although his parents made several premium payments, the majority of the premiums were paid by Aaron.

At the time of the accident, Paul was a full-time student at the University of Kentucky and lived on campus. None of the Williamses' other four cars were in Paul's name, and when

² The proper avenue for relief of the order was a timely motion to reconsider pursuant to CR 76.38.

home, Paul drove a family-owned 1989 Nissan Sentry. He never drove the pickup truck, and only Aaron had his own set of keys to the truck.

The additional automobiles owned by the Williamses and insured by State Farm, included a 1986 Dodge Caravan. The policy covering the Caravan and listing Paul as an insured contains an underinsured liability limit of \$25,000 per person and \$50,000 per accident. The policy also contains the following language concerning the application of underinsured motor vehicle coverage:

We will pay compensatory damages for bodily injury an insured is legally entitled to collect from the owner or a driver of an underinsured motor vehicle. The bodily injury must be sustained by an insured and caused by an accident arising out of the operation, maintenance or use of an underinsured motor vehicle.

The policy further states that an underinsured vehicle does not include a land motor vehicle "furnished for the regular use of you, your spouse, or any relative." "Relative" is defined as a person "related to you or your spouse by blood...who resides primarily with you. It includes your unmarried and unemancipated child away at school."

Pursuant to the liability limit of Aaron's policy, State Farm paid Paul's estate \$25,000 but denied underinsured coverage contained in the Caravan policy. The issue presented

is whether the Toyota pickup truck operated by Aaron was an underinsured vehicle so as to provide the coverage provided in the State Farm policy.

DISCUSSION

It is now well accepted that regular-use exclusions from underinsured motorist coverage are not against public policy and are enforceable.³ "The justification for the regular-use exclusion is not the possibility of collusion, but rather the fact that the insured or another family member has control over how much liability coverage is purchased."⁴ The issue of enforceability of the exclusion having been resolved by prior decisions, it remains to be decided whether the exclusion in the State Farm policy applies to the facts of this case.

The interpretation of an insurance contract is a matter of law for the court.⁵ When interpreting its terms, the court is required to give the clear and unambiguous words of the contract their plain and ordinary meaning.⁶ As stated in Snow v. West American Ins. Co.,⁷ "only actual ambiguities, not fanciful

³ See Motorists Mutual Insurance Co. v. Glass, 996 S.W.2d 437 (Ky. 1997); Pridham v. State Farm Mutual Insurance Co., 903 S.W.2d 909 (Ky.App. 1995).

⁴ Murphy v. Kentucky Farm Bureau Mut. Ins., 116 S.W.3d 500 (Ky.App. 2002).

⁵ Stone v. Kentucky Farm Bureau Mut. Ins. Co., 34 S.W.3d 809 (Ky.App. 2000).

⁶ York v. Kentucky Farm Bureau Mut. Ins. Co., 156 S.W.3d 291, 293 (Ky. 2005).

⁷ 161 S.W.3d 338 (Ky.App. 2004).

ones, are required to be construed against the drafter."⁸ We agree with the trial court that there is nothing ambiguous about the State Farm policy provision.

There is no dispute that Paul and Aaron were members of the Williams household and were relatives as defined in the policy. It is equally evident that title to the pickup truck was in both Sanford's and Aaron's names. Paul's estate contends, however, that since Aaron owned the vehicle, the vehicle was not "furnished" for his regular use. Ownership, it is maintained, is distinguishable from "furnished"; "furnished" meaning that the vehicle is provided for the use of someone other than the owner. The State Farm policy is, the estate argues, narrower than that in Murphy v. Kentucky Farm Bureau Mut. Ins.,⁹ where the court held that an estate of a child killed in an accident while a passenger driven by his brother and owned by the child's mother, could not recover under the underinsured provision. The policy in that case provided that the benefits were excluded if the underinsured vehicle was "owned by or furnished or available for the regular use of you or any family member."

Although the State Farm policy does not include the "owned by" language included in similar policy provisions, its

⁸ Id. at 342, (citation omitted).

⁹ Murphy, supra.

omission does not create an ambiguity requiring a construction other than that given by the circuit court. The policy states that the vehicle is not an underinsured vehicle if "furnished for the regular use of you or any family member." The common and ordinary understanding is that a vehicle owned is one furnished for the owner's use. Whether Aaron owned the pickup exclusively or jointly with his father, it was for Aaron's use, therefore excluded under the underinsured provision in the State Farm policy.

The judgment of the Menifee Circuit Court is affirmed.

VANMETER, JUDGE, CONCURS.

BARBER, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

BARBER, JUDGE, DISSENTING: I respectfully dissent. I agree with the Appellant that the vehicle in question was owned by Paul Williams, not "furnished by" Sanford Williams, and therefore, the underinsured coverage of the policy should be extended to the Estate of Paul Williams.

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