

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0856-MR

THOMAS L. ROUSE, AS
ADMINISTRATOR OF THE ESTATE
OF JOSHUA ADAM JONES,
DECEASED; HEATHER NICOLE
(JONES) HASH, AS NATURAL
MOTHER AND LEGAL GUARDIAN
OF ISABELLA ROSE JONES AND
JOSHUA ADAM JONES, JR.,
MINORS; JESSE ACE WHITLEY;
AND SARAH KOSZEWSKI, AS
NATURAL MOTHER AND LEGAL
GUARDIAN OF JADEN HAYWOOD
JONES, A MINOR

APPELLANTS

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JAMES R. SCHRAND, II, JUDGE
ACTION NO. 20-CI-00597

AMGUARD INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, MOYNAHAN, AND TAYLOR, JUDGES.

MOYNAHAN, JUDGE: In this civil matter, the Boone Circuit Court found that an exclusion to an underinsured motorist (“UIM”) insurance provision applied and granted summary judgment on behalf of the Appellee, AmGuard Insurance Company (“AmGuard”). We agree and affirm.

BACKGROUND

On March 9, 2020, two consecutive motor vehicle accidents occurred on Interstate-75 in northern Kentucky that resulted in injuries to Daniel Kincaid and the deaths of Katherine Kincaid and Joshua Jones. Joshua Jones was driving a Ford F-250 work truck, owned by Drake Lighting, that made contact with a Toyota FJ Cruiser being driven by Daniel Kincaid. Jones resided in Mason, Ohio, and was employed by Paducah-based Drake Services, Inc. as a service technician. As part of his employment with Drake, Jones had been assigned the F-250 as a work truck. The truck was insured by AmGuard. On the morning of this incident, he drove the truck from his home in Ohio.

At the time of that accident, Jones was driving to Louisville, to perform a job for Drake, while Kincaid was traveling with his daughter, Katherine, to the University of Kentucky for a college visit. The first collision involved limited damage and both Jones and Kincaid moved their vehicles to the interstate’s shoulder to inspect them and discuss next steps. Notably, during this time, according to a statement subsequently given to police by Kincaid, Jones told him

he was not supposed to be driving the company vehicle. Indeed, Jones reportedly asked Kincaid if he (Jones) could take care of the accident himself without calling the police. Kincaid agreed to the request by Jones, telling him he would take photos, get an estimate, and call Jones.

Tragically, while Kincaid and Jones were discussing their accident on the shoulder of Interstate-75, a Freightliner Tractor/Semi-Trailer operated by Edward Doyle for GBM Trucking, Inc. struck both Jones and Kincaid, as well as the Toyota FJ Cruiser and the Ford F-250. Jones' body was found in a nearby ditch, and he was declared dead at the scene. Kincaid sustained personal injuries and his daughter, Katherine, who was in the Toyota, was killed.

When Kincaid was subsequently asked if Jones seemed impaired during their conversation prior to the semi collision, he said he only seemed nervous but not "out of it." Further, when Kincaid was asked whether Jones' movements seemed out of the ordinary, he responded, "No. He was shaking a little bit, but again, I think I was too. It was just kind of a nervous situation." In the underlying proceedings, it was eventually discovered that Jones was driving without a valid driver's license as his Ohio Operator's License had been suspended on February 3, 2020. Furthermore, a blood toxicology report taken from Jones was positive for amphetamine, methamphetamine, and THC/marijuana.

Eventually, the Kincaid Plaintiffs and Jones Plaintiffs, respectively, sued the driver of the semi-truck and GBM Trucking in Boone Circuit Court. However, Doyle/GBM Trucking was woefully underinsured with a single liability limit of \$1 million, to be divided between all Jones and Kincaid Plaintiffs for the two deaths, personal injuries, and loss of parental consortium. AmGuard was added as a defendant for its UIM coverage of \$1 million on the Ford F-250 driven by Jones. Eventually, the Jones and Kincaid Plaintiffs reached a settlement with Doyle and GBM that divided the limited insurance coverage and dismissed those claims.

AmGuard's policy was purchased by Drake Services, Inc. and lists Drake Lighting as an additional named insured. The policy contained an entitlement exclusion such that "[a]nyone using a vehicle without a reasonable belief the person is entitled to do so[,] is excluded from coverage."¹ AmGuard eventually moved for summary judgment on the basis of the entitlement exclusion to the UIM coverage, based on Jones' statement that he was not allowed to use the work truck that day. AmGuard cited two rationales for why Jones would have made the statement he made: (1) his driver's license was suspended prior to the accident, and (2) he was impaired due to drug use.

¹ AmGuard Commercial Policy CA 21 79 10 13 Kentucky Underinsured Motorists Coverage C(2). (Record at 846, Exhibit A to January 18, 2022, Motion for Summary Judgment.)

The Jones' Estate ("the Estate") disputed that Jones was aware of his license suspension, pointing to Ohio Bureau of Motor Vehicles ("BMV") records confirming he had moved and was not officially notified of the suspension three weeks before the collision.² Furthermore, Jones' fiancée, Sarah Koszewski, testified in a deposition that she had no awareness of Jones' license suspension as no notice had been received. Beyond Koszewski's testimony, the Estate points to the testimony of Jones' work supervisor who said Jones *was* entitled to use the Ford F-250 and that he was also unaware of Jones' license suspension.

On the question of Jones' blood samples, the Estate emphasized that he had bled out from being torn apart in the semi-truck collision. Consequently, the state pathologist could only sample mixed tissue and fluids collected from the area of his chest cavity.³ Jones' autopsy was performed by Dr. Donna Stewart, a forensic pathologist at the Kentucky Medical Examiner's Office. Based on the information available to her, Dr. Stewart could not make any inferences regarding the recency of any drug use by Jones and could not determine whether Jones was intoxicated at the time of his death. This finding was supported by the Estate's

² A "NOTICE OF SUSPENSION OF DRIVING AND REGISTRATION PRIVILEGES" was mailed on February 20, 2020, to Jones at 950 Brookcrest Drive, Mason, Ohio. However, Jones had moved, and the notice was returned to the BMV with "Return to Sender – Not Deliverable as Addressed – Unable to Forward" markings.

³ The Estate explained that the sample was, "a mixed bio fluid sample from morcellated and macerated organs, including the stomach, intestines, liver, spleen, and kidneys, etc. and their contents."

toxicologist, Dr. Harry Plotnick, who reviewed the autopsy and toxicology reports, as well as the deposition of Dr. Stewart. Dr. Plotnick testified that the “mixed blood” sample provided no indication that Jones exhibited any overt effects of the drugs found in the blood sample and that the THC present was only indicative that Jones had used marijuana sometime in the past.

The circuit court analyzed the UIM exclusion under the two-pronged test of entitlement exclusions in insurance policies laid out in *Hugenberg v. West American Insurance Co./Ohio Casualty Group*, 249 S.W.3d 174, 190 (Ky. App. 2006). Utilizing that test, the court found the exclusion applied and therefore coverage was precluded. The court reasoned that Jones had a subjective belief he was not entitled to be driving the F-250 truck that day. It based this finding on Jones’ admission to Kincaid that he was not supposed to be driving the company vehicle and on the fact that Jones asked to take care of the accident himself without calling the police. The circuit court went on to find that Jones’ belief was objectively reasonable because he received a citation on December 4, 2019, that required him to appear in Mason Municipal Court on December 17, 2019, and warned him that failure to appear could result in his license being canceled. Additionally, the circuit court reasoned that Jones would have been aware of the presence of methamphetamine, amphetamine, tetrahydrocannabinol (THC), and

carboxy-tetrahydrocannabinol in his system as further evidence that he subjectively believed he was not entitled to be driving the F-250 work truck.

STANDARD OF REVIEW

In ruling on summary judgment, “[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). “Appellate review of a summary judgment involves only legal questions and a determination of whether a disputed material issue of fact exists. So, we operate under a *de novo* standard of review with no need to defer to the trial court’s decision.” *Adams v. Sietsema*, 533 S.W.3d 172, 177 (Ky. 2017).

As noted above, Kentucky courts analyze entitlement exclusions in insurance policies using a two-pronged test from *Hugenberg*, 249 S.W.3d at 190. The *Hugenberg* Court found that the first prong looks at whether the driver had a subjective belief that they were entitled to use the car, and the second prong asks whether this belief was objectively reasonable. *Id.* *Hugenberg* held that, “it is clear that coverage is excluded if the driver (a) knew he was not entitled to drive the vehicle, or (b) if he claimed he believed he was entitled to drive the vehicle, but was without reasonable grounds for such belief or claim.” *Id.* (internal quotation marks and citation omitted).

ANALYSIS

On appeal, the Estate concedes that the basic facts are undisputed, but argues there are significant material disputes in inferences from those facts that provide genuine jury issues. We disagree and find AmGuard's arguments persuasive and grounded in Kentucky law.

Here, because there was an unambiguous UIM coverage exclusion in the relevant policy, it must be enforced as written. *Meyers v. Kentucky Med. Ins. Co.*, 982 S.W.2d 203, 210 (Ky. App. 1997) (citation omitted). We also note that the language of the policy exclusion at issue essentially tracks the language of the exclusion analyzed in *York v. Kentucky Farm Bureau Mutual Insurance Co.*, 156 S.W.3d 291, 293-94 (Ky. 2005). In that case, the Kentucky Supreme Court enforced the plain meaning of an analogous exclusion. *Id.* at 294. Applying the standard in *York*, we find it critically important – and undisputed⁴ – that Jones told Kincaid that he (Jones) was not supposed to be driving the Ford F-250 truck for work on the day of the accident. In our view, the only reasonable conclusion to draw from Jones' statement – made against his own interest – is that he believed he did not have a right to drive the F-250 work truck that day. Returning to the

⁴ We note that Kincaid's deposition testimony is the only evidence of what Jones said in the post-crash conversation regarding his subjective belief about his ability to drive the F-250 work truck. Further, there will be no discoverable evidence in the future to dispute the substance of what Jones said.

Hugenberg test, then, our analytical inquiry begins and ends with the test’s first prong because it is satisfied by Jones’ comment after the first accident that he subjectively believed he was not entitled to use the work truck that day.⁵

As noted above, and though unnecessary, the circuit court offered its rationale for why Jones’ stated belief regarding his inability to use the work truck was objectively reasonable. It surmised that Jones either knew his driver’s license was suspended, or he knew he had consumed illegal drugs such that his driving might be considered legally impaired. The Estate argues those rationales rely on inferences that can be disputed while the Appellees respond just as forcefully, with information bolstering those inferences.⁶

The Estate further contends these competing inferences must be resolved by a jury, but Kentucky precedent suggests something different:

[W]here the conflict is between inferences to be drawn from undisputed facts, summary judgment may be granted when it is clear that the only reasonable inference is in favor of the moving party. Once it has been established that the evidentiary facts are genuinely undisputed, the movant must establish his right to a judgment as a matter of law. Where the claims have no substance or the controlling facts are not in dispute, summary judgment is proper.

⁵ Because the first prong is satisfied, “[t]he question of whether or not, if [Jones] had believed that he was entitled to operate the vehicle, that belief was reasonable, is irrelevant.” 249 S.W.3d at 192 (internal quotation marks and citation omitted).

⁶ For example, Jones was aware of his December 2019 citation and subsequently failed to appear for his court date. Jones also would have had knowledge of what led to the positive toxicology results – including when and how much of those substances he consumed.

Harker v. Fed. Land Bank of Louisville, 679 S.W.2d 226, 229 (Ky. 1984); *Walker v. Commonwealth*, 503 S.W.3d 165, 170 (Ky. App. 2016). Applying this precedent, we find the prospect of Jones' lying to Kincaid about not being authorized to drive the work truck an unreasonable inference to draw given the circumstances. The Estate contends that Jones lied because he needed to persuade Kincaid to go along with his desire not to involve the police. But there were other ways Jones could have accomplished his goal without fabricating a cover story. For example, if persuading Kincaid was his primary goal, Jones could have relied on more straightforward rationales for not involving police, such as not wanting to raise his company's insurance rates or not wanting to get in trouble with his boss. With other viable alternatives – it is unreasonable to infer that Jones would immediately jump to providing Kincaid with a false excuse in order to convince him to resolve their minor collision without police involvement. This is especially true if, as the Estate contends, Jones truly believed his use of the truck that day was entirely authorized.

Here, the issue would only be appropriate for a jury if there was some dispute regarding whether Jones actually told Kincaid that he (Jones) was not supposed to be driving the work truck. But the factual nature of Jones' statement was not contested by the Estate. *Cf. Auto-Owners Ins. Co. v. Spalding*, 573 S.W.3d 626, 630-31 (Ky. App. 2019) (holding there was a clear factual issue

regarding a conversation about UIM coverage when the party opposing summary judgment had “adamantly maintained in every pleading that [the conversation] did not” occur and presented evidence to dispute it ever occurred).

Thus, recognizing that no amount of discovery would yield more clarity on this question, the circuit court properly found that a jury could not unilaterally impart a subjective belief to Jones that differed from the one he clearly stated to Kincaid.⁷

CONCLUSION

Because the Boone Circuit Court properly applied the analysis in *Hugenberg* to the issue of the UIM exclusion provision here, the grant of summary judgment to AmGuard is AFFIRMED.

ALL CONCUR.

⁷ As the *Steelvest* decision makes clear, conflicting inferences, in and of themselves, do not necessarily create a genuine issue of material fact that precludes summary judgment. *Steelvest*, 807 S.W.2d at 481 (citation omitted).

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