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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001455-MR

FRANKLIN BLAKELY — APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
CIVIL ACTION NO. 03-CI-00679

SAFE AUTO INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER, MINTON, AND TAYLOR, JUDGES.

MINTON, JUDGE: Franklin Blakely claimed uninsured motorist coverage in a lawsuit for injuries he allegedly received in an automobile accident that occurred while he was driving his non-relative cohabitant's automobile insured by Safe Auto. The trial court granted summary judgment to Safe Auto from which Blakely appeals. Since the plain language of Safe Auto's auto insurance policy excluded cohabiting non-relatives like Blakely from uninsured motorist coverage, we find no error and affirm.

The pertinent facts of this case are not contested. Blakely was involved in a two-car accident while driving a car owned by Paula Stillwell, with whom Blakely resided. Michelle Scadden, the driver of the other vehicle involved in Blakely's accident, was apparently uninsured. Blakely submitted a claim for uninsured motorist benefits to Stillwell's automobile insurer, Safe Auto. Safe Auto denied the claim because it contended Blakely was not covered by the policy. Blakely then sued Safe Auto and Scadden in circuit court. The circuit court granted summary judgment to Safe Auto, and Blakely filed this appeal.

The only question presented here is whether the trial court correctly concluded that Blakely was excluded from uninsured motorist coverage under Stillwell's auto insurance policy. Before discussing the merits of the trial court's grant of summary judgment, we must define the scope of our review. In assessing the propriety of the trial court's grant of summary judgment to Safe Auto, we are mindful of the fact that summary judgment was appropriate only if Safe Auto showed that Blakely "could not prevail under any circumstances."[1] In ruling on a motion for summary judgment, we must view the evidence in the light most favorable to the non-moving party, which in this case

[1] Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991) (citing Paintsville Hospital Co. v. Rose, 683 S.W.2d 255 (Ky. 1985)).

is Blakely.[2] When we review a trial court's decision to grant summary judgment, we must determine whether the trial court correctly found that there were no genuine issues of material fact.[3] As findings of fact are not involved in the summary judgment process, the trial court's decision is entitled to no deference.[4] In fact, interpretation of insurance contracts is subject to de novo review on appeal[5] as interpretation of insurance contracts is generally a matter of law for the court.[6] Ambiguous terms within the policy must be construed in favor of the purported insured.[7] But the policy must be given a reasonable interpretation in accordance with the average person's understanding, and there is no requirement that every doubt be inevitably resolved against the drafter of the policy.[8]

The propriety of summary judgment depends upon the proper interpretation of the following exclusionary clause of Stillwell's auto insurance policy:

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[2] *Id.*

[3] Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky.App. 1996).

[4] *Id.*

[5] MGA Ins. Co., Inc. v. Glass, 131 S.W.3d 775, 777 (Ky.App. 2004).

[6] Stone v. Kentucky Farm Bureau Mutual Ins. Co., 34 S.W.3d 809, 810 (Ky.App. 2000).

[7] *Id.* at 810-811.

[8] *Id.* at 811.

> Coverage under this Part V [uninsured motorist coverage] is not provided for bodily injury sustained by any person while using:
>
> 1. a covered vehicle while it is being operated by a non-relative resident of your household or by a non-resident of your household to whom a covered vehicle is furnished or available for regular use, unless that person is listed as an additional driver on the declarations page.

Blakely contends that he is entitled to coverage under that policy exclusion because Stillwell testified in a deposition that she only lent her vehicle to him occasionally, not regularly. Thus, according to Blakely, he is entitled to coverage because the policy only excludes "regular" users of Stillwell's vehicle.

Blakely's argument runs afoul of the basic grammatical structure of the exclusionary clause. The clause excludes two separate groups of persons, as delineated by the use of the words "or by" between the groups. A plain reading of the policy shows that it excludes coverage for: 1) non-relative residents of Stillwell's household; or 2) non-residents of Stillwell's household whom Stillwell regularly permits to use her vehicle, unless that non-resident is listed as an additional driver on the declarations policy page.[9] The clause regarding regular use

[9] Even if the phrase "unless that person is listed as an additional driver on the declarations page" is interpreted to modify the non-

of the vehicle plainly is contained within the non-resident clause only and, consequently, has no bearing on the non-relative resident clause.

It is uncontested that Blakely is not related to Stillwell, that Blakely resided in Stillwell's home at the time of the accident, and that Blakely was not listed as a driver on the policy's declarations page. So Blakely falls squarely within the exclusionary clause, meaning that the trial court properly granted summary judgment to Safe Auto.[10]

For the foregoing reasons, the order of the Bullitt Circuit Court granting summary judgment to Safe Auto is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dan E. Siebert
Louisville, Kentucky

BRIEF FOR APPELLEE:

Robert L. Steinmetz
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relative resident clause, Blakely is afforded no relief. It is uncontested that he was not listed as an additional driver on the policy's declarations page.

[10] This result does not violate public policy because an insurance company has a right to base the premiums it charges on the nature and number of persons who will drive any covered vehicle. Since Safe Auto had no knowledge of Blakely's cohabiting with Stillwell, Safe Auto should be permitted to deny coverage to him.