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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000302-MR

ROBERT JONES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 09-CI-000963

GEICO INDEMNITY COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; LAMBERT,¹ CHIEF SENIOR JUDGE.

STUMBO, JUDGE: Robert Jones appeals from a Summary Judgment of the Jefferson Circuit Court in favor of Geico Indemnity Company. Jones maintains

¹ Chief Senior Judge Joseph E. Lambert, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

that the trial court incorrectly concluded that Geico had no duty to offer or furnish a written no-fault waiver arising from its motorcycle insurance coverage with Jones, and incorrectly determined that Geico had no duty to file any such written no-fault waiver with the Office of Insurance. We conclude that the Motor Vehicle Reparations Act does not require Geico to do more than merely offer optional basic reparations benefits to a purchaser of motorcycle coverage, and accordingly affirm the Summary Judgment on appeal.

On March 25, 2008, Jones obtained motorcycle liability insurance coverage via telephone from Geico. On July 25, 2008, he was operating the insured motorcycle when it was involved in a wreck with another motorcycle. Shortly thereafter, Jones filed a claim seeking basic reparations benefits from Geico. Geico denied the claim because Jones had not purchased the optional no-fault coverage. Jones then filed the instant action against Geico in Jefferson Circuit Court seeking damages arising from Geico's alleged improper failure to provide basic reparations benefits as required by statute. Jones alleged that Geico violated provisions of the Motor Vehicle Reparations Act (MVRA) when it failed to provide no-fault coverage to him, failed to comply with statutes requiring an insurer to explain the ramifications of waiving no-fault coverage, failed to execute a form required when an insured waives no-fault coverage, and failed to provide Jones with a no-fault rejection form.

The matter proceeded in Jefferson Circuit Court, whereupon Geico and Jones each moved for Summary Judgment. After the filing of memoranda and

the court's review of the record, the court rendered an Opinion and Order on January 21, 2010, sustaining Geico's motion. As a basis for the Order, the court determined that while the MVRA requires basic reparations benefits for motor vehicle insurance coverage, such coverage is merely optional for motorcycle coverage. It found in relevant part that the MVRA does not require an insurance company to take affirmative steps to offer or provide basic reparation benefits coverage to motorcycle operators. In rendering Summary Judgment in favor of Geico, it went on to find that Geico was under no obligation to file a notice of rejection, though Jones was free to do so if he wished. This appeal followed.

Jones now argues that the trial court erred in rendering Summary Judgment in favor of Geico. He contends that under the MVRA, any person suffering injury out of the use of a motor vehicle is entitled to basic reparation benefits. He maintains that a motorcycle is a motor vehicle for purposes of the MVRA and that as such, Geico was bound by statute to provide basic reparation benefits coverage unless Jones waived such coverage in accordance with the statutory scheme. Jones goes on to argue that he was never offered the option of waiving basic reparation benefits coverage, and that the court improperly concluded that Geico was under no duty to file a written waiver of basic reparation benefits coverage with the Office of Insurance. Jones seeks an order reversing the Summary Judgment in favor of Geico and directing the trial court to render Summary Judgment in favor of Jones. In response, Geico maintains that basic reparations benefits coverage for motorcycles is optional, and that the mechanism

for rejecting such coverage differs from the procedure set out to reject similar automobile coverage. It claims that Geico was under no affirmative duty to take action with respect to basic reparations benefits coverage for motorcycles, and contends that the MVRA requires the person seeking insurance to take the affirmative step of purchasing the optional coverage.

The MVRA – as set out in KRS Chapter 304 – provides the rights and duties of both insurers and operators of motor vehicles in the Commonwealth. The MVRA codifies the general rule that a person who suffers a loss from injury arising out of the maintenance or use of a motor vehicle has a right to basic reparations benefits, unless he has rejected the limitation upon his tort rights as provided in KRS 304.39-060(4). KRS 304.39-030(1). It goes on to state that those who operate motor vehicles on public roadways in Kentucky are deemed to have accepted the provisions of the MVRA. KRS 304.39-060(1).

The issue now before us is Jones' contention that Geico violated certain provisions of the MVRA when it failed to provide no-fault coverage, failed to execute a form required when an insured waives no-fault coverage, and failed to provide Jones with a no-fault rejection form. In examining these claims, the trial court recognized the general rule that a motor vehicle operator has a right to basic reparation benefits unless he has rejected this limitation on his tort rights. It went on to find, however, that specific provisions of a statute must take precedence over general provisions. *Kentucky Trust Company v. Department of Revenue*, 421 S.W.2d 854 (Ky. 1967). It determined that there are a number of very specific

statutes which govern the application of the MVRA to motorcycles. The court concluded that when the MVRA is read as a whole, it is clear that basic reparation benefits are optional for motorcycles and that no motorcycle operator may recover such benefits unless he has purchased that coverage. With respect to Jones' instant claims of error, the trial court concluded that while the general statutory provisions require an insurer to provide basic reparation benefits to motor vehicle operators unless the insured rejects such coverage, specific statutes contained within the MVRA treat motorcycle operators differently by requiring them to take the affirmative step of purchasing the optional coverage. That is to say, the court determined that while basic reparation benefits are automatically provided for motor vehicle operators unless the insured opts out, such benefits are not automatically provided for operators of motorcycles. In the latter case, no basic reparations benefits are provided unless the insured takes affirmative steps to opt in.

We have closely examined the record and the law, and find no error in this conclusion. Basic reparation benefits coverage is mandatory for motor vehicle insurance, KRS 304.39-030, and KRS 304.39-060(4) sets out the steps one must take to waive such coverage. The more specific provisions of KRS 304.39-040(3) and (4) make such coverage optional for motorcycles, however. This provision, in conjunction with KRS 304.39-060(9), departs from the general requirement that basic reparation benefits coverage is required for motor vehicles unless the insured

opts out. It places the burden on the insured to take the affirmative step of purchasing the optional coverage. KRS 304.39-040 states that,

(3) Every insurer writing liability insurance coverage for motorcycles in this Commonwealth shall make available for purchase as a part of every policy of insurance covering the ownership, use, and operation of motorcycles the option of basic reparations benefits, added reparations benefits, uninsured motorist, and underinsured motorist coverages.

(4) Notwithstanding any other provisions of this subtitle, no operator or passenger on a motorcycle is entitled to basic reparation benefits from any source for injuries arising out of the maintenance or use of such a motorcycle unless such reparation benefits have been purchased as optional coverage for the motorcycle or by the individual so injured.

This language is subject to but one interpretation. Whereas basic reparations benefits are mandatory for the broad category of motor vehicle coverage unless opted out, motorcycle operators or passengers are not entitled to such benefits unless such reparation benefits “have been purchased as optional coverage”

Jones also argues that even if the MVRA places an affirmative duty on him as the operator of a motorcycle to reject basic reparations benefits coverage, the trial court erred in concluding that the burden rested with him rather than with Geico to file such rejection with the Department of Insurance. We find no error on this issue. KRS 304.39-060(9) states that an “owner or operator of a motorcycle, as defined in Kentucky Revised Statutes, may file a rejection as described in subsections (4) and (5) of this section” This provision places the

burden on Jones as owner or operator of the motorcycle, rather than on Geico as insurer. We find no error.

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. “The 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). “Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact.” *Id.* Finally, “[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

When viewing the record in a light most favorable to Jones and resolving all doubts in his favor, we cannot conclude that the trial court improperly determined that there were no genuine issues of material fact and that Geico was entitled to a judgment as a matter of law. For the foregoing reasons, we affirm the Summary Judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
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BRIEF AND ORAL ARGUMENT
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