

RENDERED: MARCH 29, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-002073-MR

CASEY MOONEYHAM

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT  
HONORABLE DENNIS R. FOUST, JUDGE  
ACTION NO. 07-CI-00322

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY; STATE FARM FIRE  
& CASUALTY COMPANY;  
AND MARY WILSON

APPELLEES

AND

NO. 2011-CA-002074-MR

CASEY MOONEYHAM

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT  
HONORABLE DENNIS R. FOUST, JUDGE  
ACTION NO. 10-CI-00465

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: MAZE, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Casey Mooneyham brings Appeal No. 2011-CA-002073-MR and Appeal No. 2011-CA-002074-MR from two separate orders of the Marshall Circuit Court entered November 1, 2011, determining that neither underinsured motorist or uninsured motorist (UIM/UM) coverage was available to Mooneyham under motor vehicle insurances policies issued by State Farm Mutual Automobile Insurance Company (State Farm). We affirm both appeals.

Mooneyham was involved in two separate motor vehicle accidents as an alleged passenger on August 10, 2006, and May 2, 2009. In both accidents, Mooneyham claimed that third-party drivers of the motor vehicles, in which he was a passenger, drove negligently, thereby causing Mooneyham to suffer various injuries. Due to the accidents, Mooneyham claimed entitlement to UIM/UM coverage through three motor vehicle insurance policies issued by State Farm to his wife, Donita, and/or her parents, Fred and Thressa Cotham.

Consequently, State Farm filed two declaratory judgment actions (07-CI-00322 and 10-CI-00465) in the Marshall Circuit Court seeking an adjudication of Mooneyham's entitlement to UIM/UM coverage under the motor vehicle insurance policies issued by State Farm. By orders entered November 1, 2011, the circuit court concluded that Mooneyham was not entitled to UIM/UM coverage to

compensate him for damages suffered in either motor vehicle accident. In so concluding, the circuit court reasoned:

The facts as presented to the Court are that State Farm issued a policy of insurance to Fred and Thressa Cotham, who reside at 903 Main Street, Benton, Kentucky. The Cothams also own property [sic] located at 900 Poplar Street, Benton, Kentucky, which property is contiguous to the Cotham residence. A house was located on that property also, for the most part, Mooneyham and his wife lived in that residence. The Court would also note that from time to time, Mooneyham and his wife may have stayed in the Cotham residence.

The insurance policy in question provides coverage for Fred Cotham, Thressa Cotham, and Donita Cotham. Donita Cotham has coverage because she was listed on this policy.

The policy language in the State Farm uninsured UM/UIM coverage defines insured as the person shown on the Declaration page as well as any relative. Relative is defined as “A person related to you or your spouse by blood, marriage, or adoption who reside primarily with you.” The policy goes on to state that “you or your is defined as the name insured on the declaration page of the policy.” In this case, the policy in question in [sic] a part of this record attached as Exhibit 16 in State Farm’s Brief in Support of Motion for Declaratory Judgment.

In looking at the Declaration’s pages, the Court is of the opinion, while the daughter Donita Cotham, also had a policy as shown in the Mooneyham response, the policy in which Donita Cotham is the named insured does not have UM or UIM coverage.

The facts presented to the court indicated that Mooneyham’s primary residence was 900 Poplar Street, Benton, Kentucky, and not 903 Main Street, Benton, Kentucky. The facts further are that while Donita Cotham is a defined relative under the policy, Mooneyham would not be a relative under the policies

issued to Fred and Thressa Cotham, but would be a relative under the policy issued to Donita Cotham.

The UM and UIM coverage on the Fred and Thressa Cotham policy does not extend to Mooneyham. . . . The fact that Mooneyham is a) not a primary resident at 903 Main Street, b) is not a relative of Fred and Thressa Cotham, and c) cannot be linked to the Fred and Thressa Cotham policy by virtue of the fact that his wife, Donita Cotham, may be covered, affords no coverage under the policy under the UM or UIM coverage purchased by Fred and Thressa Cotham.

These appeals follow.

Mooneyham contends that the circuit court erred by concluding that he was not entitled to UIM/UM coverage under the motor vehicle insurance policies issued by State Farm to either his wife, Donita, or her parents, the Cothams. Mooneyham argues that he maintained two residences – one with his wife at 903 Main Street and the other with the Cothams at 900 Poplar Street. As he resided with the Cothams, Mooneyham asserts entitlement to UIM/UM coverage under two motor vehicle policies issued to the Cothams. Also, Mooneyham argues that he primarily resided with his wife, Donita, who was a named insured under two motor vehicle insurance policies issued by State Farm, thus also entitling him to UIM/UM coverage under such policies:

[State Farm] argues that [Mooneyham] shouldn't be covered because Fred & Thressa Cotham's home was not his primary residence. This is irrelevant. What is relevant is whether [Mooneyham] lived primarily with his wife Donita at any residence, which he did. Under any rational reading of the facts, [Mooneyham] primarily lived with his wife Donita, who was a named insured under both the State Farm policies. Otherwise, he would

not have been at a house owned by Donita's parents. It defies logic to hold any other way.

Mooneyham's Brief at 6-7.

To begin, we observe that the circuit court decided this matter without a jury pursuant to Kentucky Rules of Civil Procedure (CR) 52.01. Under CR 52.01, a circuit court's findings of fact are not disturbed on appeal unless clearly erroneous. CR 52.01. And, we review issues of law *de novo*. For the reasons hereinafter set forth, we conclude that the circuit court properly determined that Mooneyham was not entitled to UIM/UM coverage.

There were three separate policies of insurance issued by State Farm to either Mooneyham's wife, Donita, or to the Cothams. The first is identified as Policy No. 539 5931-E13-17F, the second is identified as Policy No. L13 1404-F02-17B, and the third is identified as Policy No. 599 7497-F05-17H. All three policies have identical language and read, in relevant part, as follows:

**UNINSURED MOTOR VEHICLE –  
COVERAGE U**

*You* have this coverage if "U" appears in the "Coverages" space on the declarations page.

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to collect from the owner or driver of an *uninsured motor vehicle*. . . .

. . . .

**UNDERINSURED MOTOR VEHICLE –  
COVERAGE W**

**You** have this coverage if “W” appears in the “Coverages” space of the declarations page.

We will pay compensatory damages for ***bodily injury*** an ***insured*** is legally entitled to collect from the owner or driver of an ***underinsured motor vehicle***. . . .

. . . .

**Who Is an Insured – Uninsured Motor Vehicle  
– Coverage U and Underinsured Motor Vehicle  
– Coverage W**

***Insured*** – means the ***person*** or ***persons*** covered by uninsured motor vehicle or underinsured motor vehicle coverage.

This is:

1. ***you***;
2. any ***relative***[.]

**DEFINED WORDS WHICH ARE USED IN  
SEVERAL PARTS OF THE POLICY**

***Relative*** – means a ***person*** related to ***you*** or ***your spouse*** by blood, marriage or adoption who resides primarily with ***you***. It includes ***your*** unmarried and unemancipated child away at school.

It is well-established that the interpretation of an insurance contract presents an issue of law, and our review proceeds *de novo*. See *Allen v. Lawyers Mut. Ins. Co. of Ky.*, 216 S.W.3d 657 (Ky. App. 2007). And, if no ambiguity exists in an insurance contract, we must give effect to the contract as written. *Id.*

Under the unambiguous language as set forth above, the policies of motor vehicle insurance include coverage for UIM/UM coverage if “U” appears under

coverages on the declarations page. Moreover, to be entitled to UIM/UM coverage, the individual must be considered an “insured” under the policies. Per the definition of insured for UIM/UM coverage, an individual may be an insured if that individual is a named insured as identified on the declarations page or a relative of a named insured. And, to be a relative of a named insured, such individual must be related to the named insured by marriage or blood and primarily reside with the named insured. We now turn to three specific policies of motor vehicle insurance.

In Policy No. 539 5931-E13-17F, the named insured was specifically listed as only Fred K. Cotham, and in Policy No. L13 1404-F02-17B, the named insureds were specifically listed as Fred and Thressa Cotham on the declarations page. The circuit court found Mooneyham did not primarily reside with the Cothams at 903 Main Street; instead, the circuit court found that Mooneyham primarily resided at 900 Poplar Street. And, there is more than substantial evidence in the record to support this finding.<sup>1</sup> As Mooneyham did not primarily reside with the Cothams, Mooneyham cannot be considered an insured relative entitled to UIM/UM coverage per the unambiguous policy language of Policy No. 539 5931-E13-17F and Policy No. L13 1404-F02-17B.

Also, it must be pointed out that in Policy No. 539 5931-E13-17F an additional coverage was added and designated as “Coverage S.” Coverage S

---

<sup>1</sup> The record reveals that Casey Mooneyham did not receive mail at Fred and Thressa Cotham’s residence at 903 Main Street, and that he indicated on various documents that his residence was at a different address. Moreover, Thressa testified that she did not recall Mooneyham spending a night at her residence.

provides benefits for “Death, Dismemberment and Loss of Sight.” Under Coverage S, named insureds were separately listed as Fred, Thressa, and Donita. Thus, for the limited purpose of Coverage S, Donita was clearly listed as a named insured. However, Mooneyham did not seek recovery under Coverage S but rather sought coverage under UIM/UM.

In Policy No. 599-7497-F05-17H, the named insured was specifically listed as Mooneyham’s wife, Donita, on the declarations page. Unfortunately for Mooneyham, the declarations page reveals that Donita did not purchase UIM/UM coverage; hence, UIM/UM coverage is unavailable thereunder. So, Mooneyham is clearly not entitled to UIM/UM coverage under Policy No. 599-7497-F05-17H.

Accordingly, we hold that the circuit court properly concluded that Mooneyham was not entitled to UIM/UM coverage under the motor vehicle insurance policies issued by State Farm.

For the foregoing reasons, the Orders of the Marshall Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David Troutman  
Paducah, Kentucky

BRIEF FOR APPELLEE STATE  
FARM FIRE & CASUALTY  
COMPANY:

Dennis J. Courtney  
Murray, Kentucky