

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-000459-MR

DAILYN ARGUELLES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE OLU A. STEVENS, JUDGE  
ACTION NO. 10-CI-006220

NATIONWIDE INVESTMENT  
SERVICES CORPORATION

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KELLER,<sup>1</sup> STUMBO AND THOMPSON, JUDGES.

STUMBO, JUDGE: Dailyn Arguelles appeals from an Opinion and Order of the Jefferson Circuit Court granting Summary Judgment in favor of Nationwide Investment Services Corporation. Arguelles contends that the trial court erred in

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<sup>1</sup> Judge Michelle M. Keller concurred in this opinion prior to her appointment to the Kentucky Supreme Court. Release of this opinion was delayed by administrative handling.

concluding that injuries she sustained in a motor vehicle accident are excluded from coverage under an insurance policy issued by Nationwide, and in concluding that an exclusion contained in the policy did not violate public policy. We find no error, and affirm the Opinion and Order on appeal.

The facts are not in controversy. On September 29, 2009, Arguelles was injured in a motor vehicle accident in Jefferson County, Kentucky. At the time of the accident, Arguelles was operating a vehicle that she owned and insured through a third-party insurer that is not a party to this action. Arguelles lived with her parents at the time of the accident, and the motorist who struck her was at fault and was underinsured. Arguelles settled with the motorist's insurer for the at-fault liability policy limits. She then filed a claim for underinsured motorist ("UIM") benefits with Nationwide, which had issued an automobile policy to her parents. The vehicle Arguelles was driving was not insured under her parents' policy. Nationwide denied coverage.

Arguelles filed the instant action against Nationwide in Jefferson Circuit Court seeking UIM coverage. Nationwide then filed a Motion for Summary Judgment claiming that the policy language expressly excluded coverage. At issue was an exclusionary provision stating that coverage did not apply to bodily injury suffered while occupying a motor vehicle available for the regular use of a relative.

Arguelles responded that the policy provision violated public policy and was void *ab initio*. After considering the arguments, the Jefferson Circuit Court

rendered an Opinion and Order sustaining Nationwide's Motion for Summary Judgment, and this appeal followed.

Arguelles now argues that the trial court erred in rendering a summary judgment in favor of Nationwide. She contends that the policy exclusion at issue is void as against public policy, and that the court erred in failing to so rule. After contending that contracts which violate public policy are void *ab initio*, Arguelles maintains that 1) public policy requires underinsured motorist coverage be available to pedestrian/relative insureds, 2) Nationwide's exclusion operates to bar UIM coverage to pedestrian/relatives, and therefore, 3) Nationwide's exclusion violates public policy and is void even as to claimants who were not pedestrians when injured. While acknowledging that she was not a pedestrian in the September 29, 2009 accident, Arguelles contends that because the policy exclusion at issue may be applied to exclude UIM coverage to pedestrian/relatives of the insured, and because such an application would run afoul of public policy extending UIM coverage to pedestrians, the exclusion is void in its entirety and cannot be applied to deny UIM coverage as to Arguelles. Arguelles also argues that the trial court's reliance on the unpublished opinion of *Daniel v. Metropolitan Direct Property & Cas. Ins. Co.*, 2009 WL 2901543 (Ky. App. 2009), is misplaced because *Daniel* is distinguishable. She seeks an Order reversing the Opinion and Order on appeal.

The policy exclusion at issue states that,

This coverage does not apply to: . . .

4. Bodily injury suffered while occupying or when hit by a motor vehicle;
  - a) owned by;
  - b) furnished for; or
  - c) available for the regular use of you or a relative, but not insured for:
    - 1) auto liability coverage; or
    - 2) underinsured motorist coverage.

Arguelles suffered bodily injury while occupying a motor vehicle that she owned, for which she did not purchase the optional UIM coverage, and which was not listed as one of the insured vehicles under her parents' policy with Nationwide. While the express policy language clearly operates to exclude her from UIM coverage under the present facts, the issue for our consideration is whether the Jefferson Circuit Court erred in concluding that the exclusion is not violative of public policy and is therefore enforceable. We must answer that question in the negative. Arguelles presents a novel argument that relatives of the insured who are pedestrians at the time of injury should be entitled as a matter of public policy to UIM benefits. Arguelles, however, was not a pedestrian at the time of the accident resulting in her bodily injury, and the exclusion in question does not expressly address pedestrians.

Arguelles properly notes that when interpreting insurance contracts, fairness requires that the contracts should be liberally construed with all doubts resolved in favor of the insured, and that exceptions and exclusions should be strictly construed. *Kentucky Farm Bureau Mut. Ins. Co. v. McKinney*, 831 S.W.2d 164 (Ky. 1992). In so doing, and even accepting *arguendo* Arguelles' contention that

public policy requires the application of UIM coverage to pedestrians, we find as persuasive *Daniel, supra*, and its application herein. The focal point of *Daniel* is that permitting recovery under a family member's UIM coverage would mean that every person in Kentucky who owns a car could satisfy their insurance obligation by living with a relative who has automobile insurance. We agree with the Jefferson Circuit Court's conclusion that Arguelles' interpretation would render the Motor Vehicle Reparations Act meaningless as there would be no incentive for a family with multiple vehicles to purchase optional insurance coverage (such as UIM coverage) for all of the vehicles.

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). Summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. *Id.* "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 Arguelles and resolving all doubts in her favor, we nevertheless conclude that the trial court correctly found that there were no genuine issues as to any material fact and that Nationwide is entitled to a judgment as a matter of law. The exclusion at issue does not does run afoul of public policy and operates to exclude Arguelles from UIM coverage under the facts, and the Jefferson Circuit Court properly so found.

For the foregoing reasons, we affirm the Opinion and Order of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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