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Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000006-MR

AMBEREE N. HENSLEY — APPELLANT

ON REMAND FROM THE KENTUCKY SUPREME COURT
2014-SC-000551-DG

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NO. 12-CI-000479

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND JONES, JUDGES.

JONES, JUDGE: We previously rendered an opinion reversing and remanding this matter to the trial court. The Kentucky Supreme Court granted discretionary review, vacated our decision, and remanded to us for further consideration in light

of *State Farm v. Riggs*, 484 S.W.3d 724 (Ky. 2016). Having reviewed *Riggs*, we now affirm.

I. Background

On August 7, 2009, the Appellant, Amberee N. Hensley, was involved in a motor vehicle accident with Awet Beyene. It is undisputed that Beyene negligently caused the accident. Beyene had liability coverage up to $50,000.00 with Nationwide Insurance ("Nationwide"). The automobile Hensley was driving was owned by Louisville Metro Government and did not have underinsured motorist ("UIM") coverage on it. However, Hensley had UIM coverage through two policies of insurance she maintained with State Farm.

In February 2010, Nationwide accepted liability and offered to tender the $50,000.00 policy limits to Hensley in exchange for a settlement agreement releasing Beyene from any further liability. Pursuant to KRS[1] 304.39-320, Hensley sent a letter to State Farm advising it of Beyene's proposed settlement.[2] Ultimately, State Farm advised that it did not wish to pursue a subrogation claim.

Thereafter, Hensley began negotiating with State Farm for UIM coverage under her policies. She made a formal demand for UIM benefits on November 4, 2011, which State Farm denied. On January 24, 2012, Hensley filed

[1] Kentucky Revised Statutes.

[2] In *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895 (Ky. 1993), the Kentucky Supreme Court outlined the procedure for an underinsured motorist carrier to protect its subrogation rights when its insured proposes to settle with the tortfeasor. This letter is often referred to as a "*Coots* letter." The *Coots* procedure is now codified in KRS 304.39-320.

a breach of contract action against State Farm in Jefferson Circuit Court seeking UIM benefits under her policies.

After a period of discovery, State Farm moved for summary judgment based on the limitations provisions in its policies with Hensley. The policies provide in relevant part:

> **2. Suit Against Us**
>
> There is no right of action against us unless:
>
> d. under uninsured motorist vehicle coverage and underinsured motor vehicle coverage unless such action is commenced not later than two (2) years after the injury, death or the last basic reparations payment made by any reparations obligor, whichever later occurs.

Relying on these provisions, State Farm maintained that because the accident occurred on August 7, 2009, and no death or reparation payments were involved, Hensley was barred from pursuing any "right of action" against it after August 7, 2011. Since Hensley's claim was not filed until January 24, 2012, State Farm argued that it was time barred.

Hensley responded by asserting that the limitations period contained in her policies was unreasonable (and therefore unenforceable) because it began running her time to file a UIM claim before her breach of contract cause of action against State Farm accrued. She also argued that the limitations provisions were internally inconsistent with another portion of the policies defining an underinsured motorist as one whose coverage is less than the amount of any

judgment.[3] She argued that this ambiguity should be construed in her favor. State Farm countered that the limitations period in its policies was presumptively reasonable because it mirrored the limitations period in Kentucky's Motor Vehicle Reparations Act ("MVRA") for filing a personal injury claim.

On December 18, 2012, the trial court granted State Farm's motion and entered summary judgment in its favor. The trial court reasoned that the policy at issue provided Hensley with a "reasonable amount of time after the accident to establish that the tortfeasor was an underinsured [motorist] and subsequently file suit against State Farm."

This appeal followed.

II. Standard of Review

The question before us is a purely legal one regarding coverage under insurance policies. Our standard of review, therefore, is *de novo*. *Dowell v. Safe Auto Ins. Co.*, 208 S.W.3d 872, 875 (Ky. 2006). Under *de novo* review, we owe no deference to the trial court's application of the law to the established facts. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

III. Analysis

[3] The policies provide:

> ***Underinsured Motor Vehicle***--means a land motor vehicle:
> 1. the ownership maintenance or use of which is insured or bonded for bodily injury liability at the time of the accident with limits equal to or greater than required by Kentucky law; but
> 2. the limits of liability that apply from such vehicle to the ***insured's*** damages are less than a judgment recovered against a liable party for damages on account of ***bodily injury*** due to a motor vehicle accident. (Emphasis in original).

In *Riggs, supra*, our Supreme Court considered the same policy language at issue in this case. Noting that the insured agreed to the shorter limitations period set forth in policy, the Court held that two years from the date of the accident was not an unreasonably short period of time for the insurer to require a claim for UIM benefits to be brought by the insured.

> [W]e are not so much concerned with whether a UIM claim should be labeled a tort claim or a contract claim as whether State Farm and Riggs have contracted for a UIM claim limitation that accomplishes the policy and purpose of UIM coverage in a reasonable way. It is difficult to condemn State Farm's provision as unreasonable because, at its simplest, it encourages the prompt presentation of all the potential insurance claims relating to a single accident and forces them to progress through the court system in a more cohesive way—a way that insurance claims have proceeded through our court system for decades. This is not contrary to public policy —in fact, a strong argument could be made that it benefits the public. State Farm's provision provides an insured with "the same rights as he would have had against an insured third party" —a result that is not at all unreasonable.

Riggs, 484 S.W.3d at 731.

We cannot reconcile Hensley's arguments with the outcome reached by our Supreme Court in *Riggs, supra*.[4] Therefore, in light of *Riggs, supra*, we affirm the Jefferson Circuit Court.

ALL CONCUR.

[4] While the arguments in this case centered more directly on accrual, which we addressed at length in our original opinion, the Supreme Court's majority opinion in *Riggs* suggested by implication that the cause of action begins to accrue at the time of the accident, a different conclusion than the majority reached when we first considered this case. We believe any further consideration of that issue is best addressed by the Supreme Court, especially since the policy language at issue in this case is the same language the Supreme Court considered in *Riggs*.

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