

RENDERED: JUNE 12, 2015; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-002152-MR

RONIESHA ADAMS, F/K/A RONIESHA SANDERS,
RONIESHA ADAMS, AS MOTHER AND GUARDIAN OF
B.A., A MINOR CHILD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 12-CI-006500

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: CLAYTON, LAMBERT, J., AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal from the Jefferson Circuit Court's granting of declaratory and summary judgment in an automobile accident case. Based upon the following, we reverse the decision of the trial court and remand this action for further proceedings.

BACKGROUND INFORMATION

Appellants, Roniesha Adams and her minor son, B.A., were involved in an automobile accident on April 3, 2012, in Jefferson County, Kentucky. The two were passengers in a vehicle which was insured by State Farm Mutual Automobile Insurance Company. The driver of the vehicle which hit the vehicle in which Adams and her son were passengers was not identified. Both Adams and her son assert they were injured in the accident and sought treatment. They then filed claims for Basic Reparations Benefits (“BRB” or “PIP”) under Kentucky Revised Statutes (KRS) 304.39-010, et seq. and Uninsured Motorist (UM) benefits under KRS 304.20-020.

State Farm moved the trial court for a summary and declaratory judgment asserting that the Appellants had not complied with the terms of the insurance contract by failing to cooperate in the investigation of their claims when they did not participate in an Examination Under Oath (EUO). The EUO was a requirement under the contract of insurance State Farm had with its insured. The trial court granted State Farm’s motion for declaratory and summary judgment on this issue. The Appellants then brought this appeal asserting that nothing in the Motor Vehicle Reparations Act (MVRA) allows for a dismissal by the court on these grounds.

STANDARD OF REVIEW

Issues of law are reviewed *de novo*. *Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007).

DISCUSSION

Appellants argue that the MVRA does not allow for insurance companies to impose obstacles such as the EUO prior to paying a claim. The Appellees, however, argue that the Appellants have not preserved this issue on appeal and that, therefore, their appeal must be dismissed. Specifically, State Farm asserts that Adams did not file a response to its Motion for Declaratory and Summary Judgment. Adams did, however, file a cross-motion for summary judgment which argued this issue. Therefore, we will not dismiss the appeal.

In adopting the MVRA, “[t]he General Assembly was seeking to promote ‘a system’ where motor vehicle accident victims will seek payment for their losses before and, where possible, instead of filing tort actions.” *Crenshaw v. Weinberg*, 805 S.W.2d 129, 132 (Ky. 1991). Adams argues that the purpose of this law is circumvented by requiring an EUO and that a deposition must be taken under the oversight of the circuit court, citing KRS 304.39-280(3). That statute provides:

In case of dispute as to the right of a claimant or reparation obligor to discover information required to be disclosed, the claimant or reparation obligor may petition the Circuit Court in the county in which the claimant resides for an order for discovery including the right to take written or oral depositions.

Adams asserts that EUOs are often used as a tool to harass, annoy, embarrass or oppress claimants in opposition to the purpose of the MVRA. Adams also contends that State Farm is attempting to supersede the MVRA with its policy provisions.

In *Miller v. United States Fidelity & Guaranty Co.*, 909 S.W.2d 339, 341 (Ky. App. 1995), a panel of our Court held that “[t]he circuit court may not enter an order for an examination without rhyme or reason, thereby entitling a reparation obligor to an examination simply upon demand.” In a case such as this, where there were medical reports and police reports indicating injuries and the events that occurred, a policy clause which required an EUO prior to payment of the claim and as a bar to the claim should one not be done, would be in direct opposition to the purpose of the MVRA. Should State Farm wish to obtain a statement from Adams, its remedy would be to seek a court order requiring Adams to submit to discovery. The trial court, therefore, erred in granting declaratory and summary judgment on this issue. We, therefore, reverse the decision of the trial court and remand this action for further proceedings including discovery.

ALL CONCUR.

BRIEF FOR APPELLANT:

Aaron Michael Murphy
Louisville, Kentucky

BRIEF FOR APPELLEE:

Richard W. Edwards
Raymond Smith
Jared L. Downs
Louisville, Kentucky