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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000980-MR

JEREMY A. RILEY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 13-CI-000328

STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO. AND
LIBERTY MUTUAL FIRE INSURANCE CO. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CLAYTON, AND JONES, JUDGES.

JONES, JUDGE: The Appellant, Jeremy A. Riley ("Jeremy") appeals from an order of the Jefferson Circuit Court granting a directed verdict to State Farm Mutual Automobile Insurance Company ("State Farm"). For the reasons set forth below, we affirm.

I. Background

In February of 2012, Jeremy was seriously injured in an automobile accident when a drunk driver collided head-on with a vehicle in which he was a passenger. After resolving his claim against the driver, Riley sought UIM benefits under a State Farm policy (the "Policy") issued to Riley's parents, George and Donna Riley. George initially purchased the Policy with State Farm in 2007, while Jeremy was still a minor residing with his parents. The Policy lists George Riley and Donna Riley as "named insureds" on the Declarations Page. Jeremy is not a named insured on the policy; however, he is listed under the Policy as a "resident relative" that "regularly operate[s] any vehicle in [the] household[.]"

The Policy provides that rates for the UIM coverage purchased by the Riley family are calculated "based on 3 licensed drivers who are resident relatives in the household." The basis for the UIM rates is again noted on the Declarations Page, which indicates that State Farm charged an additional premium to include Jeremy for UIM coverage.

With respect to the UIM coverage, the relevant terms of the Policy state:

Insuring Agreement

We will pay compensatory damages for ***bodily injury*** an ***insured*** is legally entitled to recover from the owner of driver of an ***underinsured motor vehicle***. The ***bodily injury*** must be:

1. sustained by an ***insured***; and

2. caused by an accident that involves the operation, maintenance, or use of an ***underinsured motor vehicle***.

…

Insured means:

1. ***you***;

2. ***resident relatives***;

3. any other ***person*** while ***occupying*** a ***car*** that is:

a. ***owned by you*** or any ***resident relative***; and

b. provided Liability Coverage through a policy issued by ***us***.

. . .

Resident Relative means a ***person***, other than ***you***, who resides primarily with the first ***person*** shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured[.]

Jeremy does not dispute that he: (1) moved out of his parents' home in May of 2010, (2) was working full-time, (3) was not in school, and (4) was renting and residing in an apartment with his girlfriend at the time of the accident.

Further, Jeremy does not deny that at all relevant times he was represented to State Farm as a resident relative. Based on these undisputed facts, State Farm denied Jeremey's claim on the basis that he did not qualify as a "resident relative" under the Policy. Jeremy then filed suit against State Farm seeking UIM benefits.

On October 3, 2013, the circuit court denied State Farm's motion for summary judgment on the basis that there was a factual dispute with respect to Jeremy's primary residence. Thereafter, State Farm moved to bifurcate the residency issue from the damages issue. The circuit court granted this motion. It also ruled that Jeremy could rely on a stipulation that State Farm charged an additional premium to the Riley family to include Jeremy under the Policy.[1]

A jury trial began on February 24, 2015. At the close of Jeremy's proof, State Farm moved for a directed verdict in its favor. The circuit court granted State Farm's motion. Its written order states:

> Counsel for Plaintiff, Jeremy Riley, objected to the motion for directed verdict. Plaintiff argued that a Stipulation entered into evidence by the parties (in which State Farm agreed that Plaintiff Riley had paid additional premiums for underinsured motorist coverage on their policy with State Farm) was sufficient to make him a legal resident of his parents' household for the purposes of the policy provisions. Over Defendant State Farm's objection, the Court allowed the Stipulation to be presented at trial. In a previous Order dated June 18, 2014, the Court determined that there was a factual

[1] The stipulation provides: "Stipulation No. 1: That State Farm charged an additional, or greater, UIM premium on Policy Number 109 7686-A01-17C, to list Plaintiff Jeremy Riley as a driver reported to own or regularly operate any vehicle in the household at 15500 Mouser Hill Road, Louisville, Kentucky. Mr. Riley and his parents were represented to be resident relatives in the household at the time the premium was calculated. This policy was in effect on February 25, 2012, on a 1995 GMC K1500."

> dispute as to Mr. Riley's residence with his parents. The insurance contract required Riley to be a resident in his parents' home to qualify for UIM coverage. Based upon prior briefing, the Court understood Plaintiff Riley would present evidence of off and on residence with his parents at the time of the accident. In the case of *Ayers v. Motorist Mutual Insurance Company*, 860 S.W.2d 726 (Ky. 1993), the Kentucky Supreme Court held that the issue of residence was primarily an issue of fact for jury determination and not a matter of law for the judge to decide.
>
> After hearing proof in the case, other than Mr. Riley's payment of premiums, there was no evidence presented that he resided with his parents at the time of accident. In fact, all of the evidence indicated that beginning in 2010, Mr. Riley ceased to live with his parents. In addition, there was testimony that his mail, driver's license and registration and enrollment papers with work all were to a residence outside of his parents' primary residence at 122200 Mouse Hill Rd. in Louisville, Kentucky. The Court finds a directed verdict is appropriate when there is an absence of proof on a material issue or if no disputed issues of fact exist upon which reasonable minds could differ. *Garcia v. Whitaker*, 400 S.W.3d 270 (Ky. 2013) (citing *Bierman v. Klapheke*, 967 S.W.2d 16, 18-19 (Ky. 1998).
>
> Here, there was no evidence presented to the jury upon which reasonable minds could conclude that Mr. Riley was living with his parents at the time of the accident at issue. For this reason, the Court sustains State Farm's motion for a directed verdict.

Jeremy then moved to alter, amend, or vacate the directed verdict in favor of State Farm. In his motion, Jeremy argued that he qualified as an insured under the "reasonable expectations" doctrine because State Farm accepted the additional premium to cover him. State Farm responded that Riley was not entitled

to relief because it was undisputed that he was not a resident of his parent's home at the time of the accident. State Farm also asserted that the insurance policy was not ambiguous and there was no "illusory coverage" because it never promised to cover Jeremy if he ceased being a resident relative.

The circuit court denied Jeremy's motion to alter, amend, or vacate on the basis that Jeremy had not shown that the court's prior decision was the product of any "manifest errors of law or fact, newly discovered or previously unavailable evidence, a manifest injustice, or an intervening change in controlling law." The circuit court then determined that policy "clearly and unambiguously defined 'insured'" such that neither the doctrine of reasonable expectations nor the prohibition against illusory coverage was applicable.

This appeal followed.

II. Analysis

A. Reasonable Expectations & Illusory Coverage

The trial court's findings that the Policy was not illusory and that the reasonable expectations doctrine was inapplicable are matters of law. *See Stone v. Kentucky Farm Bureau Mut. Ins. Co.*, 34 S.W.3d 809, 810 (Ky. App. 2000) ("As a general rule, interpretation of an insurance contract is a matter of law for the court.") (citing *Morganfield Nat'l Bank v. Damien Elder & Sons*, 836 S.W.2d (Ky. 1992)). Accordingly, "our review is *de novo* and we have no obligation of deference to the lower court." *Dowell v. Safe Auto Ins. Co.*, 208 S.W.3d 872, 875 (Ky. 2006).

We begin with the contract language. Kentucky has adopted "four basic principles of insurance policy construction." *Brown v. Indiana Ins. Co.*, 184 S.W.3d 528, 541 (Ky. 2005). They are as follows:

> 1) all exclusions are to be narrowly interpreted and all questions resolved in favor of the insured; 2) exceptions and exclusions are to be strictly construed so as to render the insurance effective; 3) any doubt as to the terms of the policy should be resolved in favor of the insured; and, 4) because the policy is drafted in all details by the insurance company, it must be held strictly accountable for the language employed.

Id.

The doctrine of reasonable expectations plays a critical role in how courts apply these rules. Ascertaining the objective and reasonable expectations of the insured guides the court in determining ambiguity from the outset. *Estate of Swartz v. Metro. Prop. & Cas. Co.*, 949 S.W.2d 72, 76 (Ky. App. 1997). "Despite the apparent clarity of the [terms of the insurance] agreement, courts are nevertheless bound to look at an insured's reasonable expectations in deciding whether the insurance contract is ambiguous and what the contract means." *Kentucky Employers' Mut. Ins. v. Ellington*, 459 S.W.3d 876, 883 (Ky. 2015). The gist of the reasonable expectations doctrine is that "the insured is entitled to all the coverage he may reasonably expect to be provided under the policy." *Simon v. Cont'l Ins. Co*., 724 S.W.2d 210, 212 (Ky. 1986) (*quoting The Law of Liability Insurance*, § 5.10B). Stated in more practical terms, "an insurance company should not be allowed to collect premiums by stimulating a reasonable expectation

of risk protection in the mind of the consumer, and then hide behind a technical definition to snatch away the protection which induced the premium payment." *Aetna Cas. & Sur. Co. v. Com.*, 179 S.W.3d 830, 837 (Ky. 2005) (*quoting Moore v. Commonwealth Life Ins. Co.*, 759 S.W.2d 598, 599 (Ky. App. 1988)).

The doctrine of reasonable expectations is a rule of interpretation, which, as its name suggests, "resolves insurance-policy ambiguity in favor of the insured's reasonable expectations." *True v. Raines*, 99 S.W.3d 439, 444 (2003). Under the doctrine, "terms should be interpreted in light of the usage and understanding of the average person." *Stone v. Kentucky Farm Bureau Mut. Ins. Co.*, 34 S.W.3d 809, 810 (Ky. App. 2000) (citing *Fryman v. Pilot Life Ins. Co.*, 704 S.W.2d 205 (1986)). What is reasonable is to be judged from the perspective of an ordinary layman, "rather than considering the policyholder's subjective thought process regarding his policy." *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 128 (Ky. App. 2012); *see also Marcum v. Rice*, 987 S.W.2d 789, 791 (Ky. 1999) ("The reasonable expectations of an insured are generally determined on the basis of an objective analysis of separate policy items and the premiums charged for each.").

While it is true that the Riley family paid an additional premium for Jeremy, we cannot conclude that it was reasonable for them to believe that the Policy provided UIM benefits irrespective of Jeremy's residency. The policy language was clear that UIM coverage for Jeremy was dependent on his being a "resident relative." In turn, resident relative is defined by the policy in fairly certain and definite terms. The Policy further provides that the premium is based

on the information State Farm received from the insureds, and any changes in that information should be communicated to State Farm.

The doctrine of reasonable expectations does not destroy the insured's obligation to read the policy, but only holds an insured to a reasonable understanding of that policy. The policy language is clear that UIM coverage for Jeremy depended on his residing primarily with his parents. The policy states that it provides coverage to an "insured," and the policy defines that term to include a "resident relative," and the policy further defines the term "resident relative." Having reviewed the policy, we must conclude that it was not reasonable for the Rileys to assume that Jeremy remained covered under the policy after he relocated his primary residence outside of his parents' home.

Jeremy also argues that the State Farm policy provides illusory coverage because his parents paid a premium for UIM coverage yet the policy did not provide coverage for him. State Farm responds by arguing that UIM coverage for Jeremy would have been available if he had resided with his parents as was represented to State Farm when it calculated the premiums. Illusory coverage occurs when a policy's language, "if interpreted as proffered by the insurer, essentially denies the insured most if not all of a promised benefit." *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 128 (Ky. 2012). Thus, illusory coverage can only be found where coverage "is at least implicitly *given* under its provisions and then *taken away*[.]" *Id*. at 129.

Jeremy contends that State Farm has created such a situation by charging him an additional premium to be included as a resident relative driver under the Policy then refusing to award him benefits. This is not the case. Just as the terms regarding UIM benefits are unambiguous, so are the terms indicating how the UIM rates are calculated. The Policy explicitly states that UIM premium rates are calculated based on "3 licensed drivers who are resident relatives in the household." We agree with Riley's assertion that an insured may reasonably expect to get what he pays for; however, it is unreasonable for an insured to expect to receive something for which he did not pay. Here, Riley was paying his portion of a premium to cover a resident relative – which he was represented to be – not a premium to cover someone who did not meet that definition. State Farm never contracted to provide Riley with UIM coverage once he ceased being a resident relative.

B. Directed Verdict

The trial court directed a verdict in favor of State Farm on the basis that no reasonable juror could conclude that Jeremy was a resident of his parents' home at the time of the accident. The standard of review regarding a motion for a directed verdict and/or JNOV is a high one for an appellant to meet.

> In ruling on either a motion for a directed verdict or a motion for judgment notwithstanding the verdict, a trial court is under a duty to consider the evidence in the strongest possible light in favor of the party opposing the motion. Furthermore, it is required to give the opposing party the advantage of every fair and reasonable inference which can be drawn from the evidence. And, it

> is precluded from entering either a directed verdict or [JNOV] unless there is a complete absence of proof on a material issue in the action, or if no disputed issue of fact exists upon which reasonable men could differ.

Taylor v. Kennedy, 700 S.W.2d 415, 416 (Ky. App. 1985); *see also Toler v. Sud-Chemie, Inc.*, 458 S.W.3d 276, 285 (Ky. 2014).

When engaging in appellate review of a ruling on a motion for directed verdict, the reviewing court must ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party. *Meyers v. Chapman Printing Co., Inc.*, 840 S.W.2d 814 (Ky. 1992). And, with regard to the review of the sufficiency of evidence, this Court must respect the opinion of the trial court that heard the evidence since a reviewing court is rarely in as good a position as the trial court that presided over the initial trial to decide whether a jury can properly consider the evidence presented. Once the issue is squarely presented to the trial court, which heard and considered the evidence, a reviewing court cannot substitute its judgment unless the trial court is clearly erroneous. *Bierman v. Klapheke*, 967 S.W.2d 16, 18 (Ky. 1998).

Jeremy contends that he presented sufficient proof at trial that a reasonable jury could have found that he qualified as a resident relative under the Policy. Jeremy maintains that the question of residency is one of fact and intention, and directs our attention to *Perry v. Motorists Mut. Ins. Co.*, in which the Kentucky Supreme Court stated that "[r]esidency and intent are questions of fact and not of law where the evidence supports more than one inference upon which

reasonable minds may differ." 60 S.W.2d 762, 764 (Ky. 1993). This is true so long as the evidence actually supports more than one inference. If it does not, nothing prohibits entry of a directed verdict.

Having reviewed the record, we can discern no error in the circuit court's conclusion that the evidence in this case supported only one conclusion: Jeremy was not a resident of his parents' home at the time of the accident. Jeremy testified that he first moved out of his parents' home in 2010. Since that time, he had entered into multiple leases. At the time of the accident, he was living with his girlfriend away from his parent's home. Jeremy did not receive mail at his parents' house. None of Jeremy's work papers or government documents listed his parent's address. While Jeremy did visit his parents' home to care for his mother while she was recovering from surgery, he was very forthcoming about the fact that he never stayed the night there and did not even have furniture in his bedroom there. Based on these undisputed fact, it is clear that Riley was not a resident of his parent's home at the time of the accident. No reasonable juror could have concluded otherwise. *See James v. James*, 25 S.W.3d 110, 115 (Ky. 2000); *see also Old Reliable Ins. Co. v. Brown*, 558 S.W.2d 190, 191 (Ky. App. 1977) ("We are of the opinion that Bonnie Sue's 'floating intentions' are typical of the recently emancipated young adult. Her vague intention of returning "home" does not support the conclusion that she and her mother were residents of the same household.").

III. CONCLUSION

For the foregoing reasons, we affirm the Jefferson Circuit Court.

ALL CONCUR.

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