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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001207-MR

RACHAEL HETTLER, AS NEXT FRIEND OF MARIAH WEST — APPELLANT

v.

APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 14-CI-00933

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Rachael Hettler, as next friend of Mariah West, brings this appeal from a July 31, 2015, order of the McCracken Circuit Court granting State Farm Automobile Insurance Company's motion for summary judgment. We affirm.

The material facts are undisputed. Jason West was involved in a motorcycle accident that resulted in his death in November 2013. At the time of his death, Jason lived with his mother, Ruth Baker. Mariah West was Jason's minor child, but she was not involved in the accident and did not reside with him. Rather, Mariah resided with her mother, Rachael Hettler, and her grandmother, Thelma Hettler. Rachael and Jason were never married. At the time of the accident, Thelma owned a motor vehicle that was insured by State Farm Automobile Insurance Company (State Farm).

On October 30, 2014, Rachael Hettler, as next friend of Mariah West, (Hettler) filed a complaint in the McCracken Circuit Court against State Farm. Therein, Hettler asserted a claim of loss of parental consortium on behalf of Mariah and sought to recover under the underinsured motorist (UIM) coverage contained in Thelma's motor vehicle insurance policy issued by State Farm.[1] In particular, Hettler claimed:

> At the time and place above mentioned, Ivor Ottway was traveling east bound on Irvin Cobb Drive when he negligently and recklessly turned into the path of Jason West causing a collision with Jason West.
>
> As a result of the aforementioned negligence of Ivor Ottway, Mr. West suffered numerous injuries which resulted in his death.

[1] It appears that the estate of Jason West received a payment under the tortfeasor's insurance policy in the amount of $100,000, and a payment of $25,000 from Ruth Baker's insurance carrier.

> Mariah West was a minor child on the date of Jason West's death, having been born on November 1, 2007. As a result of the negligence of Ivor Ottway and the death of Jason West, Mariah West will be deprived of the love, affection and companionship of her deceased father Jason West from the date of his death until the time Mariah West reaches the age of majority.
>
> At the time and place of the above mentioned collision and death of Jason West, Mariah West was covered under a policy of insurance by State Farm to Thelma D. Hettler. Rachael Hettler, Mariah's mother was a named insured on this policy. This policy covers Mariah West for underinsured motorist coverage. At all times herein mentioned Ivor Ottway was an underinsured motorist. Because Mariah West's claim is derivative of the Estate of Jason West's claim for wrongful death she is entitled to recover from State Farm for damages she suffered because of the negligence of Ivor Otway and which was not covered by other insurance.

State Farm eventually filed a motion for summary judgment arguing that Mariah was not entitled to recover UIM benefits under Thelma's motor vehicle insurance policy. By order entered July 31, 2015, the circuit court agreed with State Farm and granted the motion for summary judgment. In so doing, the circuit court concluded:

> Under the applicable policy definitions, Jason is not an insured under Thelma's policy. The definition of an insured, as explained in the policy, would include Thelma, as the named insured. It would also include Racheal and Mariah as resident relatives. Jason does not meet the definition of an insured under the policy, as he was not the named insured and he was not a resident relative. Jason was not occupying a car owned by Thelma or any other resident to Thelma at the time of the accident.

> Although Mariah makes the claim in the instant action, the focus is on Jason because Mariah's claim is derivative of his bodily injury claim. Jason is not an insured under Thelma's policy, so his claim would fail. Mariah's claim is derivative of Jason's and therefore also fails.
>
> Plaintiffs incorrectly argue that State Farm misconstrues the plain language of the policy provisions. Plaintiffs site [sic] *Allstate Insurance Company v. Dicke*, 862 S.W.2d 327 (Ky. 1993), stating there was a reasonable expectation that coverage would be provided. *Dicke* holds that when separate items of insurance are bought and paid for, there is a reasonable expectation that coverage will be provided. However, in this case, Jason did not purchase any such coverage from State Farm, and was not covered under Thelma's policy.
>
> The Kentucky Supreme Court held in *True v. Raines*, 99 S.W.3d 439 (Ky. 2003), The Doctrine of Reasonable Expectations comes into play only when a policy is ambiguous and susceptible to two or more reasonable interpretations. Plaintiffs have pointed to no specific provision that they find ambiguous.

This appeal follows.

Hettler contends that the circuit court improperly rendered summary judgment in favor of State Farm. Hettler maintains that Mariah is entitled to UIM coverage under the motor vehicle insurance policy issued by State Farm to Thelma. Hettler specifically argues:

> 1. Mariah is an insured person under Thelma's automobile insurance policy because Mariah is Thelma's granddaughter and she lived with Thelma at the time of Mr. West's death; and

2. Mariah has suffered a loss, the death of her father, for which she has a claim for loss of consortium.

Hettler's Brief at 6. We disagree.

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). In this case, the material facts are undisputed, and our review is *de novo*. *3D Enterprises Contracting Corp. v. Louisville and Jefferson Cnty. Metro. Sewer Dist.*, 174 S.W.3d 440 (Ky. 2005).

Under the motor vehicle insurance policy issued by State Farm to Thelma, the relevant UIM provisions provide:

> *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*.
>
> Such vehicle must be used within the scope of the consent of *you* or the owner of the vehicle. Such other *person occupying* a vehicle used to carry *persons* for a charge is not an *insured*; and
>
> 4. any *person* entitled to recover compensatory damages as a result of *bodily injury* to an

insured as defined in 1., 2., or 3. above.

Insuring Agreement

We will pay compensatory damages for *bodily injury* an *insured* is legally entitled to recover from the owner or 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* as a motor vehicle.

While Mariah is an insured under the above policy language, Mariah is not claiming that she suffered bodily injury due to a motor vehicle accident. Rather, Mariah is claiming loss of parental consortium as the result of her father's death in the motorcycle accident. It is well-understood in Kentucky jurisprudence that a loss of consortium claim is a derivative claim. *Daley v. Reed*, 87 S.W.3d 247 (Ky. 2002). As a derivative claim, Mariah's right to recover arises out of and is dependent upon Jason's right to recover. Jason is not an insured under the plain provisions of the motor vehicle insurance policy issued by State Farm to Thelma nor was he driving or occupying a covered motor vehicle per said policy at the time of his fatal accident. Accordingly, Jason has no legal right to recover damages of any kind under the motor vehicle insurance policy issued by State Farm to Thelma. As a result, Mariah, likewise, is not entitled to recover for loss of parental consortium under said policy.

Hettler next asserts that Mariah is entitled to UIM coverage based upon the doctrine of reasonable expectations. Hettler argues that when Thelma "purchased the policy from [State Farm] she did not expect the [UIM] coverage to be illusory." Hettler's Brief at 7.

Under the reasonable expectations doctrine, a court may interpret uncertain or ambiguous insurance provisions to conform to the insured's reasonable expectations. *Pryor v. Colony Ins.*, 414 S.W.3d 424 (Ky. App. 2013). In this case, the policy terms and provisions at issue are clear and unambiguous. There simply can be no reasonable expectation of UIM coverage under the particular facts of this case as the insurance policy is unequivocally clear and coverage would, in fact, defy reasonable expectations. Accordingly, we are of the opinion that the circuit court properly rendered summary judgment in favor of State Farm.

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Mark Edwards
Paducah, Kentucky

BRIEF FOR APPELLEE:

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