

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000477-MR

THOMAS D. ROBERTSON

APPELLANT

v. APPEAL FROM METCALFE CIRCUIT COURT
HONORABLE JOHN T. ALEXANDER, JUDGE
ACTION NO. 15-CI-00126

WESTFIELD NATIONAL
INSURANCE COMPANY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: MAZE, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Thomas D. Robertson brings this appeal from a February 3, 2016, order granting summary judgment in favor of Westfield National Insurance Company (Westfield Insurance) and a March 31, 2016, order denying a motion to alter, amend, or vacate. We reverse and remand.

On May 23, 2015, Robertson was operating an all-terrain vehicle (ATV) on a public roadway, known as Crail Hope Road. Stacy Morgan was

operating an automobile on Crail Hope Road and attempted to pass Robertson. At that time, Robertson started to turn left; consequently, Robertson's ATV and Morgan's motor vehicle collided. Both Robertson and Morgan suffered physical injuries as a result of the accident.

Morgan's motor vehicle was insured by Westfield Insurance.

Robertson was not insured. Robertson made a claim for Basic Reparation Benefits (BRB) against the motor vehicle insurance policy (insurance policy) issued by Westfield Insurance to Morgan, on the premise that he was a pedestrian within the meaning of Westfield's policy endorsement providing BRB coverage to pedestrians struck by Morgan's vehicle.¹

As a result, on November 6, 2015, Westfield Insurance filed a petition for declaratory relief in the Metcalfe Circuit Court and named Robertson as defendant/respondent. Westfield Insurance sought judgment declaring that Robertson was not entitled to BRB as a pedestrian under Morgan's insurance policy. Robertson filed an answer on November 16, 2015. Thereafter, Westfield Insurance filed a motion for summary judgment. Westfield Insurance specifically argued that Robertson was not a pedestrian at the time of the accident and maintained that the ATV constituted a motor vehicle under KRS 304.39-070(7) of the Motor Vehicle Reparations Act (MVRA).

By order entered February 3, 2016, the circuit court granted Westfield Insurance's motion for summary judgment. In particular, the court held that the

¹ Under Kentucky Revised Statutes (KRS) 304.39-050(1), a pedestrian "means any person who is not making 'use of a motor vehicle' at the time the injury occurs."

ATV constituted a motor vehicle at the time of the accident. Thus, Robertson was not a pedestrian and was not entitled to BRB under Morgan's insurance policy. Robertson then filed a timely Kentucky Rules of Civil Procedure (CR) 59 motion to vacate the summary judgment. The circuit court denied the motion by Order entered March 31, 2016, but made additional conclusions of law. This appeal follows.

To begin, summary judgment is proper where there exists no material issues of fact and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). When ruling on a motion for summary judgment, all facts and inferences are to be viewed in a light most favorable to the nonmoving party. *Id.* Given that a summary judgment involves no fact finding, as in this case, our review of the circuit court's decision is *de novo*. *3D Enterprises v. Metro Sewer Dist.*, 174 S.W.3d 440 (Ky. 2005). Additionally, the interpretation of a statute is a question of law which also looks to a *de novo* review. *City of Worthington Hills v. Worthington Fire Prot. Dist.*, 140 S.W.3d 584 (Ky. App. 2004). Our review proceeds accordingly.

Robertson contends that the circuit court erred by rendering summary judgment in favor of Westfield Insurance. His sole argument on appeal is that his ATV was not a motor vehicle within the meaning of the MVRA at the time of the accident.² For the following reasons, we agree.

² The Motor Vehicle Repairs Act is codified in KRS Chapter 304.39.

Under the BRB endorsement “Definitions” provisions of the insurance policy issued by Westfield Insurance to Morgan, the term motor vehicle “means a vehicle as defined in the Kentucky Motor Vehicle Reparations Act.” The MRVA defines motor vehicle in Kentucky Revised Statutes (KRS) 304.39-020(7) as:

“Motor vehicle” means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. Motor vehicle shall not mean moped as defined in this section.

Construing KRS 304.39-020(7) and considering the MVRA as a whole, this Court has expressly held that an ATV does not constitute a motor vehicle in *Manies v. Croan*, 977 S.W.2d 22 (Ky. App. 1998). In support of its holding, the *Manies* Court noted that an ATV is not subject to registration in Kentucky and that “[t]he registration requirement is important because it is through registration that the MVRA’s insurance provisions are enforced.” *Id.* at 23. The Court of Appeals also observed that an ATV is prohibited by Kentucky law from operating on a public highway.

The circuit court declined to follow *Manies*, 977 S.W.2d 22 because “the ATV [in *Manies*] was being operated on private property at the time of the

accident and Kentucky law at the time forbade operation of an ATV on the public roadway.” Order granting summary judgment in favor of plaintiff at 2. However, upon review of *Manies*, 977 S.W.2d 22, it is patently clear that the fact that the ATV was on private property was insignificant to the decision. And, Kentucky law still generally bans the operation of an ATV on a public roadway with narrow exceptions provided in KRS 189.515:

- (6) (a) A person may operate an all-terrain vehicle on any two (2) lane public highway in order to cross the highway. In crossing the highway under this paragraph, the operator shall cross the highway at as close to a ninety (90) degree angle as is practical and safe, and shall not travel on the highway for more than two-tenths (2/10) of a mile.
- (b) A person may operate an all-terrain vehicle on any two (2) lane public highway, if the operator is engaged in farm or agricultural related activities, construction, road maintenance, or snow removal.
- (c) The Transportation Cabinet may designate, and a city or county government may designate, those public highways, segments of public highways, and adjoining rights-of-way of public highways under its jurisdiction where all-terrain vehicles that are prohibited may be operated.
- (d) A person operating an all-terrain vehicle on a public highway under this subsection shall possess a valid operator's license.
- (e) A person operating an all-terrain vehicle on a public highway under this subsection shall comply with all applicable traffic regulations.
- (f) A person shall not operate an all-terrain vehicle under this subsection unless the all-terrain vehicle has at least one (1) headlight and two (2) taillights,

which shall be illuminated at all times the vehicle is in operation.

- (g) A person operating an all-terrain vehicle under this subsection shall restrict the operation to daylight hours, except when engaged in snow removal or emergency road maintenance.

We do not view the narrow exceptions contained in KRS 189.515(6) as undermining the soundness and continuing validity of the holding in *Manies*, 997 S.W.2d. 22. Rather, we believe the circuit court erred by failing to follow the dictates of *Manies*, 997 S.W.2d 22. Accordingly, we hold that Robertson's ATV is not a motor vehicle under KRS 304.39-020(7) per *Manies*, 997 S.W.2d 22 and that the circuit court erred by rendering summary judgment holding that it was a motor vehicle thereunder and denying BRB coverage to Robertson as a pedestrian.

For the foregoing reasons, the orders of the Metcalfe Circuit Court granting Westfield Insurance summary judgment are reversed and remanded for proceedings consistent with this Opinion.

MAZE, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

THOMPSON, JUDGE, DISSENTING: Respectfully, I dissent. An ATV operated on a public roadway is a motor vehicle for purposes of the Motor Vehicle Reparations Act (MVRA). The circuit court was correct and, therefore, we should affirm.

Kentucky Revised Statute (KRS) 304.39.050(1) defines a pedestrian as “any person who is not making ‘use of a motor vehicle’ at the time his injury occurs.” “Motor vehicle” is generally defined as “any vehicle which transports person or property upon the public highways of the Commonwealth, propelled by other than muscular power[.]” KRS 304.39-020(7). The statute then excludes certain motor vehicles including farm and construction equipment and specifically excludes “mopeds.” *Id.* Notably, ATV’s are not excluded from the general definition of “motor vehicle.”

The concept that an ATV is not a motor vehicle under the MVRA emerged in 1998 with this Court’s opinion in *Manies v. Croan*, 977 S.W.2d 22 (Ky. App. 1998). In that case, under the statutes as written, this Court concluded that ATVs, “like the golf carts... are not to be used on the public roadways.” *Id.* at 23. As this Court noted, at that time, KRS 189.515(1) provided: “No person shall operate an all-terrain vehicle upon any public highway or roadway or upon the right-of-way of any public highway or roadway.” *Id.* Under the prohibitive language, we held it was “clear that a vehicle which by law is prohibited from operation on public highways could not also satisfy the language of KRS 304.39–020(7)[.]” *Id.*

KRS 189.515 was amended after *Manies* and no longer strictly prohibits the use of ATVs on public highways. To the contrary, an ATV may be operated on any two lane public highway for “farm or agricultural related activities, construction, road maintenance, or snow removal” if, among other

requirements, the operator possesses a valid operator's license and complies with all traffic regulations. KRS 189.515(6).

Outside the context of the MVRA, it has been held that the operator of an ATV is not a pedestrian. *See Commonwealth v. Pace*, 82 S.W.3d 894, 895 (Ky. 2002) (operator of ATV guilty of driving under the influence); *Transp. Cabinet, Dep't of Highways v. Guffey*, 244 S.W.3d 79, 82 (Ky. 2008) (operator of ATV on a public highway was a member of the traveling public to whom the Department of Highways owed a duty to exercise ordinary care to maintain the Commonwealth's highways in reasonably safe condition). It is reasonable to apply the current language of the MVRA to reach the result that Robertson, who was operating an ATV on a public highway, was not a pedestrian and, consequently, is not entitled to BRB coverage.

I would affirm.

BRIEFS AND ORAL ARGUMENT
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BRIEF AND ORAL ARGUMENT
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