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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001625-MR

DIANA METZGER AND GARY METZGER — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 15-CI-000020

AUTO-OWNERS INSURANCE COMPANY
AND OWNERS INSURANCE COMPANY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, STUMBO[1] AND THOMPSON, JUDGES.

STUMBO, JUDGE: Diana Metzger and Gary Metzger appeal from orders of the Jefferson Circuit Court which granted summary judgment in favor of Auto-Owners

[1] Judge Janet Stumbo authored this opinion prior to retiring from the Kentucky Court of Appeals effective December 31, 2017. Release of this opinion was delayed by administrative handling.

Insurance Company and Owners Insurance Company (collectively referred to as Owners) on the issue of underinsured motorist (UIM) coverage. Appellants argue that Ms. Metzger was covered by a commercial automobile insurance policy, which included UIM coverage, when she was struck by a vehicle while out walking. Owners argues that since Ms. Metzger was a pedestrian when she was struck by the automobile, she was not covered under the terms of their UIM coverage. We agree with Owners and affirm.

Appellants are part owners and members of Metzger's Country Store, LLC (hereinafter referred to as Metzger's LLC). Metzger's LLC is a pet and feed store located in Simpsonville, Kentucky. Metzger's LLC was insured by Owners at all relevant times. On January 3, 2014, Ms. Metzger was walking in Louisville, Kentucky when she was struck by a vehicle driven by Courtney Gebben. Gebben only had $25,000 in liability insurance, which did not cover her medical expenses. Ms. Metzger settled with Gebben for the $25,000 amount. She also settled with Nationwide Mutual Insurance Company, through which she had a personal automobile policy which contained UIM coverage.

Ms. Metzger also sought to collect UIM benefits from Owners pursuant to a commercial automobile policy it issued to Metzger's LLC. Owners denied the claim and Appellants brought the underlying action seeking a declaration of rights determining whether or not Owners must provide UIM

benefits under the policy. After discovery had been performed, all parties moved for summary judgment. The trial court ultimately found that Ms. Metzger was not entitled to UIM benefits under the terms of Metzger's LLC's commercial automobile insurance policy and granted summary judgment in favor of Owners. This appeal followed.

> The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. . . . "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest*, 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . ." *Huddleston v. Hughes*, 843 S.W.2d 901, 903 (Ky. App. 1992)[.]

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996). "It is well established that construction and interpretation of a written instrument are questions of law for the court. We review questions of law *de novo* and, thus, without deference to the interpretation afforded by the circuit court." *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998) (citations omitted).

The relevant language from the UIM policy at issue is as follows:

2. COVERAGE

a. **We** will pay compensatory damages, including but not limited to loss of consortium, any person is legally entitled to recover from the owner or operator of an **underinsured automobile** because of **bodily injury** sustained by an injured person while **occupying** an **automobile** that is covered by **SECTION II – LIABILITY COVERAGE** of the policy.

b. If the first named insured in the Declarations is an individual, this coverage is extended as follows:

(1) **We** will pay compensatory damages, including but not limited to loss of consortium, **you** are legally entitled to recover from the owner or operator of any **underinsured automobile** because of **bodily injury you** sustain:

(a) when **you** are not **occupying** an **automobile** that is covered by **SECTION II – LIABILITY COVERAGE** of the policy; or

(b) when **occupying** an **automobile you** do not own which is not covered by **SECTION II – LIABILITY COVERAGE** of the policy.

(2) The coverage extended in **2.b.(1)** above is also afforded to a **relative** who does not own an **automobile**.

c. The **bodily injury** must be accidental and arise out of the ownership, maintenance or use of the **underinsured automobile**. (Emphasis in original).

Also relevant for our purposes is the following definition found in the main automobile insurance policy: "**You** or **your** means the first named **insured** shown

in the Declarations and if an individual, **your** spouse who resides in the same household." (Emphasis in original). The declarations for the automobile policy indicate that Metzger's LLC is the named insured.

Before we begin with our analysis, we must indicate that UIM policies provide coverage to two types of insureds, first-class insureds and second-class insureds. A first-class insured is

> the named insured, the insured who bought and paid for the protection and who has a statutory right to reject uninsured motorist coverage, and the members of his family residing in the same household. The protection afforded the first class is broad. Insureds of the first class are protected regardless of their location or activity from damages caused by injury inflicted by an uninsured motorist.

Ohio Cas. Ins. Co. v. Stanfield, 581 S.W.2d 555, 557 (Ky. 1979). The coverage afforded to a second-class insured "is confined to damages from injury inflicted by an uninsured motorist while they are" occupying a covered automobile. *Id.* In the case at hand, section 2.a. of the UIM coverage provides second-class coverage, while section 2.b. provides first-class coverage; however, the policy indicates that first-class coverage is only available if the named insured is an individual. Here, as previously stated, the named insured is a legal entity, Metzger's LLC.

Additionally, the courts of Kentucky routinely hold that any UIM coverage provision that limits a first-class insured's recovery for bodily injury to

injuries sustained while occupying a covered auto is void. *See Dupin v. Adkins*, 17 S.W.3d 538 (Ky. App. 2000).

Appellants' first argument on appeal is that unless members of the LLC are found to be first-class insureds, the terms of the UIM coverage would be illusory.

> "[I]llusory coverage" is still discussed in terms of coverage that is at least implicitly *given* under its provisions and then *taken away*, whether by virtue of a prohibition or exclusion contained in the same policy, or by virtue of a strict legal definition (*i.e.*, the definition of a "partnership" or "corporation"). Thus, in the words of one court, "the doctrine of illusory coverage is best applied . . . where part of the premium is specifically allocated to a particular type or period of coverage and that coverage turns out to be functionally nonexistent." (Emphasis in original).

Sparks v. Trustguard Ins. Co., 389 S.W.3d 121, 129 (Ky. App. 2012) (citation omitted). Appellants argue that because Metzger's LLC cannot be physically injured or occupy a covered automobile, first-class UIM coverage would never be available. Appellants rely heavily on the cases of *Hartford Acc. & Indem. Co. v. Huddleston*, 514 S.W.2d 676 (Ky. 1974); *Solheim Roofing, LLC v. Grange Mut. Cas. Co.*, No. 2009-CA-000455-MR, 2010 WL 323296 (Ky. App. Jan. 29, 2010);

and *Lovell v. St. Paul Fire & Marine Ins. Co.*, No. 2011-CA-000699-MR, 2012 WL 4037361 (Ky. App. Sept. 14, 2012).[2]

In *Hartford*, the issue revolved around whether or not members of a partnership, and their relatives, were named insureds for purposes of a commercial uninsured motorist (UM) insurance policy.[3]

> Clifford Huddleston and Orville Prewitt formed a partnership named 'City Motor Sales.' The partnership engaged in the garage business. Hartford issued a garage liability policy to 'City Motor Slaes' [sic] and included as an endorsement insurance coverage providing for protection against uninsured motorists.
>
> It is conceded that Carl Huddleston, the nineteen-year-old son of Clifford Huddleston and a resident of his household, sustained personal injuries resulting in death, caused by the negligence of an uninsured motorist.

Hartford, 514 S.W.2d at 677. The UM coverage in *Hartford* was as follows:

> **I. COVERAGE U—UNINSURED MOTORISTS**
> (Damages for Bodily Injury)
>
> The company will pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured highway vehicle because of bodily injury sustained by

[2] The parties to this action, along with this Court, acknowledge that there is no published case law directly on point as to the illusory coverage issue in this case; therefore, any citation to unpublished cases is for illustrative purposes or persuasive authority only. Kentucky Rule of Civil Procedure (CR) 76.28(4)(c). Unpublished cases are not binding on this Court.

[3] Case law regarding UIM and UM policies is used interchangeably by the courts of Kentucky because both types of insurance are similar. *See Coots v. Allstate Ins. Co.*, 853 S.W.2d 895, 896 (Ky. 1993), and *Allstate Ins. Co. v. Dicke*, 862 S.W.2d 327, 328 (Ky. 1993), *overruled on other grounds by Philadelphia Indem. Ins. Co., Inc. v. Tryon*, 502 S.W.3d 585 (Ky. 2016).

> the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured highway vehicle; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.
>
> **II. PERSONS INSURED**
> Each of the following is an insured under this insurance to the extent set forth below:
>
> (a) the named insured and any designated insured and, while residents of the same household, the spouse and relatives of either;
>
> (b) any other person while occupying an insured highway vehicle; and
>
> (c) any person, with respect to damages he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above.
>
> The insurance applies separately with respect to each insured, except with respect to the limits of the company's liability.

Id. at 677-78.

The named insured was the partnership, City Motor Sales. The Kentucky Supreme Court found that Hartford was liable under the terms of the UM coverage. The Court held as follows:

> We are persuaded the better view is that although the Uniform Partnership Act regards the partnership as a legal entity for many purposes, these purposes are, nevertheless, limited and the 'entity' concept does not

> possess such attributes of public policy that it must be invoked to achieve an unjust result. The Uniform Partnership Act applies the 'aggregate' concept when it makes partners jointly and severally liable; therefore, what public policy could be violated by knowlegeable [sic] parties contracting in a context of partnership liability insurance that they contemplate the partnership as an aggregate of persons rather than as a legal entity? The insurance contract with which we are here concerned plainly contracts for the 'aggregate' concept to be applied.
>
> A legal entity has no 'spouse' nor 'relatives' nor 'household.' A legal entity could not sustain 'bodily injury.' The uninsured-motorist insurance contract plainly embraced the partners and their spouses and relatives living in the same household. The insurer framed the language of the contractual undertaking.

Id. at 678 (footnote omitted).

While the Court in *Hartford* found liability due to the unique characteristics of a partnership, it also found liability because a partnership cannot have a spouse or relatives, nor can it sustain bodily injury. Although not directly stated, it is clear the Court also found the coverage illusory unless it covered the members of the partnership.

In *Solheim Roofing*, Grange Mutual Casualty Company provided UIM coverage to Solheim Roofing, LLC. Like in the case before us, the LLC was the named insured. Donna Solheim and her husband were owners and members of the LLC. Ms. Solheim was injured in an automobile accident and sought UIM benefits from Grange Mutual. The UIM coverage at issue stated:

> B. **WHO IS AN INSURED**
> 1. The Named Insured, subject to the following:
> . . .
> d. If the Named Insured is a limited liability company, only members of the limited liability company while "occupying" a covered "auto" owned, hired or borrowed by the Named Insured and while acting within the scope of their duties in the conduct of the Named Insured's business[.]

Solheim Roofing, 2010 WL 323296 at 1.

Grange Mutual denied coverage because at the time of her injury, Ms. Solheim was not occupying a covered auto and was not acting within the scope of her employment. This Court stated:

> We first note that we disagree with the circuit court's conclusion that a UIM policy issued to a limited liability company cannot be viewed as being issued to the members of that company. While an LLC is a legal entity distinct from its members, as a practical matter naming an LLC as an insured in a UIM policy is essentially meaningless unless coverage extends to some person or persons associated with the company. It would be nonsensical to limit protection solely to the LLC since that entity—standing alone—cannot occupy or operate a motor vehicle or suffer bodily injury or death. Moreover, it would render any UIM coverage provided to that LLC entirely illusory in nature. We further note that the policy here implicitly recognizes as much since it applies to "members of the limited liability company" in instances where the named insured is an LLC. Since Donna is a member of Solheim Roofing, LLC, she is a contemplated insured for UIM purposes.

Id. at 6 (citations omitted). The Court found Ms. Solheim a first-class insured and found the "covered auto" provision to be void; however, the Court upheld the

"while acting within the scope of their duties" provision and ultimately denied UIM coverage.

In *Lovell*, Brett Lovell was Deputy Sheriff with the Kenton County Sheriff's Department.

> On May 6, 2009, Brett was transporting an arrestee to the Kenton County Detention Center in his police cruiser. Along the way, a citizen flagged down Brett, and he stopped to lend assistance. The citizen informed Brett that two individuals were fighting in a pickup truck and indicated that the woman may be injured. Brett inquired as to the precise location of the truck, at which point the truck "jumped the curb" and landed approximately 25 to 30 feet from him before it came to a stop. Brett then approached the truck and instructed the driver to turn off the engine. When Brett was within two or three feet of the truck, the driver accelerated and drove the truck toward Brett. The truck struck Brett, and to prevent being run over, Brett grabbed onto the driver's side door. Brett eventually pulled himself up onto the running board of the truck and attempted to unholster his gun. At this point, the driver of the truck lost control, and Brett struck a telephone pole head first, suffering grave and permanent injuries.
>
> It was ultimately determined that neither the driver of the truck nor the truck was covered by an automobile liability insurance policy. However, the Kenton County Sheriff's Department provided automobile liability insurance coverage on all its police cruisers, including uninsured motorist (UM) benefits, through St. Paul.
>
> The Lovells initiated the underlying action in an attempt to recover UM benefits from St. Paul. Both the Lovells and St. Paul filed motions for summary judgment. The trial court granted St. Paul's motion, concluding that Brett was not entitled to recover UM

> benefits. In so deciding, the trial court initially determined that Brett was not a "named insured" but was an insured of the "second class." As an insured of the second class, the trial court believed that Brett was not "occupying the vehicle"[.] . . . Therefore, the trial court found that Brett was not covered under the UM provision of the policy.

Lovell, 2012 WL 4037361 at 1 (footnote and citations omitted).

The UM coverage provision at issue in *Lovell* is as follows:

> *Who is Protected Under this Agreement*
> . . .
> **Partnership, limited liability company, organization.** If the named insured is shown in the introduction as a partnership, limited liability company, organization, or any other form of organization, then the following are protected persons:
> • *Anyone in a covered auto or temporary substitute for a covered auto;* and
> • Anyone for damages he or she is entitled to recover because of bodily injury to another protected person.
> **Anyone else in a covered auto.** *Anyone else while in an auto that's a covered auto or a temporary substitute auto is protected.* (Emphasis in original).

Lovell at 2. The Kenton County Fiscal Court was the named insured on the UM policy.

This Court ultimately found Mr. Lovell should have been deemed a first-class insured; therefore, he was entitled to UM benefits.

> Based on the definitions in the insurance policy, there does not appear to be an insured of the first class. Specifically, there is no first-class coverage because the named insured, the Kenton County Fiscal Court, would have to be in a "covered auto." As set forth in *Dupin v.*

Adkins, 17 S.W.3d 538, 543 (Ky. App. 2000), "[t]he insured's status as an insured is alone a sufficient nexus for a claim of [UM] benefits without the insured's actually being in a motor vehicle covered for [UM] under the policy." Kentucky courts have repeatedly stated that "[UM] coverage is personal to the insured and not connected to a particular vehicle." *Id.* Therefore, UM coverage "must follow the insured regardless of whether the insured is injured as a motorist, a passenger in a private or public vehicle, or a pedestrian, and is only limited by the actual, valid exclusions of each insurance policy." *Id.* Because there is not a first-class insured in this case, the provisions for first-class coverage under the policy are illusory.

"In Kentucky, the exclusionary or limiting language in policies of automobile insurance must be clear and unequivocal and such policy language is to be strictly construed against the insurance company and in favor of the extension of coverage." *Nationwide Mut. Ins. Co. v. Hatfield*, 122 S.W.3d 36, 39 (Ky. 2003). The policy appears to offer first-class coverage; however, it does not. The language limiting coverage to those "in a covered auto," makes all covered persons second-class insureds. That limiting language is in conflict with the language extending coverage to first-class insureds. Put another way, the policy offers first-class coverage but then defines protected persons in such a way that no one receives that coverage. We believe the language limiting coverage to second-class insureds is, within the context of the policy as a whole, unclear, equivocal, and internally inconsistent. Thus, the limiting language should be construed in favor of the insured. Doing so leads us to the conclusion that, to be entitled to UM coverage, Brett was not required to be "in a covered auto" at the time of the accident.

Lovell at 2-3.

Based on these cases, Appellants argue that Ms. Metzger should be considered a first-class insured as a member of the LLC. Appellants claim that to hold otherwise would make the UIM coverage at issue illusory because Metzger's LLC cannot be physically injured, cannot occupy a covered auto, and does not have relatives. We disagree based on the facts of this case.

In the cases cited above, a legal entity, not an individual, was given first-class coverage. In *Hartford*, the partnership was given first-class coverage. In *Solheim*, the LLC was given first-class coverage. In *Lovell*, the Kenton County Fiscal Court was given first-class coverage. In addition, in *Solheim* and *Lovell*, individuals who were members of their respective legal entities were afforded first-class coverage if they were injured while occupying a covered auto; however, as previously stated, the "covered auto" limiting language is void as it pertains to first-class insureds. The cases cited by Appellants are distinguishable. In each of them the Court either explicitly or implicitly found that the policies were illusory because a legal entity, not an individual person, was granted first-class coverage and a legal entity cannot be physically injured or occupy a covered automobile.

The trial court in this case found that the coverage was not illusory because Metzger's LLC is not given first-class coverage. We agree with the trial court. Unlike the above cited cases, Metzger's LLC is not mentioned in the coverage section of the policy. Anyone injured while in a covered automobile is

covered under the policy, but only if the named insured is an individual does the policy provide first-class UIM coverage. The policy specifically requires that the named insured be an individual before first-class, or pedestrian, coverage applies. Appellants cite to no case or statutory law that requires all UIM policies provide first-class coverage under any and all circumstances.

We note that another panel of this Court has held similarly. In *Estate of Cox ex rel. Adm'r v. Secura Ins. Co.*, No. 2010-CA-000440-MR, 2011 WL 2555362 (Ky. App. June 10, 2011), Joseph Cox was killed in an automobile accident while riding as a passenger in a friend's vehicle. Mr. Cox owned a business called In-N-Out. Mr. Cox purchased a commercial UIM policy from Secura Insurance Company for a Ford F-350 truck. Mr. Cox's estate sought UIM benefits from Secura; however, Secura denied the claim because Mr. Cox was not in a covered automobile when he was killed. Although the exact terms of the UIM coverage are not found in the opinion, the Court stated:

> Under the clear language of the Secura policy, the Estate cannot recover UIM benefits under the circumstances in this case. The UIM endorsement to Secura's policy includes separate definitions for "insured" in cases where the named insured is an individual and where the named insured is a partnership, limited-liability company, corporation, or any other form of organization. Since In–N–Out was the named insured, the UIM coverage under the policy applies only to persons occupying a covered auto. Because Cox was not occupying the Ford F–350 at the time of the accident, his Estate is not entitled to recover under the Secura policy.

Id. at 3.

Here, Metzger's LLC's UIM coverage specifically delineated who was entitled to second-class coverage and when first-class coverage would be allowed.

> It is axiomatic that "the terms of an insurance contract must control unless [they] contraven[e] public policy or a statute." *Cheek v. Commonwealth Life Ins. Co.,* 277 Ky. 677, 126 S.W.2d 1084, 1089 (1939). "[C]ourts cannot make a new contract for the parties under the guise of interpretation or construction but must determine the rights of the parties according to the terms agreed upon by them." *Id.*

Meyers v. Kentucky Med. Ins. Co., 982 S.W.2d 203, 209-10 (Ky. App. 1997). Thus, we "must define an insurer's liability according to the terms and conditions of the policy." *Moore v. Commonwealth Life Ins. Co.,* 759 S.W.2d 598, 599 (Ky. App. 1988). Because Metzger's LLC was not given first-class coverage, nor does the UIM coverage mention the members of the LLC, we do not believe Ms. Metzger is entitled to UIM benefits under the facts of this case. We affirm the judgment of the trial court as to this issue.

Appellants also argue on appeal that the policy should be liberally construed in favor of coverage because it is ambiguous. Appellants claim the UIM coverage is ambiguous due to an endorsement called the "NO-FAULT

INSURANCE ENDORSEMENT." Appellants rely on the following language in the endorsement:

> 1. Eligible injured person means:
> you or any relative who sustains injury while occupying a motor vehicle or when struck by a motor vehicle as a pedestrian.
>
> 2. Relative means:
>
> a. your spouse who resides in your household or a person related to you by blood, marriage or adoption who resides in your household; and
>
> b. a minor in your custody or that of your spouse or a related person if the minor resides in your household, whether or not temporarily residing elsewhere.
>
> 3. You or your means the first person or organization named in the Declarations.

Appellants maintain that the use of words like "you," "your," "relative," and "person" suggests Owners intended human beings to be insureds under the policy. Owners argue that the UIM coverage is not ambiguous based on the terms of the UIM policy and the underlying commercial automobile coverage policy.

The trial court found that the contract was not ambiguous and that the terms were clear that Appellants sought to insure Metzger's LLC and not Appellants individually. We agree with Owners and the trial court.

> Although we have said that "Kentucky has consistently recognized that an ambiguous policy is to be construed against the drafter, and so as to effectuate the policy of indemnity," *Bituminous Cas. Corp. v. Kenway*

> *Contracting, Inc.*, 240 S.W.3d 633, 638 (Ky. 2007), we have also said that "[t]he rule of strict construction against an insurance company certainly does not mean that every doubt must be resolved against it and does not interfere with the rule that the policy must receive a reasonable interpretation consistent with the parties' object and intent or narrowly expressed in the plain meaning and/or language of the contract." *St. Paul Fire & Marine Ins. Co. v. Powell–Walton–Milward, Inc.*, 870 S.W.2d 223, 226 (Ky. 1994).

Kentucky Employers' Mut. Ins. v. Ellington, 459 S.W.3d 876, 883 (Ky. 2015). Additionally, "[t]erms used within insurance contracts 'should be given their ordinary meaning as persons with the ordinary and usual understanding would construe them.' *City of Louisville v. McDonald*, 819 S.W.2d 319 (Ky. App. 1991)." *Sutton v. Shelter Mut. Ins. Co.*, 971 S.W.2d 807, 808 (Ky. App. 1997).

The definition section of the endorsement in question indicates that the definitions are only to be applied to the endorsement. Also, the endorsement states that "[y]ou or your means the first person or organization named in the Declarations." This indicates that an LLC, not merely individuals, was contemplated as being an insured. Further, as set forth above, the definitions for the commercial automobile policy state: "**You** or **your** means the first named **insured** shown in the Declarations and if an individual, **your** spouse who resides in the same household." (Emphasis in original). This too indicates that both legal entities and individuals are contemplated as being insureds under the contract. Finally, the terms of the UIM coverage are clear and there is only one reasonable

interpretation, that only when a named insured is an individual will the UIM coverage provide benefits when an injury is sustained by a pedestrian.

Appellants also claim that the UIM coverage is ambiguous because of the terms contained in a separate insurance policy Metzger's LLC purchased from Owners called a tailored protection policy. The tailored protection policy was a general business insurance policy that specifically included the members of the LLC in its definition of who was insured. The trial court found this argument unpersuasive because the commercial automobile policy and the tailored protection policy are two separate policies. The trial court stated, "it would be improper to take the definition from a separate and independent policy and apply it here when the policies are not intended to incorporate the definitions of the other." We agree with the trial court and believe this argument has no merit.

Appellants' final argument on appeal is that they are entitled to coverage under the reasonable expectations doctrine.

> The reasonable expectation doctrine "is based on the premise that policy language will be construed as laymen would understand it" and applies only to policies with ambiguous terms - e.g., when a policy is susceptible to two (2) or more reasonable interpretations. Under the reasonable expectations doctrine, when such an ambiguity exists, the ambiguous terms should be interpreted "in favor of the insured's reasonable expectations." However, "[t]he mere fact that [a party] attempt[s] to muddy the water and create some question of interpretation does not necessarily create an

> ambiguity," only actual ambiguities, not fanciful ones, will trigger application of the doctrine.

True v. Raines, 99 S.W.3d 439, 443 (Ky. 2003).

We believe the reasonable expectation doctrine is inapplicable to the case at hand. This doctrine only applies to policies with ambiguous terms, but as we have previously held, the insurance policy at issue is not ambiguous. We agree with the trial court that there was no ambiguity in the policy and affirm the court's judgment as to this issue.

Based on the foregoing reasons, we affirm the judgment of the trial court.

ALL CONCUR.

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