

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001907-MR

GEICO INDEMNITY COMPANY

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 10-CI-005924

YUSUF MURAD

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; SMALLWOOD AND TAYLOR,
JUDGES.

TAYLOR, JUDGE: GEICO Indemnity Company brings this appeal from a
September 9, 2016, Order of the Jefferson Circuit Court upon a jury verdict finding
in favor of Yusuf Murad regarding insurance coverage for a motor vehicle. We
reverse and remand.

On September 14, 2008, Abdalla Suleiman was operating a Mitsubishi
Eclipse when it collided with a motor vehicle operated by Abdullahi Said. At the

time of the alleged collision, the Mitsubishi Eclipse was listed as a covered vehicle upon a motor vehicle insurance policy issued to Yusuf Murad by GEICO Indemnity Company in April of 2008. Murad is Suleiman's father. The motor vehicle driven by Said was insured by Liberty Mutual Fire Insurance Company. The police were not summoned to the accident; rather, a civilian traffic collision report was completed by Said.

Liberty Mutual paid a total of \$39,776.94 to its insured as a result of the accident. It ultimately sought subrogation from GEICO. GEICO informed Liberty Mutual that the claim was "denied" due to issues of fraud and uncooperativeness of Murad and Suleiman.

Thereafter, on August 23, 2010, Liberty Mutual filed a complaint (Action No. 10-CI-005924) in the Jefferson Circuit Court against Suleiman and Murad. Therein, it was alleged that Suleiman negligently caused a collision between his vehicle and its insured's vehicle. Liberty Mutual maintained that it paid a total of \$39,776.94 to its insured because of the accident. Liberty Mutual sought to recover said sum from Suleiman and Murad.

Neither Suleiman nor Murad filed an answer; consequently, Liberty Mutual filed a motion for default judgment. By order entered April 13, 2011, the circuit court granted Liberty Mutual's motion for default judgment and determined

that Suleiman and Murad were jointly and severally liable for the sum of \$39,776.94.

Suleiman and Murad then retained private counsel and filed, on October 7, 2011, a complaint in the Jefferson Circuit Court against GEICO (Action No. 11-CI-006538). Therein, it was asserted:

10. On August 23, 2010, Liberty Mutual instituted a civil lawsuit against Mr. Murad and Mr. Suleiman in the Jefferson County, Kentucky Circuit Court, Civil Action No. 10-CI-005924 (the “*Underlying Action*”), on its subrogation claim, asserting negligence on the part of Mr. Suleiman in causing the Accident and in addition, Liberty Mutual asserted a claim against Mr. Murad on a theory of vicarious liability, claiming Mr. Murad did not have motor vehicle insurance covering the Mitsubishi Eclipse.

11. After [Suleiman and Murad] were each served with a summons and a copy of the complaint in the Underlying Action, they notified GEICO of the Underlying Action.

12. Thereafter, GEICO continued to deny coverage on the claim and refused to provide [Suleiman and Murad] with any defense in the Underlying Action.

13. In or around November of 2010, Liberty Mutual moved for default judgment against [Suleiman and Murad]. [Suleiman and Murad] notified GEICO of the motion for default, however GEICO took no action to protect the interests of [Suleiman and Murad]. Although [Suleiman and Murad] attempted to represent themselves in the Underlying Action, a default judgment was entered against them, jointly and severally, on April 13, 2011, in the amount of \$39,776.94, plus interest thereon at the rate of 12% per annum (the “*Judgment*”).

14. On September 2, 2011, [Suleiman and Murad], by counsel, tendered a copy of the Judgment to GEICO, demanding payment thereof, which to date, GEICO has failed and/or refused to pay and in fact, GEICO has failed to even respond.

15. [Suleiman and Murad] have been damaged by GEICO's breach of contract, bad faith, and its violations of Kentucky's Insurance Code, including but not limited to its failure to provide a defense to [Suleiman and Murad] and its failure to indemnify and pay the Judgment against [Suleiman and Murad], entitling [Suleiman and Murad] to relief therefrom.

Complaint at 3-4. GEICO filed an answer to complaint and denied that the motor vehicle insurance policy issued to Murad covered the Mitsubishi Eclipse for various reasons.

On October 27, 2011, Suleiman and Murad filed a motion to set aside the default judgment in Action No. 10-CI-005924. By order entered December 21, 2011, the circuit court granted the motion to set aside the April 13, 2011, default judgment.

GEICO then retained attorney Todd Page to represent Suleiman and Murad in the action filed by Liberty Mutual (Action No. 10-CI-005924). On January 27, 2012, Page entered an appearance as co-counsel for Suleiman and Murad. Suleiman and Murad also continued to retain privately hired counsel.

Suleiman and Murad eventually filed a motion for summary judgment against Liberty Mutual (Action No. 10-CI-005924). Subsequently, by agreed

order, the two actions (Action Nos. 10-CI-005924 and 11-CI-006538) were consolidated on February 15, 2012.

The circuit court then granted, in part, Suleiman and Murad's motion for summary judgment against Liberty Mutual and dismissed all claims asserted by Liberty Mutual except one claim asserted against Suleiman. Thereafter, an agreed order was entered on October 15, 2013, dismissing the remaining claim against Suleiman.

On October 27, 2014, GEICO filed a motion for declaratory judgment in this action. GEICO asserted that the motor vehicle policy issued to Murad did not provide coverage for the motor vehicle accident that occurred on September 14, 2008. Specifically, GEICO asserted that Murad made material misrepresentations on the application for insurance coverage and that Suleiman made false statements concerning the accident and concealed facts from GEICO. Then, on February 2, 2015, the circuit court rendered an Agreed Order dismissing Suleiman as a party and all claims asserted against him. On October 27, 2015, GEICO's motion for declaratory judgment was denied.

The circuit court ultimately bifurcated for jury trial the coverage and bad faith claims. A jury trial was conducted on August 29, 2016, on the coverage issue, and the jury ultimately returned a verdict in favor of Murad, upon which judgment was entered September 9, 2016. This appeal follows.

GEICO contends that the circuit court erred by denying its motion for directed verdict. GEICO asserts that Murad was not the owner of the Mitsubishi Eclipse at the time the policy was issued in April of 2008 or at the time of the accident in September of 2008. Among its various arguments, GEICO submits that since Murad did not own the Mitsubishi Eclipse, he had no insurable interest in the vehicle and thus, the motor vehicle insurance policy covering the Mitsubishi Eclipse was void.

Kentucky case law and statutory law is clear regarding the necessity of an insurable interest in property to support a valid insurance contract. KRS 304.14-060 provides:

- (1) No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.
- (2) “Insurable interest” as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.
- (3) When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his own proper interest. This section shall not apply to life, health or title insurance.

In conformity therewith, our Court has recognized that “Kentucky law requires a person to have an insurable interest in the insured property[,]” and a motor vehicle

insurance contract is void *ab initio* in the absence of such insurable interest in the motor vehicle listed on the policy. *Sparks v. Trustguard Ins. Co.*, 389 S.W.3d 121, 125 (Ky. App. 2012). And, a directed verdict is proper when “drawing all inferences in favor of the nonmoving party, a reasonable jury could only conclude that the moving party was entitled to a verdict.” *Buchholtz v. Dugan*, 977 S.W.2d 24, 26 (Ky. App. 1998).

In the case *sub judice*, it is uncontroverted that Murad and/or Suleiman obtained possession of the Mitsubishi Eclipse in the summer of 2008 and that Suleiman received the fully completed transfer of title document shortly after June 29, 2008. It is also undisputed that Suleiman was listed as the sole owner or buyer of the Mitsubishi Eclipse and that Murad was not listed on the transfer of title document. Suleiman obtained the transfer of title document well before the September 14, 2008, accident, but did not attempt to register the Mitsubishi Eclipse until after the accident. So, at the time of the accident, the Mitsubishi Eclipse was not registered and did not have a legally valid license plate. After the accident, Suleiman admitted to adding Murad’s name above his own on the transfer of title document and then obtaining a Certificate of Title to the Mitsubishi Eclipse on November 12, 2008, upon which Suleiman or Murad were listed as owners of the Mitsubishi Eclipse.

From the uncontroverted facts as set forth above, it is evident that Murad did not possess an insurable interest in the Mitsubishi Eclipse at the time of the accident on September 14, 2008. Under Kentucky law, the transfer of the Mitsubishi Eclipse's title or ownership was accomplished upon the delivery of the fully completed transfer of title document to Suleiman by the seller.¹ See KRS 186A.215; KRS 186A.220; *Nantz v. Lexington Lincoln Mercury Subaru*, 947 S.W.2d 36 (Ky. 1997). At that point, Suleiman became the sole owner of the Mitsubishi Eclipse for motor vehicle insurance purposes and remained in that capacity well after the accident on September 14, 2008. See *Nantz*, 947 S.W.2d 36.

In sum, Murad was not the owner of the Mitsubishi Eclipse at the time he obtained a motor vehicle insurance policy from GEICO in April of 2008, ostensibly covering the Mitsubishi Eclipse. Equally important, he was not the owner of the Mitsubishi Eclipse at the time of the accident on September 14, 2008. Thus, with Murad having no insurable interest in the Mitsubishi Eclipse, the motor vehicle insurance policy issued by GEICO listing the Mitsubishi Eclipse as an insured vehicle was void *ab initio* as a matter of law. Accordingly, we conclude

¹ Kentucky Revised Statutes (KRS) 186.010(7) defines owner of a motor vehicle as the person who holds legal title.

that the circuit court erred as a matter of law by not granting GEICO's motion for directed verdict.²

We view any remaining arguments as moot.

For the foregoing reasons, the Order of the Jefferson Circuit Court is reversed and this cause is remanded for proceedings consistent with this Opinion.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT:

Edward H. Bartenstein
Louisville, Kentucky

BRIEF FOR APPELLEE:

Zachary L. Taylor
Louisville, Kentucky

ORAL ARGUMENT FOR
APPELLEE:

John A. Bahe, Jr.
Louisville, Kentucky

² Yusuf Murad argues that GEICO Indemnity Company should be estopped from challenging coverage because it provided him a defense without reservation of right after the default judgment was set aside. However, we do not believe GEICO is estopped as the issue of insurance coverage was in dispute and was actively being litigated between the parties when the defense was provided. Additionally, Murad continued to employ separate counsel to represent him, so he retained control of the case in circuit court.