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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000060-MR

STEPHEN DEWITTE AND
LAURA ALTMAN — APPELLANTS

v.

APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 16-CI-90199

METROPOLITAN DIRECT PROPERTY
AND CASUALTY INSURANCE
COMPANY AND SHARRI OAKS — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, LAMBERT, AND NICKELL, JUDGES.

LAMBERT, JUDGE: Stephen DeWitte and his mother, Laura Altman, (collectively, the appellants) have appealed from the summary judgment of the Montgomery Circuit Court in favor of Metropolitan Direct Property and Casualty Insurance Company (Metropolitan) finding that DeWitte did not have

Underinsured Motorist (UIM) or Personal Injury Protection (PIP) coverage under the automobile policy issued to Altman and her husband because DeWitte did not live in their household. Finding no error in the circuit court's opinion, we affirm.

Altman and her husband, Donald Altman, (the Altmans) purchased from Metropolitan a one-year renewal policy providing automobile insurance with an effective date of July 10, 2015.[1] The policy included coverage for PIP, liability, UIM, and Uninsured Motorists (UM) benefits, and the Altmans were the named insureds under the policy. On December 2, 2015, while the policy was in effect, DeWitte was injured as a pedestrian when he was hit by a vehicle driven by Austin Shawnquoyah while he was working in Indiana. The driver's policy did not cover all of DeWitte's damages, and he sought UIM coverage from the Metropolitan policy. Metropolitan denied coverage, stating that DeWitte was not covered under the policy.

On November 30, 2016, the appellants filed a complaint in the Montgomery Circuit Court against Metropolitan and agent Sharri Oaks alleging claims for breach of contract, negligence for failure to keep the policies up to date with DeWitte's change of address, professional negligence, and violations of the

[1] Policy Number 140001929-0.

Kentucky Consumer Protection Act.[2] They sought compensatory damages for past and future medical expenses; past and future physical, emotional, and mental pain and suffering; inconvenience; greater susceptibility to future injury; incapacity to the ability to earn money; and loss of wages.

Metropolitan filed an answer disputing the claims and a counterclaim seeking declaratory relief that it did not owe any coverage to the appellants. At the time of the accident, Metropolitan alleged that DeWitte was a gainfully employed, emancipated 26-year old who no longer resided with the Altmans at their residence. Rather, he resided in a rental apartment. Because he was not listed as a named insured or a resident of the Altmans' household at the time of the accident, DeWitte was not covered pursuant to the terms of the Metropolitan policy. In their answer to the counterclaim, the appellants alleged that DeWitte was listed as a household driver and that Metropolitan billed them – and they paid the premium – as if he were a household driver. They also alleged that Metropolitan waived or should be estopped from denying coverage because it chose not to amend the policy.

In August 2017, the appellants moved for summary judgment on the coverage issue, arguing that because DeWitte was listed as a household driver, he

[2] By agreed order, the plaintiffs' claims under the unfair trade settlement practices act and the Consumer Protection Act were bifurcated from the claims for breach of contract and negligence.

should be covered under the policy. Metropolitan objected to the motion and filed a cross-motion for declaratory summary judgment, arguing that DeWitte was not a resident relative of the Altmans' household or occupying an insured vehicle and was therefore not entitled to coverage. On December 21, 2017, the circuit court entered an opinion and order ruling on the parties' respective motions. After determining that no disputed issues of material fact existed, the court concluded that DeWitte was not entitled to recover UIM or PIP benefits under Metropolitan's policy. Accordingly, the court denied the appellants' motion and granted Metropolitan's motion. This appeal now follows.

"In cases where a summary judgment has been granted in a declaratory judgment action and no bench trial held, the standard of review for summary judgments is utilized." *Ladd v. Ladd*, 323 S.W.3d 772, 776 (Ky. App. 2010) (citing *Godman v. City of Fort Wright*, 234 S.W.3d 362, 368 (Ky. App. 2007)). And the standard of review in an appeal from a summary judgment is well-settled in the Commonwealth. "The standard of review on appeal when a trial court grants a motion for 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.'" *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001) (citing *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996); *Palmer v. International Ass'n of Machinists & Aerospace*

Workers, 882 S.W.2d 117, 120 (Ky. 1994); Kentucky Rule of Civil Procedure (CR) 56.03). The *Lewis* Court instructed that the lower court "must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor." *Lewis*, 56 S.W.3d at 436 (footnote omitted). "Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*." *Id.* at 436 (citing *Scifres*, 916 S.W.2d at 781; *Estate of Wheeler v. Veal Realtors and Auctioneers, Inc.*, 997 S.W.2d 497, 498 (Ky. App. 1999); *Morton v. Bank of the Bluegrass and Trust Co.*, 18 S.W.3d 353, 358 (Ky. App. 1999)). With this standard in mind, we shall review the issues raised on appeal.

On appeal, the appellants argue that the proper interpretation of the Metropolitan policy mandates a conclusion that DeWitte was entitled to coverage. Metropolitan disputes this assertion. The interpretation of a contract is a question of law and, therefore, is subject to *de novo* review. *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

> Under the reasonable expectation doctrine, ambiguous terms in an insurance contract must be interpreted in favor of the insured's reasonable expectations and construed as an average person would construe them. But "[o]nly actual ambiguities, not fanciful ones, will trigger application of the doctrine." Absent ambiguity,

> terms in an insurance contract are to be construed according to their "plain and ordinary meaning." Insurance policies should be construed according to the parties' mutual understanding at the time they entered into the contract, with this mutual understanding to be deduced, if at all possible, from the language of the contract itself. Exceptions and exclusions in insurance policies are to be narrowly construed to effectuate insurance coverage. But "[r]easonable conditions, restrictions, and limitations on insurance coverage are not deemed per se to be contrary to public policy."

Hugenberg v. West American Ins. Company/Ohio Cas. Group, 249 S.W.3d 174, 185-86 (Ky. App. 2006) (citations in footnotes omitted). "A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations." *Cantrell Supply, Inc.*, 94 S.W.3d at 385.

Our first consideration is whether the circuit court's conclusion that the Metropolitan policy excluded DeWitte from coverage was a reasonable interpretation of the policy. The appellants contend that because DeWitte was listed as a household driver, he was entitled to coverage, while Metropolitan contends that he was not covered for either UIM or PIP benefits because he was no longer a resident of the Altmans' household. We agree with Metropolitan.

The language of the policy pertinent to our review is as follows:

> INSURANCE AGREEMENT AND DECLARATIONS
>
> This insurance policy is a legal contract between **you** (the policyholder) and **us** (the Company named in the Declarations). It insures **you** and **your automobile** for the various kinds of insurance **you** have selected, as

> shown in the Declarations. The Declarations are an important part of this policy. By accepting this policy, **you** agree that the statements contained in the Declarations and in any application are **your** true and accurate representations. This policy is issued and renewed in reliance upon the truth of those representations. This policy contains all agreements between **you** and **us** and any of **our** sales representatives relating to this insurance. **You** must pay the required premium.

The declarations page listed the Altmans as the named insureds, and the insured vehicles were listed as a 2013 Kia Optima, a 2014 Volkswagen Jetta, and a 2013 Nissan Juke. The Altmans and DeWitte were listed as the household drivers, with the note that "IF YOU HAVE A DRIVER IN YOUR HOUSEHOLD WHO IS NOT LISTED ABOVE, PLEASE NOTIFY US IMMEDIATELY." DeWitte was not listed as a named insured.

> The policy's UIM coverage section provided as follows:
>
> **We** will pay damages for **bodily injury** sustained by:
>
> 1. **you** or a **relative**, caused by an accident arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**, which **you** or a **relative** are legally entitled to collect from the owner or driver of an **underinsured motor vehicle**[.]

Under the general definitions section, the policy defined "you" and "your" as "the person(s) named in the Declarations of this policy as the named insured and the spouse of such person or persons if a residence of the same household." The term "relative" was defined as "a person related to **you** [the policyholder] by blood,

marriage or adoption . . . and who resides in **your** [the policyholder's] household." Therefore, in order for DeWitte to be covered, he must have been a relative of the Altmans and a resident in their household.

Under the PIP portion of the policy, Metropolitan provided coverage for medical expenses and work loss, among other benefits, "incurred with respect to **bodily injury** sustained by an **eligible injured person** and caused by an accident arising out of the operation, maintenance or use of a **motor vehicle** as a vehicle." The policy defined "eligible injured person" as:

> 1. a **named insured** or any **relative** who sustains **bodily injury** while **occupying** or while a **pedestrian** through being struck by any **motor vehicle**, provided that if such person has rejected the limitation on his tort rights pursuant to the Kentucky Motor Vehicle Reparations Act, he shall not be an **eligible injured person**, unless basic personal injury coverage has subsequently been purchased for such person under this policy; or
>
> 2. any other person who sustains **bodily injury** while **occupying** or while a **pedestrian** through being struck by the **insured motor vehicle**[.]

The term "named insured" was defined as "the person or organization named in the Declarations." And the term "relative" was defined as:

> The spouse and any person related to the **named insured** by blood, marriage, or adoption including a minor in the custody of the **named insured**, spouse or such related person who is a resident of the same household as the **named insured**, whether or not temporarily residing elsewhere, but does not include any such person who is a

> **named insured** under any policy providing the security under the Kentucky Motor Vehicle Reparations Act.

In order for DeWitte to be covered as an eligible injured person, he must have been a resident of the Altmans' household at the time of the accident.

We must agree with the circuit court and Metropolitan that because the undisputed evidence establishes that DeWitte no longer lived in the Altmans' household at the time of the accident, he is not entitled to coverage for either UIM or PIP benefits under the Metropolitan policy. The undisputed evidence established that DeWitte was a college graduate, was employed on a full-time basis, had lived in his own rental apartment outside of the Altmans' home that he furnished and had paid rent and utilities for since August 2013, received most of his mail at the apartment, and had no intention of moving back in with the Altmans. That DeWitte was listed as a household driver on the declarations page did not convert him into a named insured for purposes of the injuries received as a pedestrian, as the appellants urge us to hold. The circuit court's holding is a reasonable interpretation of the policy, and we find no error in the circuit court's ruling or in concluding that there were no ambiguities in the policy language.

We also reject the appellants' argument that the circuit court should have reformed the policy based upon their intention that DeWitte was to be covered by it. In *Grisby v. Mountain Valley Ins. Agency, Inc.*, 795 S.W.2d 372, 374 (Ky. 1990), cited by Metropolitan, the Supreme Court of Kentucky observed,

"[T]he law regarding contract reformation . . . requires proof of (1) mutual mistake or (2) mistake on the part of one party and fraud on the part of the other." There was no evidence presented to establish either of these elements.

Accordingly, for the foregoing reasons, the opinion and order of the Montgomery Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

M. Stanley Goeing
Matthew S. Goeing
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BRIEF FOR APPELLEE METROPOLITAN DIRECT PROPERTY AND CASUALTY INSURANCE COMPANY:

David K. Barnes
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