

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000789-MR

KEYAIRA MEFFORD, A MINOR, BY AND
THROUGH HER GREAT-GRANDMOTHER
AND NEXT FRIEND, JERALDINE SCRUGGS;
JAYDENCE MEFFORD, A MINOR, BY AND
THROUGH HIS GREAT-GRANDMOTHER
AND NEXT FRIEND, JERALDINE SCRUGGS;
DAVIN ALEXANDER WELCH, A MINOR, BY AND
THROUGH HIS GREAT-GRANDMOTHER
AND NEXT FRIEND, JERALDINE SCRUGGS; AND
JERALDINE SCRUGGS AND HEATHER SCRUGGS,
AS CO-ADMINISTRATORS OF THE ESTATE OF
JORDAN MEFFORD, DECEASED

APPELLANTS

v. APPEAL FROM HENRY CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 16-CI-00162

GEICO INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GOODWINE, JONES, AND NICKELL, JUDGES

GOODWINE, JUDGE: Jordan Mefford’s minor children, by and through their great-grandmother and next friend, Jeraldine Scruggs, and Jeraldine and Heather Scruggs, as co-administrators of the Estate of Jordan Mefford, deceased, (collectively “Appellants”), appeal a Henry Circuit Court order granting summary judgment in favor of GEICO,¹ denying them underinsured motorist (UIM) coverage. After careful review, finding no error, we affirm.

BACKGROUND

On December 17, 2014, Jacqueline Hayes (“Hayes”) applied for and received automobile liability insurance coverage through GEICO.² Hayes listed her address as 11074 W. Polk Rd., Lexington, Indiana. GEICO mailed the policy to that address. Hayes failed to pay the policy premium and it lapsed. On March 15, 2015, GEICO reinstated the policy following payment and, again, mailed the policy to Hayes at her Indiana address.

Approximately one year later, Hayes added her 2000 Volvo S80 to the policy, listing it as located in Lexington, Indiana. GEICO issued a new declarations page, listing two vehicles covered under the policy. Again, GEICO mailed the new declarations page to Hayes at her Indiana address.

¹ Government Employees Insurance Company.

² Indiana Family Automobile Policy No. 4377-19-80-82.

On March 15, 2016, two weeks before the fatality, Hayes renewed the policy retaining coverage on her 2000 Volvo S80. She did not change the Lexington, Indiana address. GEICO issued a new declarations page and mailed it to Hayes at her Indiana address. Hayes never advised GEICO of any address change or relocation of her 2000 Volvo S80 at any time after applying for, or renewing, the policy.

On April 12, 2016, twenty-three days after Hayes renewed her policy, she and Mefford were killed in a car accident in Henry County, Kentucky. Mefford was driving Hayes's vehicle in the southbound lane of I-71. Hayes was riding in the passenger seat. A driver in the northbound lane swerved in front of Richard Hanson ("Hanson"), who was driving a tractor trailer. Hanson swerved to avoid the driver, overcorrected and entered the median, causing the tractor trailer to roll onto its side. It came to rest in the left lane of southbound I-71, directly in Mefford's lane of travel. Mefford struck the tractor trailer, killing himself and Hayes.

On August 11, 2016, Hayes's estate brought claims against Hanson, the trucking companies, and Mefford's estate. On February 25, 2017, Mefford's estate and Appellants moved the court for leave to file a third-party complaint against GEICO for UIM benefits. The trial court granted the motion and GEICO timely answered the third-party complaint.

On May 22, 2017, the parties mediated with Hanson, the trucking companies, and their insurance provider,³ as well as GEICO. The estates settled with Hanson and the trucking companies' insurance provider for the policy limits of \$1,000,000.⁴ Hayes's estate settled its negligence claims against Mefford's estate for \$25,000, and Hanson settled his cross-claims against Mefford's estate for \$10,000. Appellants and GEICO did not resolve their dispute. They filed cross motions for summary judgment on Appellants' claim for UIM benefits.

On January 26, 2018, the trial court granted summary judgment in favor of GEICO finding: (1) Indiana law applied to the terms of the contract; (2) further consideration of which state had the most "significant relationship" to Hayes was unnecessary; and (3) any UIM to which Appellants may be eligible was subject to a setoff. The trial court denied Appellants' CR⁵ 59.05 motion to alter, amend, or vacate the order. This appeal followed.

STANDARD OF REVIEW

On appeal, our standard of review 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."

³ Navigation, Inc., and Navigation Group, Inc., were insured by National Continental Insurance Company.

⁴ Each estate received \$500,000.

⁵ Kentucky Rules of Civil Procedure.

Keaton v. G.C. Williams Funeral Home, Inc., 436 S.W.3d 538, 542 (Ky. App. 2013) (quoting *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996)). Summary judgment is only proper if there is no genuine issue of material fact upon which reasonable jurors could differ. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). It is not sufficient for a non-moving party simply to oppose summary judgment; they must present some affirmative evidence which shows there is an issue of material fact. *Id.* at 482. Summary judgment review is *de novo*. *Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.3d 188, 189 (Ky. App. 2006).

ANALYSIS

The sole issue on appeal is whether Indiana or Kentucky law applies to the enforcement of an insurance policy's UIM provision. Appellants contend Kentucky law applies because (1) the accident took place in Kentucky; (2) the decedents were Kentucky residents with Kentucky driver's licenses; and (3) Hayes's vehicle was titled, purchased, and garaged in Kentucky. Appellants rely on the "significant relationship" analysis from RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 188(1) (1971) ("RESTATEMENT").

GEICO contends that Indiana law applies because (1) Hayes represented she was an Indiana resident; (2) the policy contains a choice of law provision, stating Indiana law applies to any contractual dispute between the

parties; and (3) GEICO was unaware of any connection between Hayes and Kentucky that was relevant to their insurance contract. GEICO contends the RESTATEMENT § 188 only applies when the parties have not selected a forum state as set out in the RESTATEMENT § 187.

We review three policy provisions: (1) UIM coverage; (2) choice of law; and (3) fraud and misrepresentation. First, the policy's UIM coverage provides for payment "where the limits of coverage available for payment of the *insured* under all bodily injury bonds and insurance policies covering persons liable to the *insured* are less than the limits for the *insured's* Underinsured Motorist Coverage at the time of the accident." (Emphasis in original.)

Thus, per the terms of the policy, GEICO would pay UIM benefits only if all liability coverage available is less than the UIM coverage. For this coverage, GEICO assessed a premium of \$6.32 every six months because Hayes designated in her policy that she and the vehicle were in Indiana. Had Hayes designated that she and her vehicle were in Kentucky, the premium assessed would have been \$11.25 every six months. Hayes paid premiums rated for the Indiana address throughout the policy period. Interestingly, had Hayes been honest about

her residency and the location of her vehicle, Kentucky would have been the choice of law listed in the policy. Instead, Hayes, not GEICO, chose Indiana.⁶

Second, the choice of law provision provides: “[t]he policy and any amendment(s) and endorsement(s) are to be interpreted pursuant to the laws of the state of Indiana.”⁷ Third, the fraud and misrepresentation provision provides: “Coverage is not provided to any person who knowingly conceals or misrepresents any material fact or circumstance relating to this insurance: (a) at the time of application; or (b) at any time during the policy period. . . .”

GEICO argues the RESTATEMENT §187 applies here. It states: “The law of the state chosen by the parties to govern their contractual rights and duties will be applied if the particular issue is one which the parties could have resolved by an explicit provision in their agreement directed to that issue.” Neither our Supreme Court nor this Court has taken a position on the application of the RESTATEMENT § 187 in a choice of law analysis. Rather, our Supreme Court utilizes the RESTATEMENT § 188’s “most significant relationship” test and has confirmed that it will apply its own law to a dispute with ties to Kentucky even in

⁶ GEICO is headquartered in Chevy Chase, Maryland. Decisions regarding choice of law provisions in GEICO’s insurance policies are determined by the location of the insured risk. In this case, Indiana.

⁷ Indiana Code Ann. § 27-7-5-4(b) (West) defines an underinsured motor vehicle as “an insured motor vehicle where the limits of coverage available for payment to the insured under all bodily injury liability policies covering persons liable to the insured are less than the limits for the insured’s underinsured motorist coverage at the time of the accident.”

spite of an otherwise valid choice of law provision. *See Schnuerle v. Insight Commc'ns Co., L.P.*, 376 S.W.3d 561, 567 (Ky. 2012) (applying Kentucky law in spite of an otherwise valid New York choice of law provision, “because Kentucky had the greater interest in, and the most significant relationship to, the transaction and the parties”). We note, however, that in *Schnuerle*, unlike here, the consumers had no part in selecting New York as the forum state. Here, Hayes chose Indiana, not GEICO.

The “most significant relationship test” has been explicitly adopted in Kentucky. *Saleba v. Schrand*, 300 S.W.3d 177, 181 n.2 (Ky. 2009). *See also Lewis v. American Family Ins. Group*, 555 S.W.2d 579 (Ky. 1977). When interpreting insurance contracts, courts use § 193 of the RESTATEMENT to supplement § 188’s analysis. *Asher v. Unarco Material Handling, Inc.*, 737 F.Supp.2d 662, 673 (E.D. Ky. 2010). Kentucky has expressly adopted RESTATEMENT § 193. *State Farm Mut. Auto. Ins. Co. v. Hodgkiss-Warrick*, 413 S.W.3d 875, 879 (Ky. 2013).

Regarding insurance policies, the RESTATEMENT § 193 states:

The validity of a contract of . . . casualty insurance and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy, unless with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the transaction and the

parties, in which event the local law of the other state will be applied.

Appellants argue that the “most significant relationship” test results in a finding that Kentucky has the most significant relationship with the UIM contract. The RESTATEMENT § 188 provides: “The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties[.]” A court making a choice of law determination should consider: “The place or places of negotiating and contracting; the place of performance; the location of the contract’s subject matter; and the domicile, residence, place of incorporation and place of business of the parties.” *Hodgkiss-Warrick*, 413 S.W.3d at 878-79 (citing RESTATEMENT § 188(2)).

The *issue* here is Hayes’s personal automobile insurance policy with GEICO and not the underlying subject accident. The Appellants settled with everyone except GEICO. The only remaining issue in this case is UIM coverage under the GEICO policy.

Hence, the significant transaction is not the accident but the interpretation of the UIM coverage provided by the insurance contract. *See Grange Prop. & Cas. Co. v. Tenn. Farmers Mut. Ins. Co.*, 445 S.W.3d 51, 56 (Ky. App. 2014) (concluding that a foreign state’s law applied to an insurance contract dispute involving only uninsured motorist coverage under a policy issued in the foreign state).

LaCross v. Owners Insurance Company, 531 S.W.3d 25, 30 (Ky. App. 2016). The trial court found Indiana had the most significant relationship to the formation and performance of the insurance contract under the test set forth in *Lewis*, 555 S.W.2d at 581. The trial court found Indiana had the most significant contacts with Hayes, and that her Kentucky residence, driver's license, and place where she kept her car were outweighed by the provisions of her contract with GEICO, given Hayes's misrepresentations regarding her residency and the location of her vehicle.

In its order denying Appellants' motion to alter, amend or vacate, the trial court explained that its disposition of this case was not based upon a blind adherence to a choice of law contractual provision, as the Appellants contend. Rather, the trial court made abundantly clear that its ruling was based upon a review of the very facts asserted by the Appellants; and that nevertheless, the significant relationship test under RESTATEMENT § 188, as applied to the facts, compelled the trial court to find that Indiana law applied to the Indiana policy at issue. The trial court found:

The choice of law provision of the [GEICO] policy is extremely compelling to the Court for the following reason: that Ms. Hayes is not alive to present testimony regarding her expectation concerning the principal location of the insured risk. . . . The Court relies on Ms. Hayes' representations to [GEICO] of having an Indiana address at the time she negotiated the contract, on receiving the discounted rate for the presumable place of performance being in Indiana and not Kentucky, and the agreement between [the parties]

that Indiana law would apply in any choice of law situation.

(R. at 877).

Interestingly, Appellants' arguments place Hayes in a precarious situation. A review of the record shows that Hayes lived in Kentucky for over a year prior to her death. When adding the Volvo to the policy in February 2016, Hayes told GEICO she garaged her vehicle in Indiana. Further, GEICO continued to send all declarations to the Lexington, Indiana address and Hayes never advised GEICO of a change in address or location of the Volvo.

Thus, if this Court accepts as true that Hayes lived at 7208 Hillpark Way, Apt. #207 in Louisville, Kentucky between March 2015 until her death in April 2016, then it must also accept as true that Hayes misrepresented her address to GEICO which, in turn, allowed her to pay lower premiums and prevented GEICO from properly assessing and insuring its risk. That is exactly what the trial court found.

Appellants argue that Kentucky's public policy precludes the application of Indiana law to GEICO's UIM "setoff" provision. Kentucky's general choice of law rule is only disregarded when Kentucky's public policy clearly overwhelmingly disfavors application of the foreign state's law. *Hodgkiss-Warrick*, 413 S.W.3d at 879-80. "Courts will not disregard the plain terms of a contract between private parties on public policy grounds absent a clear and certain

statement of strong public policy in *controlling laws or judicial precedent.*” *Id.* at 880 (emphasis added).

While our General Assembly, through the MVRA, has [evinced] an overriding public policy in the area of automobile liability coverage, a mandatory form of insurance, there is no comparable public policy regarding **underinsured motorist coverage, an optional coverage which may be purchased on the “terms and conditions” agreed to by the parties.**

Id. at 887 (emphases added). Thus, Appellants’ argument is misplaced. Kentucky has no clear public policy on UIM coverage. *LaCross*, 531 S.W.3d at 31. Only when it is imperative for Kentucky courts to impose Kentucky law “to protect the morals, safety or welfare of our people” is the policy “sufficiently strong” to override the other “very substantial policies” previously identified. *Hodgkiss-Warrick*, 413 S.W.3d at 880-83. We hold no such imperative is present here.

The trial court concluded Hayes misrepresented her address and the location of the 2000 Volvo S80. We agree. In *Flint v. Liberty Ins. Corp.*, 613 F.Supp.2d 899 (E.D. Ky. 2009), the 6th Circuit was faced with facts very similar to those here. Flint led his insurance company to believe he was an Indiana resident, rather than a Kentucky resident, to pay lower premiums on a UIM policy. *Id.* at 902. He was subsequently injured in a car accident in Kentucky and sought UIM benefits under the Indiana automobile policy. Applying Kentucky’s most significant contact approach, the court determined that Indiana law should apply.

Although Flint argued that he had more significant contacts with Kentucky because, in part, he had a home here, the court opined that his “state of residence alone does not resolve the issue.” *Id.* at 902. Critically, the court held that:

The parties understood the principal location of the risk was in Indiana because Flint effectively chose Indiana as the principal location . . . In essence, Flint **received the benefit of his bargain with [his insurer], establishing the location of the risk in order to pay lower premiums, and cannot avoid the burden of that bargain.**

Id. (emphasis added). The court went further in analyzing Kentucky’s contacts with Indiana’s and found that:

Kentucky does not have a more significant relationship to the insurance contract than Indiana. . . . The location of the tort is not important in the analysis of which state’s law determines the validity of or rights under the contract. . . . Also although it is unclear where Flint was domiciled, he may have been domiciled in Kentucky at the time of the accident. In contrast, **Indiana was the primary location of the subject matter of the contract, by agreement of the parties, the location of one of Flint’s residences, and a market for [the insurer’s] products. The Kentucky contacts, however, were not more significant than Indiana’s because the most significant contact, where the parties understood the principle location of the insured risk to be, was with Indiana and this contact was not outweighed by the remaining contacts.**

Id. (emphases added).

Here, as in *Flint*, the insured clearly expressed that her residence was in Indiana. That is clear from the face of the most recent renewal, which was

twenty-three days before the fatality. It is the same address Hayes used since applying for the policy in 2015. The trial court correctly applied Indiana law because it was where the parties understood the risk to be.

Even if we concluded that Kentucky has the most significant contacts and, thus, Kentucky law should apply, the fraud and misrepresentation clause in the policy would apply to facts here. An insured cannot provide one set of facts to an insurance company to qualify for lower premiums and another set of facts to the court for purposes of avoiding or evading the contract's choice of law provision. Based on Hayes's misrepresentations, GEICO was justified in denying UIM benefits and the trial court correctly granted GEICO's motion for summary judgment.

CONCLUSION

Based on the foregoing analysis, we affirm the judgment of the Henry Circuit Court.

ALL CONCUR.

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