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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2022

1210008

Alfa Mutual Insurance Company

v.

Whitney Warren, as mother and next friend of M.G. Davis, a deceased minor; Whitney Warren, as mother and next friend of L.H. Davis, a minor; and Whitney Warren, as mother and next friend of L.L. Davis, a minor

**Appeal from Marshall Circuit Court
(CV-19-900060)**

WISE, Justice.

This Court granted Alfa Mutual Insurance Company ("Alfa") permission to appeal from an order denying its motion for a summary

judgment in an action seeking uninsured/underinsured-motorist benefits brought by Whitney Warren, as mother and next friend of M.G. Davis, a deceased minor, L.H. Davis, a minor, and L.L. Davis, a minor. See Rule 5, Ala. R. App. P. We reverse and remand.

Facts and Procedural History

On January 7, 2019, Warren's minor children -- M.G. Davis, L.H. Davis, and L.L. Davis -- were in foster care and resided with Bridget Massey. Also on January 7, 2019, Warren's minor children were passengers in a vehicle that was being driven by Jan Johnson Slaton, who was transporting them for visitation with Warren on behalf of the Marshall County Department of Human Resources ("DHR"). While she was driving on U.S. Highway 431, Slaton crossed into oncoming traffic and collided with vehicles that were being driven by Jennifer Rossuck and Deborah Cole. As a result of the collision, Slaton and M.G. were killed and L.H. and L.L. suffered bodily injuries.

On February 6, 2019, Warren, as mother and next friend of her three minor children, filed a complaint against the estate of Slaton¹ and

¹Because no probate proceedings had been commenced regarding Slaton's estate, on February 22, 2019, the trial court appointed an administrator ad litem to represent Slaton's estate.

multiple fictitiously named defendants, alleging negligence and wantonness. Warren amended the complaint, among other things, to add Alfa as a defendant and to add a claim for uninsured/underinsured-motorist ("UIM")² benefits against Alfa, which provided motor-vehicle insurance for Massey. On December 31, 2020, Warren filed a third amended complaint in which she added Auto-Owners Insurance Company ("Auto-Owners") and North Alabama Counseling Center, Inc. ("NACC"), as defendants. She alleged that Auto-Owners was the UIM carrier for the grandfather with whom the three minor children had resided before they were placed in temporary foster care. She also alleged that NACC had hired Slaton to provide transportation for children and families in the care of DHR. That amended complaint stated claims of negligence and wantonness against Slaton, NACC, and fictitiously named defendants; a claim of negligent/wanton hiring, supervision, and retention against NACC and fictitiously named defendants; and claims

²"[U]nder Alabama law, the term 'uninsured motor vehicle' includes underinsured motor vehicles. See Ala. Code 1975, § 32-7-23(b)(4)." Ex parte Alfa Mut. Ins. Co., 142 So. 3d 728, 729 n.2 (Ala. Civ. App. 2013).

seeking UIM benefits against Alfa and Auto-Owners.³ Alfa filed an answer to the complaint, as amended, in which it denied that Warren's three minor children were covered by the UIM provisions of Massey's policy.

On January 12, 2021, Alfa filed a motion for a summary judgment, again arguing that Warren's three minor children were not covered by the UIM provisions of Massey's policy because they did not fall within the definition of "family members" included in that policy. On June 7, 2021, Warren filed a response to Alfa's motion for a summary judgment, and Alfa filed a reply to Warren's response to Alfa's motion the following day. On June 10, 2021, the trial court conducted a hearing on Alfa's motion for a summary judgment, and it entered an order denying Alfa's motion on July 26, 2021.

On August 6, 2021, Alfa filed a motion requesting permission to appeal the interlocutory order denying its motion for a summary judgment pursuant to Rule 5, Ala. R. App. P. On September 22, 2021, the trial court entered an order certifying that an interlocutory appeal

³We do not further discuss the dispositions as to the other defendants and claims because they are not relevant to the questions before this Court in this permissive appeal.

would be appropriate and including the following statement of the controlling questions of law in this case:

"[W]hether or not three minor children (ages three and four, two injured and one suffering fatal injuries) who were primarily residing with their foster parents at the time of an automobile collision are covered insureds under their foster parents' Alfa uninsured/underinsured ('UIM') policy definition of 'family member,' and whether Alfa's policy language is in accordance with the Alabama uninsured motorist statute, Ala. Code 1975, § 32-7-23, and public policy."

This Court granted Alfa permission to appeal pursuant to Rule 5.

Standard of Review

"Where, as here, the facts of a case are essentially undisputed, this Court must determine whether the trial court misapplied the law to the undisputed facts, applying a de novo standard of review. Carter v. City of Haleyville, 669 So. 2d 812, 815 (Ala. 1995). Here, in reviewing the denial of a summary judgment when the facts are undisputed, we review de novo the trial court's interpretation of statutory language and our previous caselaw on a controlling question of law."

Wood v. Wayman, 47 So. 3d 1212, 1215 (Ala. 2010)(quoting Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033, 1035 (Ala. 2005)).

"This Court has stated the following with regard to permissive appeals:

"In the petition for a permissive appeal, the party seeking to appeal must include a certification by the trial court that the interlocutory order involves a controlling question of law, and the trial court must include in the certification a statement of the controlling question of law. Rule 5(a), Ala. R. App. P. In conducting our de novo review of the question presented on a permissive appeal, "this Court will not expand its review ... beyond the question of law stated by the trial court. Any such expansion would usurp the responsibility entrusted to the trial court by Rule 5(a)." BE&K, Inc. v. Baker, 875 So. 2d 1185, 1189 (Ala. 2003)....'

"Alabama Powersport Auction, LLC v. Wiese, 143 So. 3d 713, 716 (Ala. 2013)."

Mid-Century Ins. Co. v. Watts, 323 So. 3d 39, 43-44 (Ala. 2020).

Discussion

In this case, Massey's policy with Alfa provides, in relevant part:

"DEFINITIONS

"Throughout this policy you and your means:

"1. The named insured shown in the declaration.

"2. The spouse if a resident of the same household.

"We, us and our refer to the company providing this coverage.

"....

"Covered Person - means:

"1. You and your.

"2. Family members.

"3. Any other person while using the covered car with express or implied permission of you or a family member.

"4. Under Part A, any person or organization legally responsible for the use of the covered car by covered persons as defined under the three subsections above.

"5. Under Part D, any person while occupying your occupied car.

"....

"Family Member - means a person related to you by blood, marriage or adoption who primarily lives with you. This includes your unmarried and unemancipated child while temporarily away at school.

"....

"PART D

"UNINSURED/UNDERINSURED MOTORIST COVERAGE

"....

"We will pay for damages for bodily injury to covered person if the covered person is legally entitled to collect such damages from the owner or driver of an uninsured car. The bodily injury must be caused by accident arising out of the operation, maintenance or use of an uninsured car."

(Emphasis in original.)

Alfa points out that, under the policy language set forth above, "to be entitled to UIM benefits, one must be a 'covered person' defined for purposes of UIM coverage as the named insured, his/her spouse if a resident of the same household, a 'family member,' and/or anyone occupying a covered car." Alfa's brief at p.14. Under the facts of this case, because Warren's minor children were not occupying a covered car under the terms of Massey's policy at the time of the accident, they must qualify as "family members" to be entitled to UIM benefits under that policy.

Alfa argues that foster children do not qualify as "family members" as that term is defined in Massey's policy with Alfa and that, therefore, Warren's three minor children were not entitled to UIM benefits under that policy. Specifically, it contends that the terms of the policy are clear and unambiguous, that the policy specifically and narrowly defines the term "family member," that similar definitions have been found by Alabama courts to be unambiguous, and that the definition does not include foster children.

"When analyzing an insurance policy, a court gives words used in the policy their common, everyday meaning and interprets them as a reasonable person in the insured's position would

have understood them. Western World Ins. Co. v. City of Tusculumbia, 612 So. 2d 1159 (Ala. 1992); St. Paul Fire & Marine Ins. Co. v. Edge Mem'l Hosp., 584 So. 2d 1316 (Ala. 1991). If, under this standard, they are reasonably certain in their meaning, they are not ambiguous as a matter of law and the rule of construction in favor of the insured does not apply. Bituminous Cas. Corp. v. Harris, 372 So. 2d 342 (Ala. Civ. App. 1979). Only in cases of genuine ambiguity or inconsistency is it proper to resort to rules of construction. Canal Ins. Co. v. Old Republic Ins. Co., 718 So. 2d 8 (Ala. 1998). A policy is not made ambiguous by the fact that the parties interpret the policy differently or disagree as to the meaning of a written provision in a contract. Watkins v. United States Fid. & Guar. Co., 656 So. 2d 337 (Ala. 1994). A court must not rewrite a policy so as to include or exclude coverage that was not intended. Upton v. Mississippi Valley Title Ins. Co., 469 So. 2d 548 (Ala. 1985).'

"B.D.B. v. State Farm Mut. Auto. Ins. Co., 814 So. 2d 877, 879-80 (Ala. Civ. App. 2001). However, if a provision in an insurance policy is found to be genuinely ambiguous, 'policies of insurance should be construed liberally in respect to persons insured and strictly with respect to the insurer.'
Crossett v. St. Louis Fire & Marine Ins. Co., 289 Ala. 598, 603, 269 So. 2d 869, 873 (1972)."

State Farm Mut. Auto. Ins. Co. v. Brown, 26 So. 3d 1167, 1169-70 (Ala. 2009).

The policy in this case defines "family member" as "a person related to you by blood, marriage or adoption who primarily lives with you. This

1210008

includes your unmarried and unemancipated child while temporarily away at school." (Emphasis omitted.) Alabama courts have held that similar language in policies from other insurance companies is clear and unambiguous. See B.D.B. v. State Farm Mut. Auto. Ins. Co., 814 So. 2d 877, 879 (Ala. Civ. App. 2001)(holding that policy language that defined the term "relative" as "a person related to you or your spouse by blood, marriage, or adoption who lives primarily with you" was clear and unambiguous). See also State Farm Mut. Auto. Ins. Co. v. Harris, 882 So. 2d 849 (Ala. 2003). Also, the definition does not specifically mention foster children who temporarily reside with an insured. Cf. Nationwide Ins. Co. v. Rhodes, 870 So. 2d 695, 697 (Ala. 2003)("[The policy] defined 'relative' to mean 'one who regularly lives in your household and who is related to you by blood, marriage or adoption (including a ward or foster child). A relative may live temporarily outside your household.'"); Boone v. Safeway Ins. Co. of Alabama, 690 So. 2d 404, 406 (Ala. Civ. App. 1997)("The insurance contract between Safeway and Michael Boone defines 'family member' as 'a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.'"). If Alfa had intended to include a foster child within the

definition of "family member," it could have easily done so. See Rhodes, supra; Boone, supra.

In support of its contentions, Alfa relies heavily on the Louisiana Supreme Court's decision in Cadwallader v. Allstate Insurance Co., 848 So. 2d 577 (La. 2003). In Cadwallader,

"Plaintiffs, M.S., N.A., and O.P., foster children of Dinnah Ruffin, were involved in a motor vehicle accident while guest passengers in a vehicle owned by Marietta Beraud and driven by Natalie Beraud. Plaintiffs filed suit against Natalie Beraud and Allstate as the liability insurer of Natalie Beraud and as the uninsured/underinsured motorist (UM) insurer of Dinnah Ruffin. ... The plaintiffs and Allstate filed cross motions for summary judgment on the issue of whether or not the foster children were covered under Ms. Ruffin's UM policy with Allstate. Coverage for the plaintiffs under the UM policy is dependent upon whether they are 'resident relatives' under the policy."

848 So. 2d at 579 (footnotes omitted). Because the policy in that case did not specifically define "resident relatives," the Louisiana Supreme Court addressed the issue "whether foster children of the insured qualified as 'relatives' under the uninsured motorist policy, which limited coverage to the insured and 'resident relatives.'" Id. at 578. That court held that "the term 'relative' is not an ambiguous term and where the policy definition of 'relative' does not specifically include foster children, the

term 'relative' does not include a foster child of that insured." Id. The court reasoned, in part:

"As a general rule, when the word 'relative' is used in insurance contracts it is intended to include persons related by marriage as well as blood. Zeringue v. Zeringue, 94-1411, p. 2 (La. Ct. App. 1 Cir. 4/7/95), 654 So. 2d 721, 722, writ denied, 95-1660 (La. 10/6/95), 661 So. 2d 471 (citing Hernandez v. Comco Ins. Co., 357 So. 2d 1368, 1370 (La. Ct. App. 4 Cir.1978), writ denied, 359 So. 2d 1305 (La. 1978)). Our appellate courts have consistently held that the term 'relative' includes relatives by blood or marriage. 15 William McKenzie & H. Alston Johnson, III, Louisiana Civil Law Treatise -- Insurance Law and Practice § 43, p. 128 (2d ed. 1996). The First Circuit found no merit to the argument that the insurance policy was ambiguous because it did not define the term 'relative.' Zeringue, 654 So. 2d at 722. As that court correctly noted, the jurisprudence clearly indicates that the term 'relative' includes persons related by blood as well as marriage. Zeringue, 654 So. 2d at 723; see also Hernandez, supra; Robertson v. Aetna Casualty & Surety Ins. Co., 629 So. 2d 445, 446 (La. Ct. App. 3 Cir. 1993); Liprie v. Michigan Millers Mut. Ins. Co., 143 So. 2d 597, 601 (La. Ct. App. 3 Cir. 1962).

"Webster's Universal Unabridged Dictionary (1989) defines 'relative' as 'one who is connected with another or others by blood or marriage.' In the Oxford English Dictionary (1989) and in Black's Law Dictionary, 6th ed., the word 'relative' is defined as 'a kinsman; a person connected with another by blood or affinity.' The Third Circuit stated in Liprie, supra, that a review of the many definitions of the word 'relative' contained in Words and Phrases indicates that when the word relative is used in insurance contracts and where no other specific definition is given, it is generally interpreted as including persons who are related by affinity or marriage as well as by blood or consanguinity. Liprie, 143

So. 2d at 601. A review of Words and Phrases, Vol. 60, p. 221, reveals that the term 'relative' indicates persons related by blood as well as marriage. In our review of Louisiana's jurisprudence, we find no case which includes a foster child within the definition of 'relative.'

"In further study of this issue, we have looked at authorities and courts outside of Louisiana for a comparison and find these other sources are of the same view that we express in this opinion. Specifically, one authority states that in the absence of policy definitions to the contrary, the term 'relative' of the insured has been held not to include a former or current foster child of the insured. 8 Lee R. Russ & Thomas F. Segalla, Couch on Insurance 3d, § 114:19, p. 114-32 (1997). Addressing the issue of whether a foster child could be considered a 'relative' of the policyholder so as to be entitled to liability coverage under the terms of the policy, the Georgia appellate court found that pursuant to the common understanding of the word 'relative,' the existence of the foster parent-child relationship did not operate to make them relatives within the contemplation of the policy. Ledford v. State Farm Mutual Auto. Ins. Co., 189 Ga. App. 866, 867, 377 S.E.2d 693, 695 (1989), aff'd, 259 Ga. 560, 386 S.E.2d 662 (1989). Unless expressly covered by the policy, a foster child living with the motor vehicle policyholder is not a relative of the policyholder, so as to be entitled to liability coverage under the policy. 46 C.J.S. Insurance § 1046 (1993).

"The United States Ninth Circuit Court of Appeals, applying Alaska law, had to decide whether the term 'relative' in an automobile insurance policy included the child of the policyholder's unmarried cohabitant. Allstate Ins. v. Shelton, 105 F.3d 514, 515 (9th Cir. 1997). The insured, Mr. Shelton, bought a house with Ms. Kohlbeck and lived with her and her four children. Approximately eleven months after they moved in together, one of Ms. Kohlbeck's children was struck by a car while riding her bicycle and killed. Mr. Shelton's divorce from his wife was finalized two months after the child's death, and

he and Ms. Kohlbeck married one month later. Ms. Kohlbeck-Shelton asserted a claim for coverage under the UM policy provisions of an Allstate policy issued to Mr. Shelton. The policy at issue did not define 'relative.' The court concluded because the child was not connected with the insured by blood or affinity, she was not his 'relative.' *Id.* at 516. 'Where insurance companies have not defined "relative," courts have applied its ordinary meaning as persons connected by blood or marriage.' *Id.* at 516-517 citing, *Groves v. State Farm Life and Casualty Co.*, 171 Ariz. 191, 829 P.2d 1237 (Ct. App. 1992) (In insurance cases, one not a relative by blood or marriage is not covered as a relative).

"....

"... Moreover, in the absence of a conflict with statutes or with public policy, insurers have the same rights as do individuals to limit their liability and to enforce whatever conditions they impose upon their obligations. McKenzie, § 4, p. 7. It is the particular insurance policy of the insured that establishes the limits of liability and it is well established that this contract of insurance is the law between the parties. When we find the contract of insurance is clear and unambiguous, as we do here in this case, we must enforce the policy as written.

"....

"In conclusion, we find the term 'relative' in the insurance policy is not an ambiguous term. It is a rather simple word with a well-established common sense meaning which is referenced in the insurance policy in a clearly worded context. The appellate court erred by expanding the definition of 'relative' to include persons not normally considered related, as that term is commonly understood, used and defined. The insurance contract provided coverage for 'resident relatives,' a dual requirement of both residency and kinship. In interpreting the insurance contract, the court

of appeal enlarged the insurance coverage beyond that which was reasonably contemplated by this unambiguous term. Simply stated, where the policy definition of 'relative' does not include foster children, the term 'relative' does not include a foster child of the insured."

848 So. 2d at 580-84.

A Missouri appellate court reached a similar conclusion in Kertz v. State Farm Mutual Automobile Insurance Co., 236 S.W.3d 39, 42 (Mo. Ct. App. 2007), stating as follows:

"The policies define 'relative' to include persons related by blood, marriage, or adoption who live with the named insured. That definition is clear and unambiguous and Ms. Kertz does not fit into any of those categories. Despite Ms. Kertz's urging, we decline to rewrite the definition of a 'relative' to include foster children. If State Farm had intended the definition of 'relative' to include foster children, it could easily have done so. See Busby v. Ranger Ins. Co., 708 S.W.2d 795, 796 (Mo. App. E.D. 1986) (noting that insurance policy at issue [included] 'ward or foster child' in the definition of 'family member'). Consequently, Ms. Kertz is an occupant insured, not a named insured and, as such, not entitled to stack the uninsured motorist coverage contained in the McKinstry's insurance policies."

We agree with the decisions of the Louisiana Supreme Court in Cadwallader and the Missouri appellate court in Kertz, and we find the reasoning in those decisions to be compelling. Applying that reasoning to this case, we hold that the definition of "family member" in the Alfa policy is clear and unambiguous and that it does not include foster

1210008

children. Giving the words in the policy their common, everyday meaning, it is clear that Warren's three minor children, who were primarily residing with their foster parents at the time of the accident, were not covered insureds because they did not fall within the definition of "family member" under their foster parents' policy. To read the definition of "family member" as including foster children who temporarily reside with an insured would rewrite Alfa's policy to expand UIM coverage to unintended beneficiaries. See Brown, supra; Kertz, supra.

Further, Alfa's policy language is in accordance with Alabama's UIM statute, Ala. Code 1975, § 32-7-23, and public policy. Section 32-7-23(a) provides:

"No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of Section 32-7-6, [Ala. Code 1975,] under provisions approved by the Commissioner of Insurance for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that

the named insured shall have the right to reject such coverage; and provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him or her by the same insurer."

Also,

"[a]s stated in Vaught v. State Farm Fire & Casualty Co., 413 F.2d 539 (8th Cir. 1969)], it appears to us from the plain and unambiguous wording of the statute, that it is the basic purposes of the Uninsured Motorist Act, and thus the public policy of the State as to this matter, that Alabama citizens purchasing automobile liability insurance be able to obtain for an additional premium the same protection against injury or death at the hands of an uninsured motorist as they would have had if that motorist had obtained for himself the minimum liability coverage required by the Safety Responsibility Act. ... It is clear that the purpose of the Uninsured Motorist Act is for the protection of the policy holder."

Higgins v. Nationwide Mut. Ins. Co., 50 Ala. App. 691, 695-96, 282 So. 2d 295, 300 (Civ. 1973). See also Star Freight, Inc. v. Sheffield, 587 So. 2d 946, 958 (Ala. 1991) (stating that "[t]he purpose of the Uninsured Motorist Statute is to protect insured persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles").

In Cadwallader, the Louisiana Supreme Court addressed arguments about that state's UIM statute and public policy as follows:

"Plaintiffs urge that Allstate's policy violates the statutory scheme of UM coverage which requires an insurer to extend UM coverage to those insured under the liability policy. La. Rev. Stat. 22:1406 requires that insurance policies provide UM coverage only for persons insured under the policy. Taylor v. Rowell, 98-2865, p. 6 (La. 5/18/99), 736 So. 2d 812, 817. '[I]t is well-settled that a person who does not qualify as a liability insured under a policy of insurance is not entitled to UM coverage under the policy.' Magnon v. Collins, 98-2822, p. 5 (La. 7/7/99), 739 So. 2d 191, 196. In the Allstate policy at issue before us, the liability policy limited coverage to the named insured and any resident relative, while using a non-owned auto. The foster children were not insured while using a non-owned auto under the liability policy; therefore Allstate did not violate La. Rev. Stat. 22:1406 by not extending UM coverage to the foster children, who were injured while riding in a non-owned auto.

"Plaintiffs further urge the exclusion of foster children from the UM coverage violates La. Const. Art. I, § 3 and therefore, the insurance policy violates public policy. It is axiomatic that '[t]he equal protection clauses of the state and federal constitutions prohibit state action that unreasonably favors one individual or class over another.' Guarantee Trust Life Ins. Co. v. Gavin, 882 F.2d 178, 181 (5th Cir. 1989) (emphasis in original). In this matter before us, plaintiffs have not articulated any state action that violates La. Const. Art. I, § 3. Nor have plaintiffs shown that the policy conflicts with public policy or statutory provisions. Accordingly, this argument has no merit."

848 So. 2d at 584.

We do not find anything in Alabama's UIM statute or any other provision of Alabama law that specifically requires that Alfa extend its definition of "family member" for purposes of UIM coverage to include

foster children who temporarily reside with an insured. Cf. Va. Code Ann. § 38.2-2206.B.1 (defining "insured" to include foster children). In addition, we do not find that Alfa's definition of "family member" violates public policy.

For these reasons, we answer the controlling questions of law that were identified by the trial court as follows: (1) Warren's three minor children, who were primarily residing with their foster parents at the time of the automobile collision, are not covered insureds because they do not fall within the definition of "family member" under their foster parents' policy and (2) Alfa's policy language is in accordance with Alabama's UIM statute, § 32-7-23, and public policy. Therefore, Alfa's motion for a summary judgment is due to be granted.

Conclusion

For the above-stated reasons, we reverse the trial court's order denying Alfa's motion for a summary judgment as to the UIM claim against it and remand the case for further proceedings that are consistent with this opinion.

REVERSED AND REMANDED.

Parker, C.J., and Bolin, Shaw, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.