

Rel: June 18, 2021

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Nicholas K. Jay

v.

United Services Automobile Association

**Appeal from Mobile Circuit Court
(CV-19-900926)**

STEWART, Justice.

Nicholas K. Jay appeals from a summary judgment entered by the Mobile Circuit Court ("the trial court") in favor of United Services

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Automobile Association ("USAA") on his claim against USAA seeking uninsured-motorist ("UM") benefits. Because Nicholas is not a "covered person" under the USAA policy, we affirm the judgment.

Facts and Procedural History

Nicholas was injured in an automobile accident when riding as a passenger in Ryen Gorman's automobile. Gorman did not have automobile insurance. Nicholas received \$50,000 in UM benefits through a policy he had with Nationwide Insurance Company. Thereafter, Nicholas commenced an action against USAA, seeking UM benefits pursuant to a USAA policy owned by his father-in-law, George M. Brewer, and under which Nicholas's wife, Michelle Jay, had automobile-insurance coverage. USAA filed an answer and asserted various affirmative defenses. Thereafter, USAA filed a motion for a summary judgment in which it argued that Nicholas was not a named insured or a family member of a named insured and, therefore, was not a "covered person" entitled to receive benefits under the policy. Nicholas filed a response in opposition to USAA's summary-judgment motion in which he argued that his wife, Michelle, was a named insured under the policy, that he was a family

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member of Michelle's, and that, therefore, he was entitled to receive UM benefits under the policy.

In support of and opposition to the summary-judgment motion, the parties provided, among other evidence, a copy of the USAA policy and deposition testimony from Nicholas and Michelle. The declarations page of the USAA policy provides information concerning the named insured, operators covered under the policy, a description of covered automobiles, coverage amounts, and insurance premiums. Under a box entitled "Named Insured and Address," the following individual is listed:

"GEORGE M BREWER
CW04 USCG RET
7610 SEQUOIA DR N
MOBILE AL 36595-2808"

(Capitalization in original.) Under a box entitled "OPERATORS," the following individuals are listed:

"01 GEORGE M BREWER
02 DIANE B BREWER
03 CAITLIN BREWER ROBERTS
04 MICHELLE D JAY"

(Capitalization in original.)

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A section of the policy entitled "PART C - UNINSURED MOTORISTS COVERAGE" provides that USAA "will pay damages which a covered person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of [bodily injury] sustained by a covered person and caused by an auto accident." (Capitalization in original.) That section defines the following relevant terms:

"A. 'Covered person' as used in this Part means:

"1. You or any family member.

"2. Any other person occupying your covered auto.

"3. Any person for damages that person is entitled to recover because of [bodily injury] to which this coverage applies sustained by a person described in 1. or 2. above."

The "definitions" section applicable to the entire policy also provides certain relevant definitions, including the following:

"A. 'You' and 'your' refer to the 'named insured' shown on the Declarations and spouse if a resident of the same household.

"....

"G. 'Family member' means a person related to you by blood, marriage, or adoption who resides primarily in your household. This includes a ward or foster child."

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Nicholas submitted a copy of a document entitled "Alabama's Proof Of Financial Responsibility Insurance Identification Card" ("the insurance card") that USAA provided as part of the policy. The insurance card contains the following information:

"NAME OF INSURED: GEORGE M BREWER
MICHELLE D JAY"

(Capitalization in original.) There are additional insurance cards included with the policy that list George with the other individuals that are named on the declarations page as "Operators."

On July 8, 2020, the trial court entered a summary judgment in favor of USAA, finding that neither Nicholas nor Michelle was a "named insured" as defined in the policy and that Nicholas was not a "covered person" under the policy. Nicholas timely filed a notice of appeal to this Court.

Standard of Review

"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a

judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-2-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

The resolution of this appeal turns on the interpretation of the policy.

"A contract of insurance, like other contracts, is governed by the general rules of contracts. Pate v. Rollison Logging Equip., Inc., 628 So. 2d 337 (Ala. 1993). Insurance companies are entitled to have their policy contract enforced as written. Gregory v. Western World Ins. Co., 481 So. 2d 878 (Ala. 1985). 'Insurance contracts, like other contracts, are construed so as to give effect to the intention of the parties, and, to determine this intent, a court must examine more than an isolated sentence or term; it must read each phrase in the context of all other provisions.' Attorneys Ins. Mut. of Alabama, Inc. v.

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Smith, Blocker & Lowther, P.C., 703 So. 2d 866, 870 (Ala. 1996).

"If an insurance policy is clear and unambiguous in its terms, then there is no question of interpretation or construction. American & Foreign Ins. Co. v. Tee Jays Mfg. Co., 699 So. 2d 1226 (Ala. 1997). The fact that the parties interpret the insurance policy differently does not make the insurance policy ambiguous. Tate v. Allstate Ins. Co., 692 So. 2d 822 (Ala. 1997). While ambiguities or uncertainties in an insurance policy should be resolved against the insurer, ambiguities are not to be inserted by strained or twisted reasoning. Kelley v. Royal Globe Ins. Co., 349 So. 2d 561 (Ala. 1977). Where the parties disagree on whether the language in an insurance contract is ambiguous, a court should construe [the] language according to the meaning that a person of ordinary intelligence would reasonably give it. Western World Ins. Co. v. City of Tuscumbia, 612 So. 2d 1159 (Ala. 1992)."

Twin City Fire Ins. Co. v. Alfa Mut. Ins. Co., 817 So. 2d 687, 691-92 (Ala. 2001). Furthermore, "[w]here an insurance policy defines certain words or phrases, a court must defer to the definition provided by the policy. St. Paul Fire & Marine Ins. Co. v. Edge Mem'l Hosp., 584 So. 2d 1316 (Ala. 1991)." Id. at 692.

Nicholas argues that he is a "covered person" entitled to UM benefits under the policy because, he contends, "covered person" is defined in the policy as a spouse of a named insured if the spouse is a resident of the

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same household as the named insured, and, he asserts, Michelle is a named insured, he is Michelle's spouse, and he resides in the same household as Michelle. Nicholas relies on the insurance card that, he argues, specifically refers to Michelle as a "named insured." The insurance card actually lists Michelle under "name of insured," rather than "named insured." Nicholas also relies on his and Michelle's deposition testimony indicating that they had discussed that Michelle was a "named insured" under the policy after receiving a copy of the insurance card.

Nicholas argues alternatively that there is a contradiction within the policy that renders it ambiguous and that the ambiguity should be resolved in his favor. Nicholas points to the discrepancy between Michelle's being listed under "name of insured" on the insurance card but as an "operator" on the declarations page. Citing, among other authorities, Cowart v. GEICO Casualty Co., 296 So. 3d 266, 271 (Ala. 2019)(plurality opinion), Nicholas argues that, because the policy is susceptible to two different interpretations, the trial court was required to adopt the interpretation in Nicholas's favor.

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USAA argues that Nicholas is not a "covered person" under the policy because, it says, George is the sole "named insured" under the policy and Nicholas does not meet the policy's definition of a "family member" of George's. USAA contends that Michelle is unambiguously listed as an "operator" under the policy and that only George is the "named insured" under the policy because he is the only individual listed on the declarations page as the "named insured."

As USAA points out, this Court has explained that "[t]he identity of the insured and liability of the insurer are determined from the terms of the contract." Kinnon v. Universal Underwriters Ins. Co., 418 So. 2d 887, 888 (Ala. 1982)(citing Armstrong v. Security Ins. Grp., 292 Ala. 27, 30, 288 So. 2d 134, 136 (1973)). In Progressive Specialty Insurance Co. v. Green, 934 So. 2d 364, 367 (Ala. 2006), this Court considered a wife's contention that she was entitled to receive the benefits of a "named insured" under a policy even though she was not listed as a "named insured" on the policy. We noted that the declarations page of that policy listed only the husband as a "named insured" and held that "[t]he fact that the terms 'you' and 'your' are defined to include both the named insured -- the person named

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on the declarations page of the policy -- and the named insured's spouse actually makes clear that the named insured's spouse is not a named insured." 934 So. 2d at 367.

In considering a similar argument in Progressive Specialty Insurance Co. v. Naramore, 950 So. 2d 1138, 1141 (Ala. 2006), this Court explained:

"The fact that the Progressive policy distinguishes the named insured from the named insured's spouse in its definition of 'you and your' shows that the two are different. See [Progressive Specialty Ins. Co. v.] Green, 934 So. 2d [364] at 366-67 [(Ala. 2006)]. This distinction is underscored by the specific identification of [the wife] on the declarations page as the named insured and [the husband] as a 'listed driver.' "

In this case, the policy lists only George as the "named insured" on the declarations page. It lists Michelle as an "operator." Although the insurance card lists both George and Michelle under "name of insured," there are insurance cards that list George with each individual "operator." The existence of an insurance card showing proof of insurance coverage with Michelle's name on it does not create an ambiguity with regard to the true "named insured" under the policy. The policy unambiguously designates George as the "named insured" and the other individuals as

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"operators." Because Michelle is not a "named insured" under the policy, Nicholas is not entitled to receive UM benefits based on his status as Michelle's spouse.

The only other scenario under which Nicholas could be entitled to UM coverage under the policy is if he is considered George's "family member." As noted above, "family member" is defined in the policy as "a person related to [the named insured] by blood, marriage, or adoption who resides primarily in [the named insured's] household." It is undisputed that Nicholas is related by marriage to George; however, it is likewise undisputed that Nicholas does not reside primarily in George's household -- Nicholas and Michelle reside together in a separate household. Accordingly, Nicholas does not meet the definition of a "family member" of George, the named insured on the policy, and, thus, he is not a "covered person" entitled to receive UM benefits.

Conclusion

Because Nicholas is neither a named insured under the policy nor a family member of a named insured as defined in the policy, he is not

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entitled to receive UM benefits under the policy, and the trial court correctly entered a summary judgment in USAA's favor.

AFFIRMED.

Parker, C.J., and Bolin, Bryan, and Sellers, JJ., concur.

Wise, J., recuses herself.