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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2020

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Nationwide Property and Casualty Insurance Company

v.

Aaron Kyle Steward

**Appeal from Etowah Circuit Court
(CV-17-900227)**

PARKER, Chief Justice.

Aaron Kyle Steward sued Nationwide Property and Casualty Insurance Company ("Nationwide"), seeking uninsured-motorist ("UM") benefits after he was injured in an accident at a publicly owned and operated all-terrain-vehicle ("ATV") park.

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The Etowah Circuit Court entered a summary judgment in Steward's favor, ruling that the ATV that collided with the one on which he was riding was an "uninsured motor vehicle" for purposes of Steward's automobile-insurance policies with Nationwide, and Nationwide appeals. Because we conclude that the roads on which the accident occurred were "public roads" under the policies, we affirm.

I. Facts

Top Trails Off-Highway Vehicle Park ("Top Trails") was an ATV park in Talladega. Top Trails was owned and maintained by the Public Park Authority of the Cities of Lincoln and Talladega ("the Authority"). Previously used by the federal government for ammunition bunkers during World War II, the land was conveyed to the Authority on the condition that it be used as a public recreational park. Although Top Trails was open to the public, visitors were required to pay an admission fee and sign a liability waiver.

During a ride at Top Trails, Steward was a passenger on a Polaris RZR ATV when it collided with another ATV driven by Wesley Bowen. The collision occurred at the intersection of two paved roads within Top Trails -- Road 6 and Road 19.

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Steward was injured, and he sued his automobile insurer, Nationwide, seeking UM benefits under two insurance policies, alleging that Bowen's ATV was an uninsured motor vehicle.

Nationwide moved for a summary judgment, arguing that Bowen's ATV was not an uninsured motor vehicle because both of Steward's policies provided that "[t]he term uninsured motor vehicle shall not include ... any equipment or vehicle designed for use mainly off public roads except while on public roads." (Emphasis added.) Steward filed a cross-motion for a summary judgment. The circuit court denied Nationwide's motion and granted Steward's, concluding that the ATV was an uninsured motor vehicle because the collision occurred on a public road. Nationwide filed a motion for permission to appeal under Rule 5, Ala. R. App. P., which the circuit court granted. The court certified the controlling question of law as "[w]hether the road (on which the ATV collision which was the subject of this litigation occurred) ... is a 'public road[,'] as contrasted to a private road." Nationwide filed a petition for permission to appeal, which this Court granted.

II. Standard of Review

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We review controlling questions of law presented on a permissive appeal de novo. See Regions Bank v. Kramer, 98 So. 3d 510, 513 (Ala. 2012).

III. Analysis

Nationwide argues that Bowen's ATV involved in the accident was "designed for use mainly off public roads" and that the roads on which the accident occurred were not "public roads," so the ATV was not an uninsured motor vehicle. Steward, on the other hand, contends that the roads were "public roads."

There is no dispute between the parties that Roads 6 and 19 were "roads"; the dispute is only whether the roads were "public." Nationwide contends that the roads were not public because they were not accessible to the public without paying a fee and signing a waiver. Steward contends that the roads were public because they were publicly owned, were maintained using public funds, and were open to the public for recreational purposes. Steward further contends that, because the parties interpret the term "public roads" differently, the term is ambiguous and must be interpreted in his favor. See Altieri v. Blue Cross & Blue Shield of Alabama, 551 So. 2d 290

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(Ala. 1989) (holding that an ambiguity in an insurance contract must be resolved in favor of the insured).

This Court has previously explained the nature of ambiguity in the context of insurance policies:

"The mere fact that adverse parties contend for different constructions [of a particular policy provision] does not of itself force the conclusion that the disputed language is ambiguous." Upton v. Mississippi Valley Title Ins. Co., 469 So. 2d 548, 554 (Ala. 1985), quoting Antram v. Stuyvesant Life Ins. Co., 291 Ala. 716, 720, 287 So. 2d 837, 840 (1973). An ambiguity exists where a term is reasonably subject to more than one interpretation. See, generally, Black's Law Dictionary 73 (rev. 5th ed. 1979)."

Cannon v. State Farm Mut. Auto. Ins. Co., 590 So. 2d 191, 194 (Ala. 1991).

Regarding the potential ambiguity here -- whether particular roads were "public roads" under the policies -- two commentators on UM insurance law have observed:

"The provision that the uninsured motorist coverage only applies when vehicles designed mainly for use 'off public roads while not on public roads' raises the question of what is a public road. The term 'public road' is not defined in the coverage terms, and does not appear to have any generally accepted meaning. The term could be intended to classify roads based on ownership or on use. ... The term should be interpreted to allow indemnification under uninsured motorist insurance when an accident occurs on a road which is either publicly owned or publicly used.

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"....

"The term 'public roads' seems at best ambiguous."

1 Alan I. Widiss & Jeffrey E. Thomas, Uninsured and Underinsured Motorist Insurance § 8.10 (3d ed. 2005) (footnote omitted). The reasonableness of Steward's interpretation of "public roads" finds further support in Random House Webster's Unabridged Dictionary 1562 (2d ed. 2001), which includes a definition of "public" as "maintained at the public expense and under public control." Here, it is undisputed that the roads were publicly owned, publicly maintained, and publicly accessible on certain conditions. Moreover, although Nationwide argues that roads are not public if public access is somehow restricted, such as by an entrance-fee requirement, we take judicial notice that such a fee is required to enter many unquestionably public spaces, such as state parks. Therefore, Steward's interpretation of "public roads" as including Roads 6 and 19 is reasonable.

Nationwide relies on Cannon, in which this Court held that the term "public roads" was not ambiguous as applied to the facts of that case. 590 So. 2d at 194. However, in Cannon the potential ambiguity was different from the one

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here. There, the plaintiff was injured when she fell off an ATV that was being driven on an unpaved portion of a public right-of-way. The plaintiff argued that "public roads" included the entire right-of-way. This Court rejected that argument, concluding that "road" plainly includes only the traveled portion of a right-of-way. Id. at 194-95. In Cannon, we did not address the potential ambiguity here -- whether a particular road is public or private. Moreover, the two cases deal with potential ambiguity of different words: in Cannon, "roads"; here, "public." Therefore, Nationwide's reliance on Cannon for the proposition that the term "public roads" is not ambiguous, as applied to the facts of this case, is misplaced.

Because Steward's interpretation of "public roads" is reasonable, we conclude that the term is ambiguous in this case, and the ambiguity must be resolved in Steward's favor, see Altiere, supra. Therefore, Roads 6 and 19 were "public roads" for purposes of the policies, and because Bowen's ATV was being operated on them at the time of Steward's injury, the ATV was an uninsured motor vehicle.

IV. Conclusion

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Under the facts of this case, Bowen's ATV involved in the accident that resulted in Steward's injury was an uninsured motor vehicle under Steward's automobile-insurance policies. Accordingly, we affirm the summary judgment in favor of Steward.

AFFIRMED.

Wise, Mendheim, and Stewart, JJ., concur.

Bryan, J., concurs in the result.

Bolin, Shaw, Sellers, and Mitchell, JJ., dissent.