STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee,
Counter-Defendant,

and

THERESA M. ANDERSON,

Intervening
Plaintiff-Appellant,

-vs- No. 100747

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee,
Cross-Defendant,

and

JACK F. POYNTER and CHERYL LEE POYNTER, d/b/a DAN'S USED CAR SALES,

Counter-Plaintiffs,
Cross-Plaintiffs-
Appellees.
/

BEFORE: Beasley, P.J.; D. H. Sawyer and E. A. Weaver, JJ.

PER CURIAM

Intervening plaintiff, Theresa M. Anderson, appeals as of right from a June 29, 1987, declaratory judgment in favor of defendant, Auto-Owners Insurance Company. Plaintiff, State Farm Mutual Automobile Insurance Company, had sought a declaratory judgment that a garage liability insurance policy issued by Auto-Owners to Jack F. and Cheryl Lee Poynter, d/b/a Dan's Used Car Sales, provided coverage to the Poynters and that an insurance policy issued by State Farm did not.

The Poynters owned and operated an automobile dealership named Dan's Used Car Sales. On or about May 20, 1983, the Poynters rented a 1973 Dodge motor home to Robert Thomas for a one-week period, beginning May 20, 1983, and ending May 28, 1983.

On May 26, 1983, Thomas permitted Patricial Ann Chosa to drive the motor home. While Chosa was driving, the vehicle collided with an automobile operated by Theresa Anderson, who filed a suit alleging personal injuries resulting from the collision. Anderson named Thomas, Chosa and the Poynters, among others, as defendants.

At the time of the collision, the Poynters were covered by a garage liability policy issued by Auto-Owners, which provided:

> "Coverages A [Bodily Injury Liability] and B shall not apply: * * *
> "b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of any * * *
> "2) automobile * * *
> (ii) while leased or rented to others by the named insured unless such lease or rental is to a salesman for use principally in the business of the named insured or unless the automobile is in the custody of the named insured for pick up, delivery, service or repair in connection with such lease or rental; * * *."

At the time of the collision, Thomas carried insurance on his personal automobile issued by State Farm. Thomas also purchased from State Farm a special renter rider that provided liability coverage for the one week that he rented the Dodge motor home.

After Anderson brought her personal injury action, State Farm filed the instant complaint seeking a declaratory judgment. Anderson moved to intervene in the action and various counter and cross-complaints and motions for summary disposition were filed.

On June 29, 1987, the trial court entered a final judgment in the case, denying State Farm's motion for declaratory judgment. The court found that the insurance policy issued by State Farm provided coverage for all of the defendants in the principal action. The court entered judgment in favor of defendant Auto-Owners and the Poynters and against State Farm and Anderson.

On appeal, Anderson argues that the trial court erred when it held that the Auto-Owners policy did not cover any liability the Poynters might have incurred in the collision.

Anderson, citing DAIIE v Irvine,[1] claims that public policy prevents an automobile liability insurance policy from containing exclusions not specifically authorized by the legislature. In Irvine, the court held void a provision in an automobile insurance policy that excluded coverage to any automobile while operated in any prearranged race or speed contest. The Irvine court relied upon State Farm Mutual Automobile Ins v Sivey[2] for the maxim of statutory construction that "the express mention of one thing implies the exclusion of other similar things".[3] The Irvine court went on to hold that, because the motor vehicle insurance statutes provided for some exclusions but did not for "prearranged race" exclusions, the exclusion was invalid and unenforceable. The court stated:

> "Defendant has pointed out no legislative authorization for the exclusionary clause that it seeks to use to avoid its liability and our examination of the applicable statutes discloses none. Thus, because the effect of the exclusionary clause's operation would be to limit the coverage required by the motor vehicle financial responsibility law, the clause is against public policy and void."[4]

First, we note that since Sivey, the Supreme Court has stated that an exclusion not specifically mentioned in the no-fault act is not per se invalid.[5]

Second, operation of the within exclusion would not limit the coverage required by the motor vehicle financial responsibility law.[6] The requirements for a motor vehicle liability policy may be fulfilled by the policies of more than one insurance carrier.[7] When Thomas rented the motor home from the Poynters, he obtained a rider from State Farm that extended the insurance policy covering his personal automobile to cover the motor home for the rental period. Taken together, Thomas' State Farm policy and the Poynters' Auto-Owners garage liability policy provided continuous insurance coverage to the Dodge motor home, as required by the motor vehicle financial responsibility law.

Accordingly, we find valid the rental exclusion contained in the Auto-Owners policy and affirm the judgment of the trial court.

AFFIRMED.

/s/ William R. Beasley
/s/ David H. Sawyer
/s/ Elizabeth A. Weaver

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1 92 Mich App 371; 284 NW2d 535 (1979).

2 404 Mich 51; 272 NW2d 555 (1978).

3 Irvine, supra, at pp 375-376.

4 Id. at 376.

5 In Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1986), five Justices indicated that an "owned vehicle" exclusion was not per se invalid.

6 MCL 257.520(b)(2); MSA 9.2220(b)(2).

7 MCL 257.520(j); MSA 9.2220(j).