

STATE OF MICHIGAN
COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

RONALD D. LEWIS,

Defendant-Appellant.

July 8, 1992

No. 129416

UNPUBLISHED

Before: Brennan, P.J., and MacKenzie and T.M. Burns*, JJ.

PER CURIAM.

This declaratory judgment action arises out of an accident between defendant's motorcycle and an uninsured motorist. Plaintiff is defendant's wife's no-fault automobile insurer. Defendant appeals as of right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9) and (10). We affirm.

The policy issued by plaintiff to defendant's wife covered three automobiles. The policy provided uninsured motorist coverage as follows:

D. Uninsured motorist. To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, and arising out of the ownership, maintenance or use of such uninsured motor vehicle

...

This coverage shall not apply:

...

(e) To bodily injury to an insured sustained while in, upon, entering or alighting from any motor vehicle owned by the named insured, spouse, or a relative of either who is a resident of the same household unless a premium charge for this coverage is shown in the declarations for such vehicle. [Emphasis added.]

The policy also contained a provision governing coverage for newly acquired automobiles. The policy reads:

IV AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES

If the named insured . . . or his spouse if a resident of the same household, acquires ownership of or leases other equipment of the type described in the Declarations, such insurance as is afforded by this policy applies to such other equipment as of the date of its delivery to him, subject to the following additional conditions:

...

E. This agreement does not apply:

• • •

(3) unless the named insured or spouse notifies the Company within 30 days following the acquisition of an additional automobile; and

(4) unless the named insured pays any additional premium required because of the application of this insurance to such other equipment.

The trial court concluded that a motorcycle is a motor vehicle, so that defendant was required to pay a premium in order to be eligible for uninsured motorist coverage. The court further held that defendant was not entitled to newly acquired automobile coverage.

On appeal, defendant first contends that the term "motor vehicle" in the above-quoted exclusion from uninsured motorist coverage is ambiguous, so that the exclusion must be construed against plaintiff and coverage extended to defendant. The argument is without merit. See Bianchi v Automobile Club of Michigan, 437 Mich 65; 467 NW2d 17 (1991). The motorcycle was a "motor vehicle" for purposes of the exclusion, Bianchi supra, and defendant was required to pay a premium in order to receive uninsured motorist coverage. It is undisputed that neither he nor his wife paid such a premium. Accordingly, defendant was not entitled to coverage under the uninsured motorist clause.

Defendant next contends that the trial court erred in ruling that he was not entitled to coverage under the newly acquired automobile provision of the policy. At the hearing on plaintiff's motion for summary disposition, defense counsel asserted that defendant purchased the motorcycle on May 8, 1989. Defendant filed his claim for benefits on May 25, 1989. Neither he nor his wife informed plaintiff that he purchased the motorcycle, and neither he nor his wife paid an additional premium for coverage for the motorcycle. Nevertheless, defendant argues that his claim for benefits, filed within thirty days of purchasing the motorcycle, served as notification to plaintiff that defendant had acquired an additional "automobile." We reject this argument.

Even if we were to conclude that the motorcycle was an "automobile" as defendant maintains, defendant can offer no authority for his contention that his application for benefits also served as a valid notification of purchase of the motorcycle. Moreover, as noted above, it is undisputed that defendant never paid a premium for coverage for the motorcycle. Given defendant's noncompliance with the conditions listed in the policy, he was not afforded coverage under the newly acquired automobile provision. See Auto-Owners Ins Co v Winter, 188 Mich App 230; 469 NW2d 314 (1991).

Affirmed.

/s/ Thomas J. Brennan
/s/ Barbara B. MacKenzie
/s/ Thomas M. Burns

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The court then denied defendant's motion. We affirm. The court's decision under the dramshop act may be based on circumstantial evidence." Several witnesses saw defendant drinking alcohol at the pub for several hours. Defendant admitted drinking at the pub. Following the accident, defendant's blood alcohol level was .34. The court properly denied defendant's judgment n.o.v. motion.

Griffin, et al. v. Leonard, et al. (Lawyers Weekly No. MA-5059 - 3 pages) (Griffin, J., concurring in the result only).

Summary by MGC.

Whistleblowers' Protection

Where the Defense Logistics Agency is not a "public body" within the meaning of the Whistleblowers' Protection Act, the court properly granted defendant-former employer summary judgment on plaintiff's whistleblower claim.

Affirmed.

Kiewiet v. NWL Control Sys. (Lawyers Weekly No. MA-5070 - 1 page).

Summary by LCC.

Mediation - Sanctions Properly Denied

Even though plaintiff received less from arbitration than the mediation amount, defendants were not entitled to mediation sanctions.

Plaintiff sued defendant over the sale of his practice in 1983. The case was mediated at \$90,000 one year later. Plaintiff rejected the award. Defendants accepted it. Five years later, the case was arbitrated for \$75,650. The trial court confirmed the arbitration award but refused to award mediation sanctions. We affirm.

"When plaintiff rejected the mediation award in April 1984, mediation was governed by GCR 1963, 316.7(b)(1). Under that subrule, sanctions were available '[i]f the defendant accepts the evaluation but the plaintiff rejects it and the case proceeds to trial....' This language meant that the commencement of trial was a necessary prerequisite for the award of mediation sanctions." Thus, "the decision to forego a trial in favor of proceeding to arbitration precluded imposition of mediation sanctions."

Affirmed.

Monrief v. Snyder, Bojan & Monrief, P.C., et al. (Lawyers Weekly No. MA-5022 - 1 page).

Summary by LCC.

Medical Malpractice - Expert Witness

Where the court refused to allow plaintiff to add expert witnesses, the court did not abuse its

discretion.

"[T]he trial court ruled that plaintiff would not be allowed to name additional experts because the deadline had passed and because plaintiff's inadequate pretrial preparation outweighed her need to fully present her case. Specifically, the court felt that plaintiff may have been on a 'fishing expedition....'"

The "court carefully considered all of [the proper] factors. Although the court could have allowed plaintiff to add her experts, it did not abuse its discretion in refusing to do so."

Affirmed.

Slaughter, et al. v. Mercy Memorial Medical Ctr., et al. (Lawyers Weekly No. MA-5068 - 1 page).

Summary by LCC.

No-Fault - Uninsured Motorist Coverage

Where defendant failed to pay an additional premium for uninsured motorist coverage under his wife's no-fault policy, the court correctly held that defendant was not entitled to such coverage.

Defendant was riding his motorcycle when he was involved in an accident with an uninsured motorist. Plaintiff, the no-fault insurer of defendant's wife, filed this declaratory judgment action. The court held that 1) the motorcycle was a motor vehicle and 2) defendant was required to pay a premium in order to be eligible for uninsured motorist coverage. We affirm.

The no-fault policy provides that uninsured

motorist coverage shall not apply to bodily injury suffered in a motor vehicle owned by the spouse of the named insured who is a resident of the same household unless a premium is paid. Since it is undisputed that neither defendant nor his wife paid any additional premium, defendant was not entitled to uninsured motorist coverage.

Affirmed.

Auto-Owners Ins. Co. v. Lewis. (Lawyers Weekly No. MA-4995 - 2 pages).

Summary by MGC.

Probate - Parental Rights Terminated

Where respondent-father 1) admitted that he had sexually abused all four of his children on numerous occasions and 2) acknowledged that it could happen again, the court properly terminated respondent's parental rights.

Affirmed.

In the Matter of Brzezinski, et al. (Lawyers Weekly No. MA-5075 - 2 pages).

Summary by LCC.

Probate - Parental Rights Terminated

Where 1) respondent-mother is unable to properly care for the children because of psychological problems and 2) there is no reasonable likelihood that the condition will be rectified within a reasonable time, the court properly terminated respondent's parental rights.

Affirmed.

In the Matter of Adams, et al. (Lawyers Weekly No. MA-5073 - 2 pages).

Summary by LCC.

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