IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE November 21, 2014 Session

EDWARD MARTIN v. GREGORY POWERS, ET AL.

Appeal from the Circuit Court for Williamson County
No. 2013347James G. Martin, III, Judge

No. M2014-00647-COA-R3-CV - Filed February 27, 2015

Holder of an automobile liability insurance policy brought suit to recover for injuries sustained after being struck by a driver in a rental vehicle. The policy holder also sought coverage under the uninsured motorist coverage provision of his policy. Insurance carrier filed answer denying coverage and moved for summary judgment, contending that the policyholder was not entitled to coverage because the vehicle involved in the incident was owned by a rental car agency and, consequently, his damages did not arise out of the ownership, maintenance or use of an uninsured motor vehicle as required by the policy. The trial court held that the rental car agency was a self-insurer under Tennessee law and, consequently, the vehicle was not an "uninsured motor vehicle," and granted the carrier's motion. Policyholder appeals; finding no error, we affirm the judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

RICHARD H.DINKINS, J., delivered the opinion of the court, in which ANDY D.BENNETT and W. NEAL MCBRAYER, JJ., joined.

Patrick Shea Callahan, Cookeville, Tennessee, for the appellant, Edward Martin.

Benjamin J. Miller, Nashville, Tennessee, for the appellee, Gregory Powers.

OPINION

On July 20, 2012, Edward Martin, the owner of a bar located in Franklin, Tennessee, was struck by a Kia Sorento being driven by Gregory Powers, a customer whom Martin had refused to serve;the Kia was owned byand rented from Enterprise Rent-A-Carof Tennessee, LLC ("Enterprise"). As a result of being struck, Martin suffered a torn meniscus, requiring surgery and physical therapy.

On July 18, 2013, Martin filed suit in Williamson County Circuit Court to recover for his injuries, naming Powers, Mountain Laurel Assurance Company ("Mountain Laurel"), Powers' automobile liabilityinsurance company,and Enterprise as defendants;in due course Mountain Laurel and Enterprise were dismissed.[1]On November 14, IDS Property Casualty Insurance Company ("IDS"), Martin's uninsured motorist carrier, filed an answer to the complaint.[2]IDS thereafter filed a motion for summary judgment, contending that Enterprise was a self-insurer within the meaning of the Tennessee Financial Responsibility Law and, consequently, Martin was not entitled to coverage because his damages did not arise out of the "ownership, maintenance or use" of an uninsured motor vehicle, as required by his policy.[3]

The motion for summaryjudgment was heard on February 10, 2014. On February 14, the court granted the motion, holding that the Kia was not an uninsured motor vehicle under the IDS policy because it was owned by Enterprise, a self-insurer under Tennessee law; an order was

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Mountain Laurel had filed a declaratory judgment action on February 28, 2013, in Williamson County Chancery Court, requesting that the court declare that it did not owe a duty to Powers because his striking Martin was an intentional act and not covered under his policy. Mountain Laurel subsequently moved for summary judgment; on January 22, 2014, the court granted the motion, holding that "[Mountain Laurel] had no contractual or other obligation to indemnify [Powers] for the allegations made by [Martin]" regarding the incident.

In theinstant case, Martin filed a notice of voluntary dismissalas to Enterprise on October 2, 2013, and the court entered an order dismissing Enterprise.

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The complaint alleged that "Ameriprise Insurance Company" was Martin's uninsured motorist carrier under policy number AI00867503; Martin nonsuited the claims against "Ameriprise Auto & Home Insurance" on March 28, 2014, pursuant to which the court entered an order dismissing "Ameriprise Auto & Home Insurance" from the suit. In its answer, IDS states that it was "sued as the uninsured/underinsured motorist carrier for Plaintiff." The record includes the affidavit of Glenn A. Sell, Underwriting Manager for IDS, to which a copy of the policy issued by IDS to Martin was attached; the policy bears the same number as that referenced in the complaint. No issue is raised in this appeal as to the status of IDS as the uninsured motorist carrier.

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Martin's policy provides coverage for compensatory damages which the insured is entitled to receive from the owner or operator of an uninsured motor vehicle where the owner's or operator's liability "arises out of the ownership, maintenance or use of the uninsured motor vehicle." In support of the motion IDS filed a statement of undisputed material facts to which it attached a copy of a Certificate of SelfInsurance issued to Enterprise by the Tennessee Department of Safety and Homeland Security and a copy of Martin's insurance policy, which included an amendment specifically applicable to Tennessee; Part III of the amendment, entitled "Uninsured Motorist Coverage," contained the definition of "uninsured motor vehicle" applicable to the policy.

entered on February 19 dismissing the case.[4]

Mr. Martin appeals, contending that the court erred in finding that the Kia was not an "uninsured motor vehicle" within the meaning of the policy.

STANDARD OF REVIEW

This case was resolved on a motion for summary judgment, which is an appropriate vehicle for resolving a case where a party can "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Tenn. R. Civ. P. 56.04. The parties do not contend that there is a genuine issue of material fact[5]; consequently, the issue before this court is a question of law which we review *de novo*, affording no presumption of correctness to the trial court's conclusions. *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005).

ANALYSIS

The Tennessee Financial Responsibility Law, codified at Tenn. Code Ann. §§ 55-12-101–140,was enacted to protectautomobile accidentvictims from financialloss byrequiring that automobile drivers have the financial ability to pay judgments for bodily injury or propertydamage resulting from a vehicle accident. *See Purkey v.American Home Assurance Company*, 173 S.W.3d 703, 706 (Tenn. 2005); *Hawks v. Greene*, No. M1999-02785-COAR3-CV, 2001 WL 1613889, at

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[4] On the same day, IDS moved to have the order certified as a final judgment pursuant to Tenn. R. Civ. P. 54.02; the order was so certified on March 5.

[5] IDS' statement of undisputed material facts included the following statement and response of Martin:

> 3. Enterprise is a self-insurer within the meaning of the Tennessee Financial Responsibility Law, T.C.A. § 55-12-101, et seq. See certificate of self-insurance attached hereto as Exhibit 1.
>
> RESPONSE: Disputed for the time period indicated and denied that there was any insurance in place applicable to this incident by Enterprise Rent-A-Car Company of Tennessee, LLC. See separate Answer of Enterprise Rent-A-Car Company of Tennessee, LLC attached to the Statement of Undisputed Facts by Plaintiff.

In his brief on appeal, Martin does not contend that there is an issue of fact as to whether Enterprise was a self-insurer or as to whether the certificate of insurance which was issued March 8, 2013, and valid until March 24, 2014, creates a coverage issue. Rather, he argues that the vehicle was insured by Enterprise "when operated by the employees or agents of Enterprise pursuant to its status as a 'self-insurer' but [Enterprise] did not insure the vehicle while being operated by persons to whom it rented the vehicle." His contention raises a question of law, which we shall address accordingly.

*11 n.15 (Tenn. Ct. App. Dec. 18, 2001). "Although the Financial ResponsibilityLaw does not, byits express terms, require drivers to obtain liability insurance in order to comply, the Law clearly contemplates that most drivers will comply by purchasing liability insurance." *Purkey*, 173 S.W.3d at 706–707. As an alternative means of proving financial responsibility, Tenn. Code Ann. § 55-12-111(a) provides:

> Any person in whose name more than twenty-five (25) vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner as provided in subsection (c).

The statutes governing uninsured motor vehicle coverage, codified at Tenn. Code Ann. §§ 56-7-1201–1206, were enacted "to provide within fixed limits some recompense to those who receive bodily injury or property damage as a consequence of the actions of an uninsured or underinsured motorist who cannot respond in damages." *Brown v. Ronald*, No. M2009-01885-COA-R3-CV,2010 WL 3732169,at*2 (Tenn.Ct.App.Sept.23,2010) *aff'd*, 357 S.W.3d 614 (Tenn. 2012). Tenn. Code Ann. § 56-7-1201(a) requires that all automobile liability insurance policies issued in Tennessee "covering liability arising out of the ownership, maintenance, or use of any motor vehicle . . . include uninsured motorist coverage, . . . for the protection of persons insured under the policy who are legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles because of bodily injury . . . ." An "uninsured motor vehicle" is defined as:

> . . . [A] motor vehicle whose ownership, maintenance, or use has resulted in the bodily injury, death, or damage to property of an insured, and for which the sum of the limits of liability available to the insured under all valid and collectible insurance policies . . . applicable to the bodily injury, death or damage to property is less than the applicable limits of uninsured motorist coverage provided to the insured under the policy against which the claim is made.

Tenn. Code Ann. § 56-7-1202(a)(1). The definition excludes vehicles which are "[s]elfinsured within the meaning of the Tennessee Financial Responsibility Law, compiled in title 55, chapter 12, or any similar state or federal law." Tenn. Code Ann. § 56-7-1202(a)(2)(C).

The IDS policy provides coverage for bodily injuries suffered by an insured when, as a pedestrian, the insured is struck by an "uninsured motor vehicle," defined as:

> [A] land motor vehicle or trailer of any type which is:
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> a) not insured by a bodily injury liability bond or policy at the time of the accident; or
>
> b) insured by a liability or bond policy in which the sum of the bodily injury liability

limits available for payment under all policies, bonds and securities at the time of the accident:

> i) is less than the minimum bodily injury liability limits for this coverage; or
>
> ii) has been reduced by payment to persons other than the insured to an amount which is less than the limit of liability for this coverage.

The definition specifically excludes vehicles "owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent." The "applicable motor vehicle law," as referenced in the policy,is Tenn.Code Ann.§ 55-12-111. The record includes a certificate of self-insurance issued to Enterprise[6]; the fact that the Kia was owned by Enterprise is not disputed.

Martin asserts that the exclusion in the IDS policy for vehicles "owned or operated by a self-insurer" does not apply because, at the time he was struck, the Kia was not being driven by an employee or agent of Enterprise. He argues that "Enterprise insured the vehicle when operated bythe employees or agents of Enterprise pursuant to its status as 'self-insurer' but did not insure the vehicle while being operated by persons to whom [Enterprise] rented the vehicle." In our review of the policy, Tenn. Code Ann. § 55-12-111, and the other pertinent statutes in the Financial ResponsibilityLaw, we have found nothing that conditions one's status as a self-insurer on whether the driver of the vehicle is an employee or agent of the owner or is a renter of the vehicle, or limits the applicability of the certificate in any other manner. Accordingly, because the Kia was owned by Enterprise, a self-insurer under Tennessee law, it is not an "uninsured motor vehicle" as required in order for Martin to receive coverage for his injuries under the IDS policy.

Martin contends that the exclusion in the policy does not apply because the exclusion only applies when the injured party is entitled to recover from the "self-insurer." He asserts that, because Enterprise is exempt from liability for the damages caused by Powers in accordance with 49 U.S.C.A. § 30106[7], the Kia was uninsured, and as a result, the exclusion in the policy does not apply.

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On March 3, 2013, the Tennessee Department of Safety and Homeland Security issued a Certificate of Self-Insurance to Enterprise which stated:

> This certifies the company named herein has established self-insurance with the Tennessee Department of Safety for all owned or leased vehicles, pursuant to § 55-12-111, Tennessee Code Annotated. This certificate of self-insurance is valid until March 24, 2014, unless cancelled by theDepartment. This certificate is sufficient to establish evidence of financial responsibility as compliance with the Tennessee Financial responsibility Law of 1977.

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We do not agree that the exemption afforded Enterprise under federal law has any applicability to our determination of whether the Kia was an uninsured motor vehicle, as that term is defined in the IDS policy. The policy clearly states that an "uninsured motor vehicle" does not include a vehicle that is "owned or operated by a selfinsurer under anyapplicable motor vehicle law." As noted earlier,Enterprise is a self-insurer under Tennessee law and the owner of the Kia; consequently, the Kia is not an uninsured motor vehicle. Furthermore, Enterprise's liability is not at issue in this case, and we fail to see how the exemption has any relevance to the contractual relationship between Martin and IDS arising from the insurance policy.

Martin next contends that the IDS policy exclusion for vehicles "owned or operated by a self-insurer" is inconsistent with the statutory exclusion at Tenn. Code Ann. § 56-71202(a)(2)(C) for vehicles that are "[s]elf-insured within the meaning of the Tennessee Financial Responsibility Law." As we understand his argument, the statute requires that the vehicle be "self-insured" at the time of the accident, meaning that there are resources available to cover the owner and operator of the vehicle in case of an accident, whereas the policy language that the vehicle be owned by a "self-insurer" refers to "regulatory compliance of an ownerof multiple vehicles";based on this asserted inconsistency,heargues that the statutory language "[s]elf-insured within the meaning of the Tennessee Financial Responsibility Law" should take precedence over the policy language "owned or operated by a self-insurer under any applicable motor vehicle law"; and that as a result, the Kia was uninsured at the time of the incident because rental car agencies are exempt from liability for persons to whom they rent cars.

In addressing this argument,we considerTenn.Code Ann.§§ 56-7-1202(a)(2)(C)and 55-12-111 *in para materia.*[8]Tenn. Code Ann. § 56-7-1202(a)(2)(C) excludes from its definition

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49 U.S.C.A. § 30106 provides in pertinent part:

> (a) In general.--An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if-
>
> (1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and
>
> (2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

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> [S]tatutes 'in para materia'– those relating to the same subject or having a common purpose– are to be construed together, andtheconstruction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by

of uninsured motor vehicles those vehicles which are self-insured in accordance with the Financial Responsibility Law. The term "self-insured" does not appear in the Financial Responsibility Law; however, Tenn. Code Ann. § 55-12-111 is entitled "Selfinsurers" and provides the process for one to receive a Certificate of Self-Insurance. Construing the statutes together, one who obtains a Certificate of Self-insurance is considered to be "self-insured" for purposes of Tenn. Code Ann. § 56-7-1202(a)(2)(C). Thus, there is no inconsistency; rather, both the policy and the statute exclude from the definition of "uninsured motor vehicle" those vehicles owned by persons who have obtained a Certificate of Self-insurance.

Additionally, Martin contends that the term "self-insurer" is an "undefined technical term" in the policy and that, as a consequence, we should apply the plain meaning of the term in our interpretation of the policy.[9]Doing so, he argues, would create a "reasonable expectation of the average policyholder . . . that the reference to 'vehicles owned and operated by a self-insurer' is meant to define an additional class of insured motor vehicles" rather than "a class of uninsured vehicles for which the policy provides no coverage." We fail to see the merit in this argument.

In *Garrison v. Bickford*, our Supreme Court set out the principle guiding the interpretation of insurance policies:

> Equally well-established is the principle that "[i]nsurance policies are, at their core, contracts." As such, courts interpret insurance policies using the same tenets that guide the construction of any other contract. Thus, the terms of an insurance policy " 'should be given their plain and ordinary meaning, for the primary rule of contract interpretation is to ascertain and give effect to the intent of the parties.'" The policy should be construed "as a whole in a reasonable and logical manner," and the language in dispute should be examined in the context of the entire agreement.

Garrison, 377 S.W.3d at 663–64 (internal citations omitted). Considering the term "selfinsurer" specifically in the context of the uninsured motorist provision of the policy, as well as the in the context of the entire policy, it is clear that a "self-insurer" is one that has the financial ability to satisfy judgments resulting from the use of its own vehicles without purchasing an insurance policy or posting a liability bond[10]; the self-insurer's vehicle is insured and would not constitute an "uninsured motor vehicle."

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the language of another statue.

Lyons v. Rasar, 872 S.W.2d 895, 897 (Tenn. 1994).

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Martin states the plain meaning to be "a person or company that guarantees that it will indemnify persons to which the person or company has caused loss or damage and will maintain a special fund to cover any such loss."

Martin further contends that the term "self-insurer," as used in the policy, is ambiguous and as a result, the policy should be construed to provide him uninsured motorist coverage.[11] As noted *supra* p. 5, the term "self-insurer" is followed by the words "under any applicable motorvehicle law." Considered in this context there is no ambiguityorconfusion; the "applicable motor vehicle law" is Tenn. Code Ann. § 55-12-111.

As a final matter, Martin contends that the policy exclusion for vehicles "owned or operated by a self-insurer" is contrary to public policy and should be invalidated. He argues that the Financial Responsibility Law is "meant 'to protect innocent members of the public from the negligence of the motorists on the roads and highways,'" *Purkey*, 173 S.W.3d at 706, and cites language in Tenn. Code Ann. § 56-7-1201(a), which he calls the "statement of purpose" to be "for protection of persons insured under the [automobile liability insurance] policy who are legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles" for his argument. He also asserts that both Tenn. Code Ann. §56-7-1201(a) and the Financial Responsibility Law "reflect Tennessee's policy of promoting the notion that victims of torts should recover from compensation." *Alcazar v. Hayes*, 982 S.W.2d 845, 852 (Tenn. 1998).

In our consideration of the public policy argument, we are mindful of the following instruction in *Purkey*:

> It is well-settled that the public policy of Tennessee "is to be found in its constitution, statutes, judicial decisions and applicable rules of common law."

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[10] *See* Tenn. Code Ann. § 55-12-139(b)(2).

[11] Martin argues that the term "self-insurer" might be construed to mean "a person or entity that maintains [a plan under which a business maintains its own special fund to cover any loss]"; "a person or entity that has chosen not to have insurance at all and that has instead chosen to assume the risk"; or "that an indemnity plan exists to cover damages, insurance or otherwise, or that no such plan exists."

> Because the determination of public policy is primarily a function of the Legislature, the judiciary may only determine public policy "in the absence of any constitutional or statutory declaration."

Purkey, 173 S.W.3d at 705(internal citations omitted). The exclusion from the definition of uninsured motor vehicles of those that are "self-insured within the meaning of the Tennessee Financial Responsibility Law" at Tenn. Code Ann. § 56-7-1202(a)(2)(C) is a declaration of the Legislature's determination of public policy. Inasmuch as the Legislature has made such a declaration, we determine only whether the exclusion in the policy from the definition of uninsured motor vehicle those owned by "self-insurer[s]" is consistent with the statute. We have so held that the exclusion in the policy is consistent with the statute; this argument is without merit.

CONCLUSION

For the foregoing reasons, the judgement of the trial court is affirmed.

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RICHARD H. DINKINS, JUDGE