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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1171126

Misty Cowart

v.

GEICO Casualty Company

Appeal from Mobile Circuit Court
(CV-16-902314)

MITCHELL, Justice.

This insurance-coverage case stems from an accident in which Zachariah Cowart ("Zachariah") ran over his wife Misty Cowart ("Misty"). Misty was partially compensated for her injuries under one provision of her automobile-insurance

policy ("the policy"), and she seeks to use the uninsured-motorist provision of the policy to make up the difference. The trial court entered a summary judgment in favor of the insurer and upheld its denial of uninsured-motorist benefits to Misty. That judgment, however, is not supported by the language of the policy. For that reason, and because there are key factual questions that are unresolved, we reverse the summary judgment and remand the case for further proceedings.

Facts and Procedural History

This case arises from an accident involving Misty and Zachariah. On November 8, 2014, after an argument broke out between the couple, Zachariah decided to leave the house by automobile, despite the fact that he was intoxicated. Zachariah was unable to locate the keys to the company car that he typically drove, so he instead took the keys to the 2013 Jeep Wrangler sport-utility vehicle ("the Jeep") typically driven by Misty. Despite Misty's protest, Zachariah started the Jeep and began to drive off. In doing so, he knocked Misty down with the vehicle and ran over her left leg, causing compound fractures to her leg and ankle. At the time of the accident, both Misty and Zachariah were named insureds

under the policy, which was issued by GEICO Casualty Company ("GEICO") and covered the Jeep.

On November 2, 2016, Misty sued Zachariah in the Mobile Circuit Court alleging negligence and wantonness. She subsequently accepted a settlement from GEICO for the limits of the bodily-injury-liability provision of the policy, even though that settlement did not fully compensate her for her injuries. On October 31, 2017, the trial court granted a joint stipulation for dismissal with prejudice as to Zachariah.

Before Zachariah was dismissed from the case, Misty amended her complaint to name GEICO as a defendant and demand payment under a separate provision of the policy for uninsured-motorist coverage. On June 5, 2018, GEICO filed a motion for a summary judgment. GEICO argued that the policy specifically excluded uninsured-motorist coverage for injuries caused by the operator of an "insured auto" and that the policy definition of an "insured auto" included all vehicles listed on the declarations page, one of which was the Jeep. In support of its motion, GEICO attached a copy of the policy

and an excerpt from Misty's deposition in which she described being injured by Zachariah while he was operating the Jeep.

Misty opposed GEICO's motion for a summary judgment. In her brief, she pointed out that the policy definition of an "insured auto" excluded a vehicle being used without the permission of its owner, thus rendering such a vehicle an uninsured automobile that would be covered by the policy's uninsured-motorist provision. She submitted an affidavit stating that the Jeep had been purchased by Zachariah and given to her as a gift; that she had refinanced the Jeep, naming herself as a co-borrower; that she made the monthly loan payments for the vehicle after it was refinanced; that there was a clear understanding between her and Zachariah that the Jeep was her vehicle; that she was the sole and exclusive driver of the Jeep; and that Zachariah did not have a key to the Jeep. The affidavit also stated that Zachariah had taken the Jeep without her permission at the time of the accident. Misty submitted copies of the refinancing documents referred to in the affidavit, as well as excerpts from Zachariah's testimony in their March 5, 2015, divorce proceeding as evidence that she was the owner of the Jeep and that Zachariah

was using it without her permission at the time of the accident. Because she allegedly owned the Jeep and because Zachariah had allegedly used the Jeep without her permission, she argued that the Jeep was an "uninsured auto" under the policy and that she was therefore entitled to compensation under the uninsured-motorist-coverage provision.

In response to Misty's opposition, GEICO argued that because Misty was married to Zachariah when he purchased the Jeep and at the time of the accident, the Jeep was marital property. GEICO argued that because Zachariah had an ownership interest in the vehicle, he did not legally have to obtain Misty's permission before using the vehicle. Accordingly, GEICO argued, the Jeep did not fall within the unpermitted-use exception to the "insured auto" definition in the policy, making the Jeep an "insured auto" that was not covered under the uninsured-motorist provision.

On July 24, 2018, the trial court granted GEICO's motion for a summary judgment on the ground that the Jeep fell within the definition of "insured auto" in the policy. Misty appealed.

Standard of Review

Misty seeks reversal of the summary judgment in favor of GEICO. We review a summary judgment under the following standard:

> "[When a party] appeals from a summary judgment, our review is de novo. EBSCO Indus., Inc. v. Royal Ins. Co. of America, 775 So. 2d 128 (Ala. 2000). We apply the same standard of review the trial court used in determining whether the evidence presented to the trial court created a genuine issue of material fact. Jefferson County Comm'n v. ECO Preservation Services, L.L.C., 788 So. 2d 121 (Ala. 2000) (quoting Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)). Once a party moving for a summary judgment establishes that no genuine issue of material fact exists, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). 'Substantial 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 Florida, 547 So. 2d 870, 871 (Ala. 1989). In reviewing a summary judgment, we view the evidence in the light most favorable to the nonmovant and entertain such reasonable inferences as the jury would have been free to draw. Jefferson County Comm'n v. ECO Preservation Servs., L.L.C., supra (citing Renfro v. Georgia Power Co., 604 So. 2d 408 (Ala. 1992))."

Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000).

Analysis

We analyze this appeal in two parts. First, we interpret the language of the policy. Second, we determine whether Misty has presented sufficient evidence to create genuine issues of material fact regarding whether she was the sole owner of the Jeep and whether she denied Zachariah permission to use the vehicle at the time of the accident.

A. Interpretation of Policy Language

We adhere to the following principles of construction when we interpret an insurance contract:

> "'The law of this state regarding the construction of insurance policies is well settled and clear. "The contract of insurance will be construed strictly against the insurer and liberally in favor of the insured [citations omitted.] ...." ... Exceptions to coverage in a policy of insurance must be interpreted as narrowly as possible in order to provide maximum coverage of the insured. Employers Insurance Co. of Alabama, Inc. v. Jeff Gin Co., 378 So. 2d 693 (Ala. 1979); Westchester Fire Insurance Co. v. Barnett Millworks, Inc., 364 So. 2d 1137 (Ala. 1978); Life Insurance Co. of Georgia v. Miller, 292 Ala. 525, 296 So. 2d 900, on remand 53 Ala. App. 741, 296 So. 2d 907 (1974); see Booker T. Washington Burial Ins. Co. v. Williams, 27 Ala. App. 393, 173 So. 269 (1937). Finally, the provisions in an automobile liability policy are to be construed liberally in favor of the insured. United States Fidelity & Guaranty Co. v. Baker, 24 Ala. App. 274, 134 So. 894, cert. denied, 223 Ala. 172, 134 So. 896 (1931).'"

Hall v. State Farm Mut. Auto. Ins. Co., 514 So. 2d 853, 856-57 (Ala. 1987) (quoting Cotton States Mut. Ins. Co. v. Michalic, 443 So. 2d 927, 930 (Ala. 1983), overruled on other grounds by Holt v. State Farm Mut. Auto. Ins. Co., 507 So. 2d 388 (Ala. 1986)). In doing so, we strive to "give insurance policies a plain meaning construction." Ho Bros. Rest. v. Aetna Cas. & Sur. Co., 492 So. 2d 603, 605 (Ala. 1986). We further recognize that "[a]n insurance policy must be read as a whole. The provisions of the policy cannot be read in isolation, but, instead, each provision must be read in context with all other provisions." Allstate Ins. Co. v. Hardnett, 763 So. 2d 963, 965 (Ala. 2000) (citing Attorneys Ins. Mut. of Alabama, Inc. v. Smith, Blocker & Lowther, P.C., 703 So. 2d 866, 870 (Ala. 1996), and Hall v. American Indem. Grp., 648 So. 2d 556 (Ala. 1994)).

The policy provides the following uninsured-motorist coverage:

> "Under the Uninsured Motorist Coverage we will pay damages for bodily injury caused by accident which the insured is legally entitled to recover from the owner or operator of an uninsured auto or

> hit-and-run auto arising out of the ownership, maintenance or use of that auto."[1]

The policy defines an "uninsured auto" in part as "an auto for which the limits of liability under all bodily injury insurance policies available to the injured person are less than the damages which the injured person is legally entitled to recover." GEICO does not dispute that the Jeep satisfies this part of the definition.

But GEICO points to the list of exclusions in the policy from the "uninsured auto" definition as support for its contention that the Jeep is ineligible for uninsured-motorist coverage:

> "The term 'uninsured auto' does not include:
>
> > "(a) an insured auto;
> >
> > "(b) an auto owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
> >
> > "(c) an auto owned by the United States of America, any other national government, a state, or a political sub-division of any such government or its agencies;

[1]The policy indicates terms that are defined elsewhere in the policy with bold and italicized print. We have preserved this emphasis in our quotations from the policy by underlining those terms.

> "(d) a land motor vehicle or trailer operated on rails or crawler-treads or located for use as a residence or premises; or
>
> "(e) a farm-type tractor or equipment designed for use principally off public roads, except while used upon public roads."

Because the term "uninsured auto" does not include an "insured auto," it becomes necessary to examine what constitutes an "insured auto" under the policy. The full definition of an "insured auto," along with the exclusions, is as follows:

> "'Insured auto' is an auto:
>
> > "(a) described in the declarations and covered by the bodily injury liability coverage of this policy;
> >
> > "(b) temporarily substituted for an insured auto when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction; or
> >
> > "(c) operated by you or your spouse if a resident of the same household.
>
> "But the term 'insured auto' does not include:
>
> > "(i) an auto used to carry passengers or goods for hire, except in a car pool;
> >
> > "(ii) an auto being used without the owner's permission; or
> >
> > "(iii) under subparagraphs (b) and (c) above, an auto owned by or furnished for the regular use of an insured."

Because there is no dispute that the Jeep is covered by the bodily-injury-liability provision of the policy, GEICO argues that the Jeep is an "insured auto" under subparagraph (a) above and that Misty's injuries cannot be covered by the policy's uninsured-motorist provision, regardless of who owned the Jeep at the time of the accident and regardless of whether Misty withheld permission from Zachariah to operate the Jeep at that time.

We disagree with GEICO's interpretation of the policy because it ignores the fact that the policy excludes from the definition of an "insured auto" "an auto being used without the owner's permission." Reading the policy as a whole, see Hardnett, 763 So. 2d at 965, the text clearly allows for the possibility that a vehicle otherwise considered insured by virtue of subparagraph (a) of the definition of an "insured auto" (i.e., a vehicle "described in the declarations and covered by the bodily injury liability coverage of [the] policy") may nonetheless be considered an "uninsured auto" eligible for uninsured-motorist coverage by virtue of the exclusion in subparagraph (ii) from the "insured auto" definition of "an auto being used without the owner's permission." Because the plain language of the policy does

not exclude from uninsured-motorist coverage a vehicle being driven without its owner's permission, the policy must be read to provide uninsured-motorist coverage in such an event.

GEICO argues that Hardnett forecloses this interpretation of the policy. That argument is incorrect. The policy at issue in Hardnett excluded from its definition of "uninsured auto" "a motor vehicle which is insured under the Liability Insurance Coverage of this policy." 763 So. 2d at 964 (emphasis added in Hardnett). Thus, the Hardnett policy directly excluded vehicles insured under other provisions of that policy from the definition of an "uninsured auto." Like the Hardnett policy, the policy at issue in this case refers to vehicles covered by other provisions in its exclusions from the definition of an "uninsured auto." But unlike Hardnett, the policy does not make a total exclusion of vehicles covered elsewhere in the policy because the definition of "insured auto" cross-referenced in the definition of "uninsured auto" does not include vehicles driven without the owner's permission. Therefore, although it is permissible under Alabama law to deny uninsured-motorist coverage to vehicles insured under other portions of a policy, the Jeep, by virtue of the exclusion, is not such a vehicle.

B. Ownership of the Jeep and Denial of Permission

The issue now becomes whether, on the facts of this case, the Jeep falls under one of the definitions of "uninsured auto" in the policy. That issue turns on whether Misty owned the Jeep and denied Zachariah permission to use it at the time of the accident. When the evidence is viewed in the light most favorable to Misty, there are genuine issues of material fact regarding whether Misty was the sole owner of the Jeep as the result of a previous gift from Zachariah and whether she had denied him permission to use the Jeep at the time of the accident.

1. Ownership

Misty argues that she was the sole owner of the Jeep because it was given to her as a gift by Zachariah. The elements of a valid inter vivos gift under Alabama law are:

> "1) An intention to give and surrender title to, and dominion over, the property;
>
> "2) Delivery of the property to the donee; and
>
> "3) Acceptance by the donee."

Dial v. Dial, 603 So. 2d 1020, 1022 (Ala. 1992) (citing First Alabama Bank of Montgomery v. Adams, 382 So. 2d 1104, 1110 (Ala. 1980), and Garrison v. Grayson, 284 Ala. 247, 224 So. 2d

606 (1969)). "The existence of an intention to give is to be determined from a consideration of the conduct and declarations of the alleged donor and the relationship and circumstances of the parties." Garrison, 284 Ala. at 249, 224 So. 2d at 608 (citing Jennings v. Jennings, 250 Ala. 130, 33 So. 2d 251 (1947), and Bowline v. Cox, 248 Ala. 55, 26 So. 2d 574 (1946)).

Misty submitted substantial evidence that Zachariah intended to give her the Jeep as a gift. First, Misty's affidavit, as described above, is evidence of Zachariah's intent to give the Jeep to her. Second, in an excerpt of Zachariah's testimony from their 2015 divorce proceeding, Zachariah admitted that the Jeep was Misty's to drive:

"Q. That's the Jeep she normally drove, right?

"A. Yes, sir.

"Q. You didn't normally drive that Jeep, correct?

"A. No, sir."

Misty has also submitted substantial evidence tending to prove that she accepted the gift of the Jeep and that the Jeep was delivered to her. Misty's affidavit, the excerpts from Zachariah's divorce-proceeding testimony, and Misty's deposition testimony from this case all suggest that Misty was

in sole possession of the keys to the Jeep, a fact that strongly implies acceptance and delivery of the Jeep as a gift. A jury would be free to infer that Zachariah intended to give Misty the Jeep as a gift and that she accepted the gift and took delivery of the Jeep when she took exclusive possession of the keys.

Misty did not produce a record copy of the title to the Jeep listing her as the sole owner, but that is not fatal to her argument that Zachariah relinquished title to the Jeep by gift. Under § 32-8-39(d), Ala. Code 1975, "[a] certificate of title issued by [the Department of Revenue] is prima facie evidence of the facts appearing on it." But this presumption is not conclusive, and ownership of a vehicle can be established by evidence other than a certificate of title. See Crowley v. State Farm Mut. Auto. Ins. Co., 91 So. 2d 53, 55 (Ala. 1991). Even if Zachariah were the only person listed on the title to the Jeep, Misty has produced evidence that, if proved at trial, a jury could rely on to overcome the presumption established by a certificate of title.

GEICO argues that, "[v]is-à-vis each other, [the] parties are free to make any domestic agreements they want as to which vehicle is 'his' vehicle and which vehicle is 'her' vehicle;

however, under the law, the subject Jeep remains marital property, with each party having an undivided ownership interest in the vehicle." GEICO's brief at 16-17. GEICO's wholesale rejection of the possibility of an interspousal gift of an automobile is inconsistent with Alabama law, which has long recognized that "[a]ll property of the wife, whether acquired by descent or inheritance, or gift, devise or bequest, or by contract or conveyance, or by gift from or contract with the husband, is the separate property of the wife." § 30-4-5, Ala. Code 1975 (emphasis added); see also Pennsylvania Thresherman & Farmers' Mut. Cas. Ins. Co. v. Crapet 199 F.2d 850, 852 (5th Cir. 1952) ("The disputed issue of fact, therefore, was whether [the husband] had divested himself of all right of control by making a gift of the insured automobile to [his then wife] ...." (applying Alabama law)). Spouses, like anyone else, may transfer title to a vehicle between one another by gift. If Misty is able to prove the elements of a valid inter vivos gift under Alabama law, she is the sole owner of the Jeep. Misty has presented sufficient evidence to create a genuine issue of material fact regarding whether she became the sole owner of the Jeep after it was transferred to her by gift from Zachariah.

2. Permission

The record contains undisputed evidence that Misty denied Zachariah permission to use the Jeep at the time of the accident. First, Misty testified to that fact in her affidavit. Second, she submitted the following excerpt from Zachariah's trial testimony in their 2015 divorce proceeding, which reinforces her claim that Zachariah drove the Jeep without her permission:

> "I pushed her down, I held her down and said 'I'm leaving, this is getting out of control, I don't want this to happen. I'm leaving.' She was telling me the whole time 'You're not going nowhere, you're not leaving.' I did have a truck, my company pickup truck that is not mine, it's a company truck .... And I could not find my keys. I found them later two days later in the yard. All I could find was the Jeep keys, they were on the counter. I grabbed the Jeep keys, ran out the door. My dog was already right behind me. I throw'd him in the Jeep, as soon as I got in the Jeep, cranked it up, put it in drive, [and] I pushed the gas ...."

Finally, in a deposition in this case, Misty testified: "[Zachariah] tells me he's leaving. I tell him to take his truck; don't take my Jeep. He grabs the keys; he goes to get in the Jeep. I go to open the door and look at him and tell him, 'Don't take my Jeep.' And he takes off." GEICO did not contest with evidence the allegation that Misty denied Zachariah permission to use the Jeep. Accordingly, Misty

provided sufficient evidence to create a genuine issue of material fact regarding whether she had denied Zachariah permission to drive the Jeep at the time of the accident.

Conclusion

The plain language of the policy provides that a vehicle driven without its owner's permission, regardless of whether that vehicle is covered under the bodily-injury-liability provision of the policy, is not an "insured auto," thus making it eligible for coverage under the uninsured-motorist provision of the policy. Therefore, Misty is entitled to compensation under her uninsured-motorist coverage if she can prove that she was the sole owner of the Jeep and that Zachariah was operating it without her permission at the time of the accident that caused her injuries. Because there are genuine issues of material fact with respect to her alleged ownership of the Jeep and her denial of permission to Zachariah, the trial court improperly entered a summary judgment for GEICO.

REVERSED AND REMANDED.

Parker, C.J., and Shaw, J., concur.

Bryan and Mendheim, JJ., concur in the result.