

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SHANA A. SANTIAGO,)	
)	C.A. No. 09C-12-027 JTV
Plaintiff,)	
)	
v.)	
)	
NATIONWIDE PROPERTY &)	
CASUALTY INSURANCE)	
COMPANY,)	
Defendant.)	

Submitted: June 30, 2010
Decided: September 30, 2010
Revised: October 22, 2010

Anthony Forcina, Esq., Newark, Delaware. Attorney for Plaintiff.

Carol J. Antoff, Esq., Law Office of Cynthia G. Bean, Newark, Delaware.
Attorney for Defendant.

Upon Consideration of Parties'
Cross Motions for Summary Judgment and
Defendant's Motion - GRANTED
Plaintiff's Motion - DENIED

VAUGHN, President Judge

ORDER

Upon consideration of the parties' cross-Motions for Summary Judgment, and the record of this case, it appears that:

1. This is a declaratory judgment action filed by the plaintiff, Shana A. Santiago, to determine if she is entitled to bodily injury liability coverage under an automobile insurance policy issued to the plaintiff's mother and stepfather, Fern and Richard Graven. The policy in question was issued by defendant Nationwide Property & Casualty Insurance Company. Both parties have moved for summary judgment.

2. On November 8, 2008, the plaintiff operated a Ford Escort, solely owned by her, while involved in a motor vehicle accident. Two people, Cynthia Dilks and Ella Pauline Florian, were injured in the accident. On July 1, 2009, Dilks and Florian brought an action for bodily injuries against the plaintiff. They allege that the motor vehicle accident and their resulting injuries were the result of the plaintiff's negligence. The plaintiff's Ford Escort was insured by Allstate Insurance Company.

3. The plaintiff lived with the Gravens at the time of the accident. However, the plaintiff is an excluded driver under the Gravens' policy, at the request of the Gravens. The Ford Escort is not an insured vehicle under the Gravens' policy. Nonetheless, the plaintiff contends that, since she meets the definition of "relative,"¹

¹ (Def.'s Ex. N. at 1.) (stating that relative means "one who regularly lives in your household and who is related to you by blood, marriage or adoption (including a ward or foster child). A relative may live temporarily outside your household.").

the Gravens' Nationwide policy covers her for bodily injury liability in excess of her Allstate policy's coverage.

4. The plaintiff contends that she is entitled to excess liability coverage under 18 *Del. C.* § 3909(c), which provides, in pertinent part: "With respect to any person excluded from coverage . . . the policy may provide that the insurer shall not be liable for damages, losses or claims arising out of the operation or use of the insured motor vehicle...."² She contends that since the quoted language specifically refers to damages arising from operation of an insured vehicle, the section does not apply to damages arising from operation of an unlisted vehicle; that since she was operating a vehicle not insured under the policy, her excluded driver status does not apply; and that she is covered under a section of the policy which provides coverage for relatives.

5. In response, the defendant contends that it is not liable for bodily injury liability coverage to the plaintiff because she was specifically excluded by the policyholders, and her vehicle is not a covered vehicle.

6. When opposing parties file cross Motions for Summary Judgment, neither party's motion will be granted unless no genuine issue of material fact exists

² 18 *Del. C.* § 3909(c) states:

With respect to any person excluded from coverage under this section, the policy may provide that the insurer shall not be liable for damages, losses or claims arising out of this operation or use of the insured motor vehicle, whether or not such operation or use was with the express or implied permission of a person insured under the policy.

and one party is entitled to judgment as a matter of law.³ Moreover, the motions shall be deemed to be the equivalent of a stipulation for decision on the merits unless a party has argued that there is a genuine issue of material fact.⁴

7. In addition to the statutory language, the plaintiff relies upon the case of *State Farm v. Washington*.⁵ In *Washington*, an insured's son was an excluded driver under his father's policy. He was injured while operating an automobile owned by an aunt, which was insured under a separate policy held by the aunt. The accident was caused by the negligence of the driver of another car. The son received the full limit of bodily injury liability coverage from the other driver's insurer. He then filed a claim for underinsured bodily injury liability coverage under his father's policy. His claim was denied by the insurer on the grounds that he was an excluded driver under his father's policy. The Court held that such a denial was against public policy because the son was "the innocent victim of another's negligence."⁶ It is apparent from the court's opinion that the nature of the claim asserted – one for underinsured benefits for bodily injury sustained by an innocent person – was a key fact in the court's decision. It is important to understand the distinction between a claim for underinsured coverage by an innocent person and a claim for liability

³ *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 744 (Del. 1997).

⁴ Super. Ct. Civ. R. 56(h).

⁵ 641 A.2d 449 (Del. 1993).

⁶ *Id.* at 452.

coverage by a negligent party who has injured another. As the court noted, the auto insurer “assumes two very different risks in terms of liability and uninsured/underinsured motorist coverages. In the first instance, the experience, driving record and negligence of the insured driver defines the risk to the insurer. In the latter, the risk is defined by the negligence of the public at large.”⁷ The difference in the nature of the claim involved in *Washington* and the one involved in this case distinguishes *Washington*. I conclude that *Washington* is not applicable here.

8. The plaintiff also relies upon *Kivlin v. Nationwide*,⁸ which she contends reinforces the idea that the excluded driver provision applies only where the excluded driver is operating a vehicle insured under the policy. In that case the Delaware Supreme Court applied the statute and found that an insurer had no liability for damages caused by an excluded driver who operated a motor vehicle insured under the policy. The court in that case, however, did not address the issue involved here – liability coverage for operation of a vehicle not insured under the policy by an excluded driver.

9. I am not persuaded that the use of the phrase “insured motor vehicle” in §3909(c) means that an excluded driver is excluded from liability coverage if operating an insured vehicle, but entitled to such coverage if operating a vehicle not insured by the policy. The statute does not expressly so state. The interpretation

⁷ *Id.*

⁸ 765 A.2d 536 (Del. 2000).

advanced by the plaintiff is not consistent with the purpose of the statute. The legislation's dual purpose is to ensure the continued coverage to families, while protecting insurers from unnecessary risk, or, as in this case, risks which the insured themselves seek to exclude.⁹ The statute gives insurance carriers the ability to create affordable auto insurance policies by excluding certain named drivers. I find that the plaintiff is excluded from liability coverage under the defendant's policy.

10. Furthermore, it appears that the plaintiff's claim is not within the policy's coverage even if she were not an excluded driver. Under the terms of the policy, liability coverage is provided if the "relative" is driving a vehicle which meets the definition of "your auto" or "other vehicle." "[Y]our auto" covers only those vehicles listed in the Declarations.¹⁰ It is undisputed that the plaintiff's Ford Escort is not listed in the Declarations. To qualify as an "other vehicle," the Ford Escort would have to fall into one of three categories: (1) "a private passenger auto you do not own, while it is used as a temporary substitute for your auto"; (2) "a private passenger auto newly acquired by you"; or (3) "a private passenger auto owned by a non-member of your household."¹¹ It is clear that the plaintiff's Ford Escort fails to fall within one of these categories.

⁹ The Delaware Supreme Court noted that the purpose of the statute was to allow "[C]ontinued coverage of vehicles at a reasonable cost to the remaining insureds under the policy while at the same time the insurer no longer bears the risks arising from the excluded persons' poor driving record...." *Kivlin*, 765 A.2d at 541 (citing *Washington*, 641 A.2d at 452).

¹⁰ (Def.'s Ex. N. at 2.)

¹¹ (Def.'s Ex. N. at 3.).

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12. For the reasons stated above, the defendant's Motion for Summary Judgment is ***granted*** and the plaintiff's Motion for Summary Judgment is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary
Order Distribution
File