[Cite as *Selective Ins. Co. of Am. v. Arrowood Indemn. Co.*, 2010-Ohio-557.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

SELECTIVE INSURANCE COMPANY OF AMERICA Plaintiff-Appellee	:	C.A. CASE NO. 23400
	:	T.C. CASE NO. 08-CV-179
vs.	:	(Civil Appeal From Common Pleas Court)
ARROWOOD INDEMNITY CO., fka ROYAL INDEMNITY CO. Defendant-Appellant	:	

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O P I N I O N

Rendered on the 19th day of February, 2010.

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WOLFF, J.:

{¶ 1} Defendant Arrowood Indemnity Company, fka Royal Indemnity Company ("Arrowood"), appeals from a grant of summary judgment in favor of Selective Insurance Company of America ("Selective").

{¶ 2} Thomas and Carol Gentry are the parents of Shiloh Gentry.

On July 3, 2001, Shiloh purchased a Chevrolet Silverado. Carol Gentry co-signed on the loan for the Silverado for purposes of obtaining financing. The Purchase Agreement listed "SHILOH N GENTRY CAROL L GENTRY" as the purchaser. Both Shiloh and Carol signed the Purchase Agreement. The title to the Silverado identifies Shiloh as the owner. The State of Ohio Motor Vehicle Report lists Shiloh as the registered owner of the Silverado. Only Shiloh used the Silverado and she was the only one who made payments on the Silverado.

{¶ 3} Shiloh intended to purchase automobile insurance for the Silverado. Consequently, on August 1, 2001, Shiloh Gentry went to the Bureau of Motor Vehicles and then began driving the Silverado to an insurance agent's office for purposes of obtaining automobile insurance for the Silverado. On her way to the insurance agency, she rear-ended a vehicle driven by Joanne Kisselman.

{¶ 4} On June 16, 2003, Joanne Kisselman and her husband, Bill, commenced an action against Shiloh and Thomas Gentry, alleging that Shiloh's negligence proximately caused injury to Joanne. The Complaint also alleged that Thomas Gentry negligently entrusted the Chevrolet Silverado to Shiloh and included a cause of action against Selective, the Kisselman's insurer, for Uninsured Motorists/Underinsured Motorists ("UM/UIM") coverage.

{¶ 5} Selective paid Joanne and Bill Kisselman $246,000.00 pursuant to the UM/UIM coverage provisions of the insurance policy issued by Selective to the Kisselmans. Selective then commenced an action against Shiloh and Thomas Gentry for reimbursement of the $246,000 that Selective paid to the Kisselmans. While this action was pending, Royal Insurance Company of America ("Royal") denied coverage to the Gentrys for the August 1, 2001, automobile accident based on the terms of an insurance policy ("Royal Policy") purchased from Royal by Carol and Thomas Gentry. On February 28, 2006, Selective obtained a default judgment against Shiloh and Thomas Gentry in the amount of $246,000.00.

{¶ 6} On January 7, 2008, Selective filed a petition against Royal pursuant to R.C. 3929.06 based on the default judgment obtained against the Gentrys. Selective subsequently amended its petition to identify Arrowood as the successor in interest to Royal. (Dkt. 6, 11). Selective and Arrowood filed cross motions for summary judgment.

{¶ 7} On February 9, 2009, the magistrate found that the Royal Policy purchased by Thomas and Carol Gentry provided coverage for the August 1, 2001, automobile accident caused by Shiloh Gentry, because Carol was an owner of the Silverado, which was a "newly acquired auto" within the meaning of the Royal Policy. Therefore, the magistrate found that summary judgment should be granted in

favor of Selective. (Dkt. 34). Arrowood filed timely objections to the magistrate's decision, which the trial court overruled on March 26, 2009. (Dkt. 41). The trial court granted judgment in favor of Selective and against Arrowood on the issue of liability coverage for the Silverado under the Royal Policy. Arrowood filed a timely notice of appeal.

ASSIGNMENT OF ERROR

{¶ 8} "THE TRIAL COURT ERRED IN GRANTING THE APPELLEE'S MOTION FOR SUMMARY JUDGMENT AND IN DENYING THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT."

I

{¶ 9} When reviewing a trial court's grant of summary judgment, an appellate court conducts a de novo review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336. "De Novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Brewer v. Cleveland City Schools Bd. Of Edn.* (1997), 122 Ohio App.3d 378, 383, citing *Dupler v. Mansfield Journal Co.* (1980), 64 Ohio St.2d 116, 119-20. Therefore, the trial court's decision is not granted any deference by the reviewing appellate court. *Brown v. Scioto Cty. Bd. Of Commrs.* (1993), 87 Ohio App.3d 704, 711.

{¶ 10} This appeal concerns the interpretation of the Royal Policy. In construing the terms of an insurance policy, we are

guided by the rules of contract interpretation. First, "[i]t is well-settled law in Ohio that '[w]here provisions of a contract of insurance are *reasonably* susceptible of more than one interpretation, they will be construed strictly against the insurer and liberally in favor of the insured.' (Emphasis added.) *King v. Nationwide Ins. Co.* (1988), 35 Ohio St.3d 208, 519 N.E.2d 1380, syllabus; see, also, *Buckeye Union Ins. Co. v. Price* (1974), 39 Ohio St.2d 95, 68 O.O.2d 56, 313 N.E.2d 844. It is axiomatic that this rule cannot be employed to create ambiguity where there is none. It is only when a provision in a policy is susceptible of more than one reasonable interpretation that an ambiguity exists in which the provision must be resolved in favor of the insured." *Hacker v. Dickman*, 75 Ohio St.3d 118, 119-20, 1996-Ohio-98.

{¶ 11} Also, "[t]he fundamental goal in insurance policy interpretation is to ascertain the intent of the parties from a reading of the contract in its entirety and to settle upon a reasonable interpretation of any disputed terms in a manner calculated to give the agreement its intended effect." 57 Ohio Jurisprudence 3d (2005) 394, Insurance, Section 315. "The Ohio Supreme Court also has stressed that while policy exclusions 'will be interpreted as applying only to that which is clearly intended to be excluded * * *[,] the rule of strict construction does not permit a court to change the obvious intent of a provision just

to impose coverage.' *Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd.* (1992), 64 Ohio St.3d 657, 665, 597 N.E.2d 1096." *Colter v. Spanky's Doll House*, Montgomery App. No. 21111, 2006-Ohio-408, at ¶29.

II

{¶ 12} The Liability Coverage section of the Royal Policy provides the following:

{¶ 13} "INSURING AGREEMENT

{¶ 14} "A. We will pay damages for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident . . . .

{¶ 15} "B. 'Insured' as used in this Part means:

{¶ 16} "1. You or any 'family member' for the ownership, maintenance or use of any auto or 'trailer'.

{¶ 17} "2. Any person using 'your covered auto'.

{¶ 18} "3. For 'your covered auto', any person or organization but only with respect to legal responsibility for acts or omissions of a person from whom coverage is afforded under this Part.

{¶ 19} "4. For any auto or 'trailer', other than 'your covered auto', any other person or organization but only with respect to legal responsibility for acts or omissions of you or any 'family member' for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does

not own or hire the auto or 'trailer'."

{¶ 20} The following definitions appear under the Definitions section of the Royal Policy:

{¶ 21} "A. Throughout this policy, 'you' and 'your' refer to:

{¶ 22} "1. The 'named insured' shown in the Declarations; and

{¶ 23} "2. The spouse if a resident of the same household.

{¶ 24} ***

{¶ 25} "F. 'Family member' means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

{¶ 26} ***

{¶ 27} "J. 'Your covered auto' means:

{¶ 28} "1. Any vehicle shown in the Declarations.

{¶ 29} "2. A 'newly acquired auto'.

{¶ 30} ***

{¶ 31} "K. 'Newly acquired auto':

{¶ 32} "1. 'Newly acquired auto' means any of the following types of vehicles you become the owner of during the policy period:

{¶ 33} "a. A private passenger auto[.]

{¶ 34} ***

{¶ 35} "2. Coverage for a 'newly acquired auto' is provided as described below. If you ask us to insure a 'newly acquired

auto' after a specified time period described below has elapsed, any coverage we provide for a 'newly acquired auto' will begin at the time you request the coverage.

{¶ 36} "A. For any coverage provided in this policy except for Coverage for Damage to Your Auto, a 'newly acquired auto' will have the broadest coverage we provide for any vehicle shown in the Declarations. Coverage begins on the date you become the owner. However, for this coverage to apply to a 'newly acquired auto' which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 14 days after you become the owner.

{¶ 37} "If a 'newly acquired auto' replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it."

{¶ 38} Finally, the Exclusions sections of the Royal Policy provides, in part, as follows:

{¶ 39} "B. We do not provide Liability Coverage for the ownership, maintenance or use of:

{¶ 40} ***

{¶ 41} "5. Any vehicle, other than 'your covered auto', which is:

{¶ 42} "a. Owned by any 'family member'; or

{¶ 43} "b. Furnished or available for the regular use of any

'family member'."

III.

{¶ 44} Pursuant to the terms of the Royal Policy, coverage is provided for accidents involving the vehicles identified in the Declarations and for a "newly acquired auto" that the named insureds become owners of during the policy period. The named insureds under the Royal Policy are Thomas and Carol Gentry. Moreover, the Royal Policy excludes coverage for the use of any vehicle that is owned by the Gentrys' family members, such as Shiloh Gentry. Therefore, if Carol Gentry did not own the Silverado at the time of the August 1, 2001 accident, then there is no insurance coverage available under the Royal Policy for that accident.

{¶ 45} The trial court found that Carol Gentry was an owner of the Silverado at the time of the automobile accident involving Shiloh, which triggered coverage under the Royal Policy for a "newly acquired auto" involving a family member. The trial court stated, in part:

{¶ 46} "Because the Royal policy did not define the words 'own' or 'owner,' the Magistrate correctly stated that a court must give the words their 'natural and commonly accepted meaning[s]' whenever possible. To 'own' means 'to have or possess.' *Hitt v. Anthem Cas. Ins. Group* (2001), 142 Ohio App.3d 262. The Magistrate noted that, by cosigning the purchase agreement for her daughter, who

lived with her, Carol Gentry arguably had the right to possess the Silverado. This court agrees with the Magistrate.

{¶ 47} "Furthermore, the Silverado was intended to replace the Cavalier, which was insured under the Royal policy. (Defendants' Exhibit E, p. 21). While the Cavalier was titled in Thomas Gentry's name, Shiloh Gentry solely used and paid for the Cavalier prior to its trade-in on the Silverado. The Cavalier was traded-in as partial payment on the Silverado.

{¶ 48} "Moreover, while her name was not on the title to the Silverado, Carol Gentry cosigned the loan for the Silverado and signed the purchase agreement. As stated previously, while the certificate of title is certainly a reflection of an insurable interest, it does not preclude a recognizable insurable interest in one who does not possess the title. As a co-signor on the loan for the Silverado, Carol was liable for the full balance of the loan. Although Shiloh and Carol had an agreement that Shiloh would make the loan payments, this agreement did not relieve Carol from full payment responsibility under the terms of the loan in the event that Shiloh failed to pay. Furthermore, at the time of the accident, Carol had paid the policy premium on the Cavalier. Carol even represented to the dealership and the financing company that the Silverado was insured under the Royal policy at the time that she cosigned the loan and signed the purchase agreement.

{¶ 49} "Consequently, this court agrees with Plaintiff Selective that Carol Gentry had an interest in preserving and protecting the Silverado until the loan was paid in full. Specifically, the court agrees that Carol would have benefitted from the continued existence of the Silverado and would have suffered a loss from the destruction of the Silverado while still owing on the loan. Thus, for purposes of the Royal policy, Carol was an owner of the Silverado during the policy period, as the Silverado was a 'newly acquired auto' that replaced the 'covered auto' Cavalier. In that circumstance, liability coverage was afforded under the Royal Policy." (Dkt. 41, p. 13-14).

IV

{¶ 50} Based on the particular facts in the record before us, we do not agree that Carol Gentry was an owner of the Silverado at the time of the August 1, 2001 accident. Black's Law Dictionary, Seventh Edition, defines "own" as "[t]o have or possess as property; to have legal title." Similarly, R.C. 4501.01(V) defines "owner" as including "any person or firm, other than a manufacturer or dealer, that has title to a motor vehicle . . . ." It is undisputed that Shiloh, not Carol, possessed and had legal title to the Silverado at the time of the accident. The record is clear that the Silverado was intended to be Shiloh's automobile and that she was the only person making payments on the outstanding loan

and responsible for the everyday maintenance of the car. Also, there is no evidence that Carol or Thomas Gentry ever intended to own the Silverado. Rather, everyone agrees that the Silverado was to be Shiloh's automobile and that she would be responsible for the car on a going forward basis.

{¶ 51} The Royal Policy unambiguously requires ownership as a prerequisite of coverage. Although Carol Gentry may have acquired an insurable interest in the Silverado by cosigning for the loan, this act did not make her an owner of the car. *Allstate Ins. Co. v. Neel* (1980), 25 Wash. App. 722, 724-25, 612 P.2d.6 ("The insurance policy refers to ownership, not an insurable interest. Whether the [parents] could have insured the Jeep is not material to the question whether their insurance policy in fact covered it.") The facts that (1) the Cavalier, titled in Thomas Gentry's name, was traded in for and replaced the Silverado; (2) Carol Gentry signed the purchase agreement; (3) policy payments on the Cavalier were current; and (4) Carol Gentry represented to the dealership and the finance company that the Silverado was insured under the Royal Policy likewise did not make Carol Gentry an owner of the Silverado. Therefore, the Silverado cannot be considered a "newly acquired auto" under the Royal Policy and the trial court erred in granting summary judgment in favor of Selective.

{¶ 52} The judgment of the trial court will be reversed and the cause remanded for further proceedings consistent with this Opinion, including granting summary judgment in favor of Arrowood.

DONOVAN, P.J. concurs.

FROELICH, J., concurs separately

(Hon. William H. Wolff, Jr., retired from the Second District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

FROELICH, J., concurring separately:

{¶ 53} I write separately to stress the narrowness of the holding. As stated by the trial court, "it is undisputed by the parties that the determinative issue in this case is whether Carol Gentry had a sufficient ownership interest in the Silverado to trigger coverage...." I agree with the majority that an "insurable interest" is not necessarily the same as ownership, but I disagree with the emphasis on R.C. 4501.01(V) and Black's definition. However, given the record and its unique facts, I concur that at the time of the accident, Carol Gentry did not have sufficient ownership interest to trigger coverage.

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