Swain v. State Farm Insurance Co.

1996 | Cited 0 times | Ohio Court of Appeals | April 11, 1996

JOURNAL ENTRY and OPINION

JUDGMENT: Affirmed.

Plaintiff-appellant, Sheryl Swain, appeals from the trial court's judgment that, as a matter of law, plaintiff is not entitled to uninsured motorist coverage from the insurance policy issued by defendant-appellee, State Farm, to DeWayne Lyons. For the reasons that follow, this judgment is affirmed.

On October 17, 1993, plaintiff was injured in an automobile accident in Garfield Heights, Ohio. Plaintiff was driving a car rented by DeWayne Lyons. Lyons had automobile insurance from State Farm which included uninsured motorist coverage. The policy was issued in Georgia and listed Lyons' 1988 Mercedes as the insured vehicle. He was visiting the area and was a passenger at the time of the accident. The driver that hit plaintiff was an uninsured motorist.

Thereafter, plaintiff sought to recover from State Farm under the uninsured motorist portion of Lyons' policy. State Farm denied this claim and plaintiff filed a complaint in common pleas court on June 6, 1994. On May 30, 1995, the trial court granted summary judgment for defendant and held that plaintiff was not an insured under the policy. Plaintiff timely appealed raising one assignment of error which states as follows:

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT-APPELLEE STATE FARM INSURANCE COMPANY, AS PLAINTIFF-APPELLEE IS ENTITLED TO RECOVER UNDER THE UNINSURED MOTORIST COVERAGE IN THE POLICY ISSUED BY APPELLEE STATE FARM INSURANCE COMPANY TO DEWAYNE LYONS.

Under this assignment, we must interpret the policy in question and determine whether the plaintiff is an insured. Insurance policies are generally interpreted by applying rules of contract law. Burris v. Grange Mut. Cos. (1989), 46 Ohio St.3d 84, 89. If the language of the insurance policy is doubtful, uncertain, or ambiguous, the language will be construed strictly against the insurer and liberally in favor of the insured. Faruque v. Provident Life & Acc. Ins. Co. (1987), 31 Ohio St.3d 321. However, the general rule of liberal construction cannot be employed to create an ambiguity where there is none. Karabin v. State Auto. Mut. Ins. Co. (1984), 10 Ohio St.3d 163, 166-167. If the terms of a policy are clear and unambiguous, the interpretation of the contract is a matter of law. Inland Refuse Transfer

Co. v. Browning-Ferris Industries of Ohio, Inc. (1984), 15 Ohio St.3d 321.

The policy was issued to DeWayne Lyons. Under the uninsured motorist portion of the policy, the policy defines who is insured as follows:

Who Is an Insured

Insured - means the person or persons covered by uninsured motor vehicle coverage.

This is:

1. the first person named in the declarations;

2. his or her spouse;

3. their relatives; and

4. any other person while occupying:

a. your car, a temporary substitute car, a newly acquired car or a trailer attached to such car. Such car has to be used within the scope of the consent of the first person named in the declarations or that person's spouse; or

b. a car not owned by you, your spouse or any relative or a trailer attached to such car. It has to be driven by the first person named in the declarations or that person's spouse and within the scope of the owner's consent. State Farm Policy at 16.

This portion of the policy is unambiguous. Plaintiff does not fall under any of the first three definitions of an "insured." She is not the first person named in the declaration; that person is DeWayne Lyons. She is also not the spouse or a relative of Lyons.

Additionally, plaintiff does not fall under the "any other person" definition found in 4(a). This section allows another to recover if riding in (1) the first person's car, (2) a temporary substitute car, (3) a newly acquired car, or (4) trailer attached to such car. Plaintiff was not driving the car of "the first person named" because that car was the 1988 Mercedes in Georgia. Likewise, plaintiff was not driving a "temporary substitute car." The policy defines "temporary substitute car" as follows:

Temporary substitute car--means a car not owned by you or your spouse, if it replaces your car for a short time. Its use has to be with the consent of the owner. Your car has to be out of use due to its breakdown, repair, servicing damage or loss. A temporary substitute car is not considered a non-owned car.

In this case, plaintiff has not produced any evidence to establish that Lyons' car was out of use because of breakdown, repair, servicing damage or loss. Therefore, the rental car driven by plaintiff cannot be considered a temporary substitute car. Similarly, the car driven by plaintiff was not a newly acquired car or trailer attached to such car. Accordingly, plaintiff does not fall under any of the definitions found in 4(a) of the policy section defining who is insured for uninsured motorist purposes.

Plaintiff also does not fall under the 4(b) definition of "any other person." This portion of the policy requires, inter alia, that the car be driven by "the first person named in the declarations or that person's spouse." Again, it is uncontroverted that plaintiff, who is neither named in the declaration nor married to Lyons, was driving the car at the time of the accident. Accordingly, plaintiff does not fall under the 4(b) definition of an insured for uninsured motorist purposes.

Plaintiff further argues that, pursuant to R.C. 3937.18 and the Supreme Court's holding in State Farm Auto. Ins. Co. v. Alexander (1992), 62 Ohio St.3d 397, any provision which deprives an insured of uninsured motorist coverage for tort claims against an uninsured motorist is invalid and unenforceable. Plaintiff's argument is meritless. The court has since restated the holding of Alexander as follows: "[u]nder Alexander, the statute mandates coverage if (1) the claimant is an insured under a policy which provides uninsured motorist coverage; (2) the claimant was injured by an uninsured motorist; and (3) the claim is recognized by Ohio tort law." Martin v. Midwestern Group Ins. (1994), 70 Ohio St.3d 478, at 481. Alexander and Martin are both directed at exclusions in automobile policies. Under the first prong of the Alexander test, plaintiff must be an insured under the policy. In the case at bar, plaintiff was not an insured; therefore, no exclusion operated to prevent plaintiff's recovery.

Since, as a matter of law, plaintiff is not an insured under the policy, the trial court judgment for State Farm is affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LEO M. SPELLACY, C.J., and BLACKMON, J., CONCUR.

DIANE KARPINSKI JUDGE