LOUISIANA COURT OF APPEAL

Elliott v. Elliott

672 So. 2d 938 (La. Ct. App. 1996) · Decided February 23, 1996

SUMMARY

The Louisiana appellate court affirmed summary judgment for Prudential Property and Casualty Insurance Company in a dispute over uninsured motorist coverage. The court held that the policy's owned-but-not-insured exclusion barred coverage because the vehicle involved in the accident was owned in part by the insured's resident spouse and was not listed under the policy. The court declined to decide whether the relevant Louisiana statute independently precluded coverage.

CASE DETAILS

COURT	Louisiana Court of Appeal
WRITING FOR THE COURT	JaFOGG, Judge; Fogg; JaFogg; LeBlanc; Whipple
JURISDICTION	Louisiana
DECIDED	February 23, 1996
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed a summary judgment rendered in favor of Prudential Property and Casualty Insurance Company on the issue of uninsured-motorist coverage.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether there is no genuine issue of material fact and whether the mover is entitled to judgment as a matter of law; the appellate court resolved the coverage issue based on the undisputed policy language.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Gwendolyn Elliott, Derrick Hall, Nicholes Hall v. Prudential Property and Casualty Insurance Company

TOPICS

uninsured motorist · insurance coverage · summary judgment · marriage · prenuptial agreements

PRACTICE AREAS

Insurance · Automobile insurance · Uninsured-motorist coverage · Civil procedure

QUESTIONS PRESENTED

1. Whether a Prudential automobile policy covering the wife's separately owned Chevrolet provided uninsured-motorist coverage for injuries sustained while she and her children were occupants of her husband's separately owned truck.
2. Whether the policy's exclusion for a car owned by the insured or a resident relative violated public policy because the spouses maintained separate property.

HOLDINGS

1. The policy excluded uninsured-motorist coverage because the truck was owned in part by David Elliott, who was a resident relative of Gwendolyn Elliott, and the truck was not insured under the policy's uninsured-motorist coverage.
2. The exclusion was not shown to violate public policy, and the court found no jurisprudential support for invalidating it on that basis.

KEY QUOTATIONS

> *"We will not pay for bodily injury or property damage for anyone using a car not insured under this part owned by you or a resident relative."* (940)

> *"Thus, the truck does not meet the definition of an uninsured motor vehicle."* (940)

FACTUAL BACKGROUND

David and Gwendolyn Elliott were married but had entered into a prenuptial agreement establishing separate property regimes. David owned a 1985 Ram Charger truck, insured by Southern United Fire Insurance Company without uninsured-motorist coverage, while Gwendolyn separately insured her 1988 Chevrolet Beretta through Prudential with $100,000 in uninsured-motorist coverage. Gwendolyn and her two children were injured while passengers in David's truck when it struck a stopped vehicle. The Prudential policy covered the Chevrolet but contained an exclusion for bodily injury or property damage involving a car owned by the insured or a resident relative that was not insured under the policy's uninsured-motorist coverage.

PROCEDURAL HISTORY

Gwendolyn Elliott, individually and on behalf of her two minor children, sued for injuries sustained in an automobile accident and sought uninsured-motorist benefits from Prudential. Prudential moved for summary judgment, arguing that Louisiana Revised Statutes 22:1406(D)(1)(e) and the policy excluded coverage. The trial court granted the motion and dismissed the claim against Prudential. The Louisiana Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Scmdoz v. State Farm Mutual Auto. Co., 620 So. 2d 441 (La. App. 3d Cir. 1993)

- Kemer v. LaBalle, 560 So. 2d 571 (La. App. 5th Cir. 1990)

OPINION

JAFOGG, J.

JaFOGG, Judge. Plaintiff appeals a summary judgment rendered in favor of the defendant insurer upon a finding that LSA-R.S. 22:1406(D)(l)(e) precludes uninsured motorist insurance coverage. We affirm. It is undisputed that David and Gwendolyn Elliott were married on November 2, 1991. Prior to their marriage, they entered into a prenuptial agreement and elected a separate property regime.

The agreement recognized David Elliott's 1985 Ram Charger truck as his separate and paraphernal properly and Gwendolyn Elliott's 1988 Chevrolet Beretta as her separate property. David Elliott insured his truck through Southern United Fire Insurance Company. His policy provided liability coverage, but uninsured motorist coverage was rejected. Gwendolyn Elliott insured her automobile through Prudential Property and Casualty Insurance Company (Prudential).

That policy provided Mrs. Elliott with $100,000 in uninsured motorist coverage. On May 31, 1993, Gwendolyn Elliott and her two minor children, Derrick and Nicholes Hall, were passengers in her husband's truck, when the vehicle struck the rear of a truck stopped on the Interstate 10 Mississippi River Bridge in Baton Rouge. Mrs. Elliott and the two children suffered personal injuries.

Mrs. Elliott, individually and on behalf of her two minor children, sued for damages naming as defendants, among others, Southern United Fire Insurance Company and Prudential.1 As to Prudential, Mrs. Elliott sought to recover uninsured motorist benefits. Prudential responded to this lawsuit by filing a motion for summary judgment on the issue of coverage. Therein, it asserted that the provisions of LSA-R.S.

22:1406(D)(l)(e), as well as the provisions of the policy, precluded the recovery of uninsured motorist insurance. The trial court granted the defendant's motion and dismissed the plaintiffs claim against Prudential. |sWe pretermit the issue of whether the statute precludes recovery as we find the language of the insurance policy is dispositive of the issue of coverage. *940Plaintiff asserts that the trial court erred in holding that a separately issued insurance policy covering the Chevrolet which was not involved in the accident did not provide uninsured motorist coverage for her injuries.

Conversely, Prudential seeks to limit its liability by relying on an exclusion contained in its policy. In asserting that the policy precludes coverage, Prudential notes that the declaration sheet of Prudential's policy describes a 1988 Chevrolet Beretta, and no other vehicle. Prudential contends that, therefore, coverage is excluded under the following clause which appears in Part 4 of the policy, which is entitled, "PART 4 UNINSURED MOTORISTS PAC 4/LA (ED.

1/88) IF YOU ARE HIT BY A MOTOR VEHICLE THAT IS UNINSURED OR UNDER-INSURED”: LOSSES WE WILL NOT PAY FOR {PART 4) CARS OWNED BY RESIDENT RELATIVES We will not pay for bodily injury or property damage for anyone using a car not insured under this part owned by you or a resident relative. It is undisputed that the truck involved in the accident was owned, in part, by Mr. Elliott.

Furthermore, under the definitions section of the policy the term “resident relative” is defined as “someone who lives in your household and is related to you by blood, marriage, adoption or is a ward or foster child.” Thus, the truck does not meet the definition of an uninsured motor vehicle. Mrs. Elliott attacks the policy provision as being against public policy which “promotes uninsured motorist coverage and allows married individuals to own separate property.” However, she cites no jurisprudence in making this argument and our review of the caselaw leaves us with no support for this proposition.

Rather, we find jurisprudential support for the converse argument. See Scmdoz v. State Farm Mutual Auto. Co., 620 So.2d 441 (La.App. 3d Cir.1993) (wherein similar exclusionary language withstood assertions that it violated public policy); see also Kemer v. ⊥4Laballe, 560 So.2d 571 (La.App. 5th Cir.1990).

For the foregoing reasons, we affirm the judgment of the trial court. Costs are to be borne by the appellant. AFFIRMED.. The lawsuit entitled “Barry Scruggins vs. David Elliott, et al", suit number: 25,817, Division "B”, was subsequently transferred and consolidated with the suit filed by Gwendolyn Elliott.