DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Direct General Ins. Co. v. Vreeman

943 So. 2d 914 (Fla. Dist. Ct. App. 2006) · No. No. 1D05-5625 · Decided December 1, 2006

SUMMARY

The Florida First District Court of Appeal held that Direct General Insurance Company was not required to provide personal injury protection coverage to passengers injured in an Enterprise rental vehicle. The policy did not cover the injured parties or the rental vehicle, and the rental agreement's coverage-shifting language could not create coverage where none existed under the policy.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Hawkes, J.; Allen, J.; Benton, J.
JURISDICTION	Florida
DECIDED	December 1, 2006
DOCKET	No. 1D05-5625
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct General appealed an order granting Enterprise Leasing Company summary judgment in a declaratory judgment action concerning which party had primary responsibility for personal injury protection coverage.
STANDARD OF REVIEW	De novo review of the trial court's construction of the insurance policy and Florida Motor Vehicle No-Fault Law, including its grant of summary judgment.
PRECEDENTIAL VALUE	Published opinion; precedential within the Florida First District Court of Appeal subject to later treatment.
PARTIES	Direct General Insurance Company v. Aurea Vreeman, Julio Monsanto, Elizabeth Leandry, Armando Leandry, Enterprise Leasing Company, Larry Rene Schneider

TOPICS

insurance coverage · insurance · statutory interpretation · contract interpretation · appellate procedure

PRACTICE AREAS

insurance · insurance coverage · uninsured motorist

QUESTIONS PRESENTED

1. Whether Direct General's PIP policy extended coverage to Elizabeth and Armando Leandry while they occupied an Enterprise rental vehicle.
2. Whether the primary-coverage provision in the rental car agreement, pursuant to section 627.7263, Florida Statutes, could shift Enterprise's statutory PIP obligation to Direct General when Direct General's policy did not otherwise provide valid and collectible coverage.

HOLDINGS

1. The Leandrys were not entitled to PIP coverage under the policy provision covering the named insured or a relative of the named insured while occupying any motor vehicle because they were neither named insureds nor relatives of a named insured.
2. The Enterprise rental vehicle was not an insured motor vehicle under Direct General's policy because it was owned by Enterprise, was not listed on the policy, and no premium had been charged for it.
3. The rental car agreement could not create valid and collectible PIP coverage where Direct General's policy otherwise provided none, and it therefore could not shift Enterprise's PIP obligation to Direct General.

KEY QUOTATIONS

> *"The coverage shifting language of the rental car agreement cannot serve to create coverage where none otherwise exists."* (943 So. 2d at 917)

> *"The rental car agreement cannot create coverage merely by naming Appellant's policy as primary on the rental car, regardless of the identity or number of additional drivers Enterprise may wish to authorize to drive their vehicles."* (943 So. 2d at 917)

FACTUAL BACKGROUND

Direct General issued Aurea Vreeman a policy providing PIP coverage for a 1996 Saturn and later added another vehicle and identified Julio Monsanto and Christine Vreeman as additional or principal drivers. Monsanto rented a vehicle from Enterprise, listed Direct General's policy number in the rental agreement, and authorized Elizabeth Leandry to drive. Elizabeth and Armando Leandry were injured in an accident while occupying the Enterprise rental vehicle, and Enterprise paid approximately $20,000 for damages. The trial court concluded that Direct General's policy and section 627.7263 made Direct General's PIP coverage primary.

PROCEDURAL HISTORY

Direct General filed a declaratory judgment action seeking a determination whether Enterprise's or Direct General's PIP coverage was primary after Enterprise paid approximately $20,000 to or on behalf of Elizabeth and Armando Leandry. The trial court held that section 627.7263, Florida Statutes, and the rental agreement shifted the primary PIP obligation to Direct General and required reimbursement to Enterprise. The First District reversed and remanded with directions to enter judgment for Direct General.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Reverse the summary judgment and remand with directions to enter judgment in favor of Direct General.

CASES CITED

- Progressive Express Ins. Co. v. Devitis, 924 So. 2d 878, 879-880 (Fla. 4th DCA 2006)
- Allstate Ins. Co. v. Morgan, 870 So. 2d 2 (Fla. 2d DCA 2003)
- Am. Auto. Ins. Co. v. Pajor, 316 So. 2d 612 (Fla. 4th DCA 1975)

OPINION

PER CURIAM.

943 So. 2d 914 (2006) DIRECT GENERAL INSURANCE COMPANY, Appellant, v. Aurea VREEMAN, Julio Monsanto, Elizabeth Leandry, Armando Leandry, Enterprise Leasing Company, Larry Rene Schneider, Appellees. No. 1D05-5625. District Court of Appeal of Florida, First District. December 1, 2006. *915 Anthony J. Russo, Esq., R. Steven Rawls, Esq., and Ryan K. Hilton, Esq., Butler Pappas Weihmuller Katz Craig, LLP, Tampa, for Appellant.

Dennis R. Schutt, Esq., and Brian A. Mills, Esq., Schutt, Schmidt, Burnett, and Noey, Jacksonville, for Appellees. HAWKES, J. Appellant, Direct General Insurance Company, appeals the trial court's order granting summary judgment in favor of Enterprise Leasing Company.

The trial court held that, pursuant to section 627.7263, Florida Statutes, Appellant had the primary responsibility to provide personal injury protection (PIP) insurance coverage to Elizabeth and Armando Leandry for injuries received while driving a rental car owned by Enterprise, and that, since Enterprise had paid $20,000 in satisfaction of Appellant's PIP obligation, Appellant was required to reimburse Enterprise.

On appeal, Appellant argues the trial court erred by finding the policy issued by Appellant extended PIP coverage to the Leandrys. Specifically, Appellant argues its policy definitions defeat Enterprise's effort to shift their statutory obligation to provide PIP coverage on the rental car onto Appellant.

We agree. Accordingly, we reverse and remand with directions to enter judgment in favor of Appellant. I. FACTS Appellant issued an insurance policy to Aurea Vreeman, providing coverage for a 1996 Saturn SL2. The policy included PIP coverage. Vreeman later executed an Endorsement Request, which added coverage for an additional car, and her friend, Julio Monsanto, and her daughter, Christine, as "additional drivers" of the vehicles covered by the policy.

Appellant issued an Amended Policy Declarations page identifying Vreeman as a "named insured," and Christine Vreeman and Monsanto as "principal drivers." Monsanto was neither married to, nor otherwise related to Vreeman.

After Monsanto was identified as an "additional driver" on the Declarations Page, he rented a car from Enterprise, and listed Elizabeth Leandry as an additional driver under the rental agreement. The Leandrys are not related to anyone identified in the insurance policy Appellant issued to Vreeman. Monsanto listed Appellant's policy number under that portion of the rental car agreement providing the "valid and collectible liability insurance and personal injury protection insurance of any authorized rental or leasing driver is primary...."

Ms. Leandry then drove the rental car with her husband Armando Leandry as a passenger and, while driving, turned in front of another car, causing an automobile accident. Both of the Leandrys sustained injuries as a result of the accident. Enterprise paid approximately $20,000 to or on behalf of the Leandrys, for damages stemming from the accident. Appellant filed a declaratory judgment action seeking a determination as to whether Enterprise's or Appellant's PIP coverage was primary.

Ultimately, the trial court held the PIP statute and the rental car agreement language shifted the primary PIP obligation to Appellant. The trial court erred. II. THE LANGUAGE OF THE PIP POLICY The PIP portion of the insurance policy issued by Appellant to Vreeman states Appellant "will pay, in accordance with the Florida Motor Vehicle No Fault Law," for specified damages "caused by accident arising out of the ownership, *916 maintenance or use of a motor vehicle and sustained by... you or a relative while occupying a motor vehicle... or... any other person while occupying the insured motor vehicle...."

(Emphasis added). The PIP portion of Appellant's insurance policy provided the following definitions: "You" is defined as "the Policyholder named on the Declarations Page and spouse, if living in the same household." "Insured motor vehicle" is defined as "a motor vehicle of which you are the owner and with respect to which security is required to be maintained under the Florida Motor Vehicle No Fault Law, and for which a premium is charged."

"Named insured" is defined as "the person or persons named on the Declarations Page of the policy and, if an individual, shall include the spouse if a resident of the same household." Appellant must provide PIP coverage to the Leandrys only if they come within the terms of the policy.

The policy obligates Appellant to provide PIP coverage in either of two situations. In the first situation, PIP coverage is provided to the "named insured" or a relative of a "named insured" when these individuals are occupying any motor vehicle.

The Leandrys are not named insureds nor relatives of a named insured on the policy Appellant issued to Vreeman. Since the Leandrys are not named insureds, they are not entitled to coverage merely because they suffered damages while "occupying a motor vehicle." Consequently, Appellant incurs no obligation to provide PIP benefits to the Leandry's under the first provision.

In the second situation, the policy provides PIP coverage to any person who occupies "the insured motor vehicle." Under the policy, only a vehicle owned by "you," meaning Vreeman, for which a premium was collected, could qualify as an "insured motor vehicle." Since Enterprise owned the vehicle the Leandrys were driving, and the rental car was not listed on the policy Appellant issued to Vreeman, the rental car could not qualify as an "insured motor vehicle" as that term is defined by Appellant's policy.

Thus, Appellant incurs no obligation to provide PIP coverage to the Leandrys under the second provision. III. THE RENTAL CAR AGREEMENT Enterprise seeks to avoid the policy language by relying on the coverage shifting language of the rental car agreement.

The language of the agreement meets the requirements of section 627.7263, Florida Statutes. This language makes any "valid and collectible liability insurance or personal injury protection insurance of any authorized rental or leasing driver" primary. Id. Ms. Leandry is the authorized driver of Enterprise's car and she and her husband are the ones seeking benefits from Appellant's policy.

Appellant's policy never extended "valid and collectible" PIP coverage to the Leandrys. The coverage shifting language of the rental car agreement cannot serve to create coverage where none otherwise exists. See Progressive Express Ins. Co. v. Devitis, 924 So. 2d 878, 879-880 (Fla. 4th DCA 2006); see also Allstate Ins. Co. v. Morgan, 870 So. 2d 2 (Fla. 2d DCA 2003) (finding Morgan not entitled to PIP benefits because she was not in an "insured motor vehicle" as defined in the policy's PIP definitions).

Even if the rental car agreement language purported to create coverage where none otherwise existed, an agreement between Enterprise and Monsanto is incapable of altering Appellant's contractual obligations. See Am. Auto. Ins. Co. v. Pajor, 316 So. 2d 612 (Fla. 4th DCA 1975) (holding *917 stranger to an insurance contract could not unilaterally alter contract's terms by issuing a replacement policy).

IV. CONCLUSION Under the facts of this case, Appellant is not required to provide the Leandrys with PIP coverage pursuant to the Florida Motor Vehicle No Fault Law or by the terms of the policy it issued to Vreeman.

The rental car agreement cannot create coverage merely by naming Appellant's policy as primary on the rental car, regardless of the identity or number of additional drivers Enterprise may wish to authorize to drive their vehicles.

The trial court erred as a matter of law in construing the insurance contract language and the Florida Motor Vehicle No Fault Law to require Appellant to provide the Leandrys with PIP coverage. REVERSED and REMANDED with directions. ALLEN, and BENTON, JJ., concur.