

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO: 2016-CP-23-04327

Nationwide Insurance Company of America,

Plaintiff,

v.

Kristina Knight, Individually and as Personal Representative of the Estate of Daniel P. Knight,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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SC Court of Appeals

This matter came before the Court for a hearing on Monday, May 22, 2017. Present at the hearing was Adam J. Neil of Murphy & Grantland, P.A. representing Nationwide Insurance Company of America ("Nationwide") and Edwin L. Turnage of Harris & Graves, P.A. representing Kristina Knight and the Estate of Daniel P. Knight (collectively "Knight"). Under consideration by the Court were the parties' cross-motions for summary judgment. Having reviewed the submissions of the parties, considered the arguments of counsel, and studied the law of this state, the Court grants Nationwide's motion for summary judgment and denies the cross-motion filed by Knight.

This declaratory judgment action arises from an automobile accident that occurred on February 2, 2016. Daniel P. Knight died as a result of injuries he sustained in the accident. Daniel was driving a motorcycle in the accident, which was insured by a policy of insurance issued by a company that is not a party to this case. Nationwide provided automobile insurance coverage to Knight's wife (who was then his fiancée) for a 1996 Ford Ranger that was not involved in the accident. Kristi and Daniel were married at the time of his death. Knight's Estate collected underinsured motorist ("UIM") benefits from other sources and then made a claim for underinsured motorist benefits from Nationwide. Nationwide denied the claim for UIM benefits because Daniel Knight was specifically excluded from coverage under the Nationwide policy at Kristi's written request.

When she applied for the policy, Kristi signed Nationwide's Excluded Driver Form, which is entitled "Voiding Auto Insurance While Named Person Is Operating Car." The endorsement states, "With this endorsement, all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle." When she executed the endorsement, Kristi represented that Daniel had "obtained insurance or other security to operate motor vehicles."

There are no disputed issues of material fact in this case. Kristi signed the Excluded Driver Form, and Daniel Knight was listed as an excluded driver on the policy at the time of the February 2, 2016 accident. The parties do not dispute the terms of the Excluded Driver Form, only its legal effect.

The General Assembly expressly permits policyholders to exclude specific individuals from coverage provided by automobile insurance policies issued in the State of South Carolina. *See* S.C. Code Ann. § 38-77-340. South Carolina's excluded driver statute provides in pertinent part:

Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340.

Under the terms of the statute, an excluded driver endorsement is valid and enforceable where the form has been approved by the South Carolina Department of Insurance, the endorsement names the excluded driver, and the named insured declares either that the excluded driver has turned in his license to the DMV or has an appropriate policy of insurance from another source. Each of these elements is satisfied by Nationwide's form. Nevertheless, Knight contended that Nationwide incorrectly denied the claim for UIM benefits.

Knight first argued that the Excluded Driver Form did not apply to this UIM claim because Daniel Knight was a statutory insured. Knight asserted that the Excluded Driver Form cannot apply to coverage required by statute. However, the South Carolina Court of Appeals addressed this question in *Lincoln General Ins. Co. v. Progressive Northern Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013), and held the exclusion applies to the coverage provided by the policy even when the excluded driver is a statutory insured. Moreover, UIM coverage is not mandatory coverage in South Carolina.

Second, Knight argued that despite the endorsement, the Nationwide policy cannot exclude UIM coverage because the language of §38-77-340 only applies to liability coverage. Knight's position is unsupported by the language in Nationwide's endorsement and by the statutory language. The plain language in the endorsement shows that the excluded driver endorsement applies to all coverage provided under the policy issued to Kristi. Since the endorsement applies to all coverages, the only question is whether an exclusion that is so broad is allowed by the statute. The statute provides that the named driver endorsement is applicable to "a policy of liability insurance." In this context, a policy of liability insurance must encompass all coverages provided to the policyholder because UIM coverage cannot be sold as a stand-alone policy. *See* §38-77-160. In South Carolina there is no policy of Underinsured Motorist Insurance or a policy of Personal Injury Protection Insurance. All of those types of coverage are attached to the policy of liability insurance. *See* § 56-9-20(5) (defining "Motor Vehicle Liability Policy" to include a policy including the coverages described within §§38-77-140–38-77-230, which includes underinsured motorist coverage).

Lastly, Knight argued that applying the endorsement to a claim for UIM benefits is contrary to the public policy of South Carolina because it limits the portability of the UIM coverage. The Court disagrees. Nationwide does not dispute that Daniel might have collected UIM benefits were it not for Kristi's execution of the excluded driver endorsement. In other words, Nationwide does not contend

that Daniel cannot collect UIM coverage because he was not operating the truck insured by Nationwide. Rather, the coverage is not available because Kristi chose to exclude it when Daniel was operating a vehicle.

The public policy of South Carolina actually supports Nationwide's application of the excluded driver endorsement to UIM coverage. In South Carolina an insured can only purchase UIM and UM coverage with limits up to the amount of the liability coverage limits. Thus, an individual is not allowed to protect himself from injury in an amount greater than that which he protects the public. Allowing an excluded driver to collect UIM coverage when he is explicitly and purposefully excluded from coverage for his liability to others undercuts that legitimate public policy objective.

In sum, there is no dispute as to any material fact in this case. All of the statutory requirements of § 38-77-340 have been satisfied. Therefore, the Court declares that "all coverages" in the Nationwide policy were "not in effect" at the time of the accident and Knight was specifically excluded and is not entitled to collect UIM coverage from Nationwide.

Nationwide's motion for summary judgment is hereby **GRANTED**.

HONORABLE WILLIAM H. SEALS, JR.
Presiding Judge



Greenville Common Pleas

Case Caption: Nationwide Insurance Company Of America vs. Kristina Knight ,
defendant, et al
Case Number: 2016CP2304327
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157