

STATE OF MICHIGAN
IN THE SUPREME COURT

DAWN MARIE MILLER,

Plaintiff-Appellant,

and

**MICHIGAN DEPARTMENT OF
COMMUNITY HEALTH**

Intervening Plaintiff,

vs.

**THE PROGRESSIVE CORPORATION,
PROGRESSIVE CASUALTY INSURANCE
COMPANY, PROGRESSIVE CLASSIC
INSURANCE COMPANY, PROGRESSIVE
MICHIGAN INSURANCE COMPANY,**

Defendants,

and

**CITIZENS INSURANCE COMPANY OF
AMERICA,**

Defendant-Appellee.

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Supreme Court No. _____

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Washtenaw County Circuit Court
Case No.: 02-284-NF

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DEFENDANT/APPELLEE'S BRIEF IN RESPONSE
TO APPLICATION FOR LEAVE TO APPEAL

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BRIEF OPPOSING APPLICATION FOR LEAVE TO APPEAL

Statement of Facts

The Washtenaw County trial court and the Court of Appeals concluded this plaintiff is not entitled to personal injury protection benefits or underinsurance coverage under a policy naming her parents alone as named insureds, when plaintiff did not live with her parents, and their covered vehicles were not involved in the accident. Furthermore, the courts determined that the doctrine of equitable estoppel did not provide relief. The decisions of the trial court and appellate court were well supported by long standing precedent and the facts of this case and cannot be interpreted as clearly erroneous or in conflict with precedent.

On March 8, 2001, Dawn Miller sustained injuries in an automobile accident while riding as a passenger in a vehicle owned and operated by her fiancée, Richard O’Palko, Jr. No other vehicles were involved in the collision. Mr. O’Palko had insured his vehicle under a policy issued by an entity of the Progressive Insurance Company. The accident occurred while Dawn Miller and her fiancée were traveling to Michigan to visit Ms. Miller’s parents. Eighteen months prior to this accident, Dawn Miller moved to Maryland to live with her fiancée and his parents. The sworn testimony provided by the Appellant confirmed that she moved to Maryland permanently, she obtained employment in Maryland and she planned to marry and raise a family in that state.

Citizens insured a vehicle which had Ms. Miller’s parents, Steven and Sallie, identified as the “named insured”. Dawn Miller was identified only as an “occasional driver” of the vehicle in a section of the renewal endorsement that is specifically excluded from the policy. (Exhibit A). Following the accident, both Citizens and Progressive were notified that Dawn Miller would be seeking personal protection benefits as a result of the accident. Additionally, Dawn Miller sought

underinsured motorist benefits under the Citizens policy.

In her deposition, Ms. Miller provided the following sworn testimony regarding her residency at the time of this accident:

1. On March 8, 2001, her residential address was 5345 Long Beach Drive, Saint Leonard, Maryland. (Exhibit B; Deposition p. 6).
2. Ms. Miller had lived in Saint Leonard, Maryland for a “year and a half” prior to her accident. (Exhibit B; Deposition p. 7).
3. She lived with her fiancé and his mother and stepfather. (Exhibit B; Deposition p. 7).
4. When she moved to Maryland, she intended to start a life with her fiancé and get married. (Exhibit B; Deposition p. 9).
5. She planned to stay in Maryland. (Exhibit B; Deposition p. 9).
6. She lived in Maryland from July of 1999 until March 8, 2001 (Exhibit B; Deposition P. 11).
7. She obtained a Maryland driver’s license. (Exhibit B; Deposition p. 12).
8. She obtained employment in Maryland. (Exhibit B; Deposition p. 12).
9. She never had any gaps in her employment where she left Maryland and worked elsewhere. (Exhibit B; Deposition p. 15).
10. She used the Maryland address on her 1999 and 2000 tax returns. (Exhibit B; Deposition p. 18).
11. She had credit cards with Capital One and Kohl’s, both used her Maryland address. (Exhibit B; Deposition 19).
12. She had a library card in Maryland. (Exhibit B; Deposition p. 20).
13. Her fiancé had no plans to move. (Exhibit B; Deposition p. 21).

14. As far as the life she planned with her fiancé, she planned to live in Maryland, raise a family in Maryland, and stay in Maryland. (Exhibit B; Deposition p. 21).

The Citizens policy did not identify Dawn Miller as a “named insured”. Furthermore, she did not reside in the household of the “named insured”, thus, Dawn Miller is precluded from receiving any benefits under the Citizens policy.

Argument

**THE TRIAL COURT AND APPELLATE COURT CORRECTLY DISMISSED
APPELLANT’S COMPLAINT AGAINST CITIZENS BECAUSE DAWN MILLER WAS
NEITHER A NAMED INSURED AT THE TIME OF THE ACCIDENT NOR WAS SHE A
RESIDENT OF THE MILLER’S HOME AT THE TIME OF THE ACCIDENT**

Named Insured

Citizens will pay underinsured motorist benefits under the following condition:

We will pay compensatory damages which an “insured” is legally obligated to recover from the owner of an “underinsured motor vehicle” because of “bodily injury”:(Exhibit C)

Thus a person must first be an “insured” under the policy in order to be eligible for underinsured motorist coverage.

In the DEFINITIONS section of the underinsured motorist endorsement an “insured” is defined as follows:

A. “Insured” as used in this Section means:

1. You or any “family member”

Both the terms “you” and “family member” are defined in the DEFINITIONS section of the main policy as follows:

A. Throughout this policy, “you” and “your” refer to:

1. The “named insured” shown in the declarations...

G. “Family Member” means a person related to you by blood, marriage or adoption, who is a resident of your household.

(Exhibit D

Thus, in order to qualify for underinsured motorist benefits under the Citizens policy a person must be either 1) the “named insured shown in the Declarations”, or 2) a relative of the named insured, living in the same household as the named insured.

The Michigan No Fault Act delineates the requirements than an injured person must satisfy in order to recover personal injury protection benefits:

Except as provided in subsection (2) (3) and (5) a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person’s spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. MCLA 500.3114(1).

It is well settled in Michigan law that the term “named insured” and the term “person named in the policy” contained in the No Fault Act are synonymous.

In at least four previous cases, the Michigan Court of Appeals has held that the phrase “the person named in the policy” is synonymous with the term “named insured”. Cvengros vs Farm Bureau, 216 Mich App 261 (1996); Harwood vs. Auto-Owners Ins Co, 211 Mich App 249 (1995),

lv app den 451 Mich 874 (1996); Transamerica Ins Corp of America vs Hastings Mutual Ins Co, 185 Mich App 249 (1990), lv app den, 437 Mich 1010 (1996); and Dairyland Ins Co vs Auto-Owners Ins Co, 123 Mich App 674 (1983). See: R. Logeman, Michigan No-Fault Automobile Cases Law and Practice, Section 3.4 (3rd ed. 2002). Thus, the phrase “person named in the policy”, as it appears in the statute governing this litigation has been thoroughly examined by the Michigan courts, with the decisions holding that the phrase is synonymous with “named insured”.

In addition to the statutory requirements, the Citizens policy provides the following definitions regarding No Fault benefits:

“Insured” is defined as:

You or any “family member” injured in an “auto accident”.

The word “you” is defined as:

1. The “named insured” shown in the Declarations; and
2. The spouse if a resident of the same household.

The term family member is defined as :

A person related...by blood, marriage or adoption who is a resident of your household.

(Exhibit D).

The Citizens declarations for the policy involved in this lawsuit contained the following line, “Named Insured: Miller, Steven J & Sallie A”. Dawn Miller is not identified. Thus, it is clear that she is not a named insured. Furthermore, the identification of her as a “casual driver” is insufficient to convert her to a “named insured”.

In Dairyland Ins Co vs Auto-Owners Ins Co, 123 Mich App 674 (1983) the Court of Appeals considered the phrase “person named in the policy” from MCL 500.3114(1). In the case, an issue arose as to whether a woman, endorsed as a driver on a no-fault policy issued to her mother,

who lived elsewhere, was a person named in her mother's policy. It was found that the woman was not a person named in her mother's policy. The Court of Appeals reasoned as follows:

We further believe it illogical to interpret a code designation, dealing with a risk classification, as the equivalent of naming an insured. Policy language must be construed according to its ordinary, plain meaning. Rowland vs Detroit Automobile Inter-Ins Exchange, 388 Mich 476; 201 NW2d 792 (1972). Under plaintiff's interpretation, sons or daughters leaving their parents' household to establish new domiciles would carry with them coverage from their parents policy and extend it to their spouse or other relatives in their new household. This interpretation requires a greatly strained construction of the statutory language and would substantially expand the insurer's exposure without the insurer's having any practical means of calculating the risk. Dairyland, supra at 685-686.

The Dairyland rationale was adopted in Transamerica Ins vs Hastings Inc, 185 Mich App 249 (1990), lv app den, 437 Mich 1010 (1996). Specifically, where a young man was listed on a policy as one of several drivers of a vehicle, but not as a named insured, he was not a person named in the policy, even though he was a co-owner of the vehicle and lived with his parents.

Transamerica Ins vs Hastings Ins, Id. The court stated that to hold otherwise would expand the insurer's exposure to a point beyond justifiable limits. This point, which fits precisely into our present situation with Dawn Miller, was explained in the brief prepared on behalf of Hasting:

Under Transamerica's theory, Scott (the injured person) will be an insured under the Hastings Mutual policy wherever he goes and whatever he does. If Scott marries and leaves home to live with his spouse, he will continue to be insured because he is the "person named in the policy". In addition, Scott's spouse, their children, and any relative domiciled in the same household will be entitled to benefits under Hastings

Mutual's policy... Under Transamerica's reading of "the person named in the policy" coverage has now been extended from one household-that of the named insureds-to three households and several more people-probably more people than could reasonably be expected to reside in the Curtiss household. Is this what Hastings Mutual, the Curtisses or the Legislature intended? It hardly seems likely. Transamerica Ins vs Hastings Ins, 185 Mich App 249, 254-255 (1990).

In Cvengros vs Farm Bureau, 216 Mich App 261 (1996), the court followed Transamerica, Dairyland, and Harwood and recognized that the mere listing of a person as a designated driver on a no-fault policy does not make the person a "named insured". The policy language in Cvengros differed from the case at bar. More specifically, that policy defined a "named insured" more broadly by including "the individual named in the declarations". Thus, the plaintiff's girlfriend qualified as a "named insured", even though that specific designation was not placed next to her name, because she was identified on the declaration sheet. The Citizens policy, however, is more specific and states that the only way to receive benefits through the "named insured" provision is to be specifically shown as a "named insured" in the declarations. Similarly, in Harwood vs Auto-Owners Insurance Co, 211 Mich App 249 (1995), it was found that a person who was merely a designated driver was not a named insured under a policy.

As noted above, the Declarations of the policy issued to Steven Miller identified the "named insured" as Steven Miller and Sallie Miller. Dawn Miller is listed only as an "occasional driver" in a section of the endorsement that is clearly excluded from the policy. The definitions in the Citizens policy and the cases referenced above make it clear that Dawn Miller was not a named insured and thus not a "person named in the policy" as that term has been defined. Consequently, she cannot satisfy the "named insured" requirements under the No Fault Act, the PIP provisions of the Citizens

policy or underinsured provisions of the Citizens policy.

Domicile

In addition to failing to qualify as a named insured, Dawn Miller does not qualify as a resident relative. In regard to residency, as set forth in the case of Goldstein vs Progressive Cas Ins Co, 218 Mich App 105, 111-112 (1996), lv app den, 455 Mich 869 (1997), the relevant factors to be considered in determining whether a person is domiciled in the same household as the insured include:

- (1) the subjective or declared intent of the person to remain in the place contended to be the domicile;
- (2) the formality of the relationship between the person and the members of the household;
- (3) whether the place where the person lives is the same house, within the same cartilage, or upon the same premises; and
- (4) the existence of another place of lodging by the person alleging residence. Workman v DAIIE, 404 Mich 477, 496-497 (1979).

All relevant factors must be considered in ascertaining domicile. Montgomery v Hawkeye Ins Co, 52 Mich App 457 (1974). In Workman, supra, which also cited several cases from “our sister state courts”, the court stated that the four factors specified were merely “among the relevant factors” to be considered. Workman at 496.

The Michigan Court of Appeals has looked favorably on the residency decisions of other courts. Specifically, it has been stated:

In Waller vs Rocky Mountain Fire & Casualty co, 272 Or 69; 535 P2d 530 (1975), the court held that the named insured’s son, who had prior to the accident moved to his friend’s parents’ house, was not a “resident” of his father’s home, despite the fact that the son had left clothing with his parents, had not changed his mailing address, had given his parents’

address on an employment application, and returned to his parents' home most weekends. The finding of non-residency was upheld in part on the son's testimony that he planned to move back with his parents in the future on only a very temporary and indefinite basis. In Cotton States Mutual Ins Co vs McEachern, 135 Ga App 628; 218 SE2d 645 (1975), the court held that the son of a named insured who had moved from his father's home six weeks previously was not a resident of his father's household, despite the fact that he and his wife frequently took their meals at his father's home. The court stated that the mere intent to change domicile may suffice if the individual takes some action to remove himself from his parents' home. In Tencza vs Aetna Casualty & Surety Co, 111 Ariz 226; 527 P2d 97 (1974), the court held that the named insured's 18-year-old stepdaughter who had moved away from his household two months before did not qualify as domiciliary, since all relevant indicia pointed to her emancipation. Relevant factors noted by the court included her desire to escape friction between her and her brother, the absence of parental guidance following her move to another state, the absence of any intent on her part to return, her endeavors to support herself, and the fact that she was at an age when many young women are considered emancipated.

It is worthwhile to reiterate the admissions of the Appellant regarding her residency:

1. On March 8, 2001, her residential address was 5345 Long Beach Drive, Saint Leonard, Maryland. (Exhibit B, Deposition p. 6).
2. Ms. Miller had lived in Saint Leonard, Maryland for a "year and a half" prior to her accident. (Exhibit B, Deposition p. 7).
3. She lived with her fiancé and his mother and stepfather. (Exhibit B, Deposition p. 7).
4. When she moved to Maryland, she intended to start a life with her fiancé and get

- married. (Exhibit B, Deposition p. 9).
5. She planned to stay in Maryland. (Exhibit B, Deposition p. 9).
 6. She lived in Maryland from July of 1999 until March 8, 2001 (Exhibit B, Deposition P. 11).
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 14. As far as the life she planned with her fiancé, she planned to live in Maryland, raise a family in Maryland, and stay in Maryland. (Exhibit B, Deposition p. 21).

The trial court concluded as follows:

As plaintiff Dawn Miller was neither a named insured at the time of the accident nor was she a resident of the Miller's home at the time of the accident, under the terms of the policy she is excluded from coverage for both no-fault benefits and under insured motorist benefits...(Exhibit E).

That decision is well supported by case law and testimony of the Appellant and it should be affirmed.

THE TRIAL COURT AND APPELLATE COURT CORRECTLY CONCLUDED THAT

THE DOCTRINE OF EQUITABLE ESTOPPEL DOES NOT APPLY

The trial court set forth a succinct analysis of the Appellant's equitable estoppel theory:

"Her position is that Citizens should be equitably estopped from denying that its policy provides either no-fault coverage or under insured motorist coverage to plaintiff because the language of the policy specifically indicates that the payment of the premiums is based upon the inclusion of Dawn Miller as an occasional driver of the insured's Chevy vehicle.

This court is not persuaded by that argument. The renewal of that declaration and endorsement states, again, "your policy premium is based on the following information which is not part of the policy". *Thus, that portion of the endorsement that identifies Dawn Miller as an occasional driver is, by its own clear language, excluded from the policy itself.* The policy itself only identifies Steven and Sally Miller as named insured. As plaintiff Dawn Miller was neither a named insured at the time of the accident nor was she a resident of the Miller's home at the time of the accident, under the terms of the policy she is excluded from coverage for both no-fault benefits and under insured motorist benefits..." (Exhibit E).

Mate vs Wolverine Mutual, 233 Mich App 14 (1998) contains facts similar to those of the case before this court. In Mate, the deceased plaintiff sought benefits under a policy in which the sole named insured was his mother's ex-husband with whom he did not live. The plaintiff claimed that Wolverine Mutual should be estopped from denying coverage based upon the "named insured" issue because the insurance agent who issued the policy did not advise that the decedent was not "fully covered" under the policy.

The court noted:

Equitable estoppel arises only “when one by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.”

The court noted that “the insured is obligated to read the policy and raise questions concerning coverage within a reasonable time after issuance.” *Id.* at 23. Consequently, the court precluded the plaintiff from asserting estoppel.

In this case, the trial court recognized that Citizens clearly identified the named insureds on its policy. Furthermore, Citizens clearly indicated that the information regarding Dawn Miller’s status as an occasional driver was not a part of the policy. If Dawn Miller had read the policy she would have determined that she was not a “named insured”. As the trial court recognized, Citizens committed no acts or representations upon which the Appellant could justifiably rely to determine she was a “named insured”. Instead, it found that she was not identified as a “named insured” and “that portion of the endorsement that identifies Dawn Miller as an occasional driver is, by its own clear language, excluded from the policy itself.” Consequently, the information used to calculate the policy premium does not provide a basis for estoppel in any manner.

RELIEF REQUESTED

The trial court and appellate court based their decisions on long standing precedent and the facts of this case. Defendant/Appellee requests that this Court affirm the dismissal of the plaintiff's case with prejudice and/or deny this application for leave to appeal.

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