IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 16, 2009 Session

# MARK BAYLESS ET AL. v. RICHARDSON PIEPER ET AL.

**Appeal from the Circuit Court for Davidson County**
**No. 05C-3547 Amanda Jane McClendon, Judge**

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**No. M2008-01073-COA-R3-CV - Filed August 26, 2009**

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Motorist was injured while in the course and scope of his employment and sued for compensatory damages. After settling with the tortfeasor's liability insurer for policy limits, the motorist used the proceeds to pay the workers' compensation subrogation interest and sought to recover the remainder of his damages from the uninsured motorist carrier. The trial court held that provisions in the uninsured motorist policy entitled the insurer to set off the full amount of workers' compensation benefits in addition to the full liability settlement motorist received to reduce its obligation under the policy. We find this results in a double offset for the uninsured motorist carrier and is prohibited by *Boyce v. Geary*, No. 01-A-01-9409-CV-00410, 1995 WL 245389, *1 (Tenn. Ct. App. Apr. 28, 1995). The judgment of the trial court is reversed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Brian Patrick Dunigan, Goodlettsville, Tennessee, for the appellants, Mark Bayless and Terri Bayless.

James Randolph Tomkins and Warren Maxey Smith, Nashville, Tennessee, for the appellees, Richardson Pieper and Unnamed Defendant State Auto Insurance Company.

## OPINION

### FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 2004, Mark Bayless was injured while acting in the course and scope of his employment when he was struck by a vehicle driven by Richardson Pieper. Mr. Bayless suffered serious injuries and Mr. Pieper was killed. Mr. Bayless and his wife Terri ("Plaintiffs") filed suit against Mr. Pieper's estate seeking compensatory damages and damages for loss of consortium

resulting from the accident.[1] The uninsured/underinsured motorist carrier, State Auto Insurance Company ("State Auto"), was named a defendant and served with Mr. Bayless's complaint.

Mr. Bayless received workers' compensation benefits in the amount of $84,937.65.[2] Mr. Bayless's employer, Crawford Door, a Tennessee corporation, intervened in the action to preserve its subrogation interest under Tenn. Code Ann. § 50-6-112(c), part of the Tennessee Workers' Compensation Act. Crawford Door sought reimbursement for benefits it paid to Mr. Bayless.

On March 25, 2007, Plaintiffs settled with Mr. Pieper's estate for $100,000, his liability insurance policy limits. In July 2007, Plaintiffs paid Crawford Door the amount of $67,000 in satisfaction of its workers' compensation subrogation lien. The Plaintiffs used proceeds from the $100,000 liability insurance settlement to pay the workers' compensation claim. The only remaining claim was against State Auto for uninsured motorist ("UM") benefits. The Plaintiffs filed a motion to determine the amount of any offset State Auto was entitled to under its policy on April 4, 2008.

The uninsured motorist insurance policy issued by State Auto[3] provided, in pertinent part:

> **Limit of Insurance**
> . . .
> No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage form . . . .
> We will not make a duplicate payment under this coverage for any element of "loss" for which payment has been made by or for anyone who is legally responsible.
> We will not pay for any element of "loss" if a person is entitled to receive payment for the same element of "loss" under any workers' compensation law, disability benefits or similar law.

The parties stipulated to Plaintiffs' damages of $225,000 and agreed State Auto was entitled to offset workers' compensation benefits of $84,937.65. However, the parties disputed what amount State Auto owed under the uninsured/underinsured motorist policy. State Auto claimed it was entitled to an offset for the workers' compensation benefits paid plus the total amount of liability insurance received because it considered these "duplicate payment" for the same element of loss. State Auto contended its liability was limited to $40,062.35 after crediting $84,937.65 and $100,000 against Mr. Bayless's damages. On the other hand, the Plaintiffs claimed State Auto was prohibited from a double offset.

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[1] The complaint originally named Mr. Pieper as defendant; an ad litem estate was opened for the deceased and substituted as a party.

[2] Of the total workers' compensation benefits, Mr. Bayless received $49,132.68 in medical benefits, $17,008.41 in temporary disability, and $18,796.56 in permanent partial disability.

[3] The policy was between State Auto and Crawford Door and covered the vehicle driven by Mr. Bayless at the time of the accident. There is no dispute that Mr. Bayless was an insured under the policy.

The trial court found the policy specifically excluded payments made by the tortfeasor's liability insurer and for workers' compensation benefits:

> The underinsured motorist policy provided by [State Auto] does not provide for offsets or reductions for liability insurance coverage maintained by [Mr. Pieper] but rather, it specifically provides that the underinsured motorist coverage will not duplicate any payments for the same element of loss for which payment has been made under the [Mr. Pieper's] liability insurance coverage.
>
> The underinsured motorist policy provided by [State Auto] does not provide for offsets or reductions for amounts payable to the Plaintiffs under any applicable workers' compensation law but rather, it specifically provides that the underinsured motorist coverage will not make payments for any element of loss paid or payable under any workers' compensation coverage law that is available to the Plaintiffs.

Mark and Terri Bayless filed a timely notice of appeal.

## ANALYSIS

The sole issue for our review is whether State Auto is entitled to a credit for both workers' compensation benefits and liability insurance benefits when a portion of the liability benefits were used to pay the workers' compensation subrogation interest. This issue is a question of law which we review de novo upon the record with no presumption of correctness as to the trial court's conclusions. *Sims v. Stewart*, 973 S.W.2d 597, 599 (Tenn. Ct. App. 1998).

State Auto relies on the language of its policy to disclaim any liability for Mr. Bayless's loss paid by the $100,000 in liability insurance and the loss paid by the $84,937.65 in workers' compensation insurance. We find State Auto's argument to be without merit since this Court has previously held that liability insurance proceeds used to reimburse a workers' compensation subrogation lien are not regarded as "duplicate" payments such that a UM carrier may claim a double offset for overlapping benefits. *See Boyce v. Geary,* No. 01-A-01-9409-CV-00410, 1995 WL 245389, *3 (Tenn. Ct. App. Apr. 28, 1995).

The legislative purpose of Tennessee's uninsured motorist statutes, Tenn. Code Ann. § 56-7-1201, *et seq.*, is "to provide an insured motorist a right of recovery under the uninsured motorist provisions of his policy only up to the statutory required minimum [of liability coverage]." *Terry v. Aetna Cas. & Sur. Co.*, 510 S.W.2d 509, 513-14 (Tenn. 1974). Provisions in uninsured motorist policies that reduce UM coverage where other coverage or benefits are available to the insured are valid as long as they do not deny payment of at least the statutory minimum to an insured. *Id.*; *Mathis v. Stacey*, 606 S.W.2d 290, 293 (Tenn. Ct. App. 1980). Based on this purpose, the General Assembly has adopted a "limited coverage" theory regarding offset provisions in the uninsured motorist statutes as opposed to the "broad coverage" theory. *Terry*, 510 S.W.2d at 513. Specifically,

the scope of UM coverage may be reduced by offsets for "(a) payments made under the liability or medical payments feature of the policy; (b) amounts paid under any workers' compensation law, disability benefits law, or similar law; and (c) all sums paid by or on behalf of persons or organizations who may be legally responsible." Phillip A. Fleissner & Paul Campbell III, TENNESSEE AUTOMOBILE LIABILITY INSURANCE § 18.2 (2007-08 ed.).

This Court addressed the issue of overlapping benefits in a factually similar case where the insured was injured in a collision while in the course and scope of his employment. *Boyce,* 1995 WL 245389 at *1. The insured, Mr. Boyce, suffered permanent partial disability, received workers' compensation benefits in the amount of $160,983 and was entitled to future medical set at $12,000 initially but to be determined in full at a later date. *Id*. at *1-*2. He was awarded the tortfeasor's liability insurance policy limits of $100,000 and, after $2,300 was paid for property damages, used $97,000 of the proceeds to reimburse the workers' compensation carrier. *Id*. at *1. The trial court declared the insured's uninsured motorist carrier, with single limit coverage of $300,000, was entitled to setoff workers' compensation benefits but not to reduce its obligation for the $97,000 payment to the workers' compensation carrier. *Id*. at *1-*2. The UM carrier relied on a provision in its policy which permitted the insurer to reduce its liability for payments made "by or on behalf of persons or organizations who may be legally responsible. . . . [and a]ll sums paid or payable under any workers' compensation, disability benefits or any similar law." *Id*. at *2. The UM carrier argued it was entitled to reduce its liability for the sums paid in satisfaction of the workers' compensation claim plus the amount Mr. Boyce received from the liability insurer.

The *Boyce* Court was asked to apply Tenn. Code Ann. § 56-7-1205, which remains unchanged, regarding uninsured motorist coverage and its effect on policy limits, with particular emphasis on the last sentence:

> Nothing contained in this part shall be construed as requiring the forms of coverage provided pursuant to this part, whether alone or in combination with similar coverage afforded under other automobile liability policies, to afford limits in excess of those that would be afforded had the insured under the policies been involved in an accident with a motorist who was insured under a policy of liability insurance with the minimum limits described in § 55-12-107, or the uninsured motorist liability limits of the insured's policy if the limits are higher than the limits described in § 55-12-107. *The forms of coverage may include terms, exclusions, limitations, conditions, and offsets that are designed to avoid duplication of insurance and other benefits*.

Tenn. Code Ann. § 56-7-1205 (emphasis added). After weighing the language of the policy against the language and intent of the statute, the Court held that the insurer could reduce its obligation by payments made by those legally responsible for the loss "but only where such a reduction 'avoid[s] duplication of insurance and other benefits.'" *Id*. at 3. In other words, the UM carrier was not entitled to an offset for liability insurance proceeds that were used to satisfy the workers' compensation subrogation interest. A holding to the contrary would cause the insured to suffer a

double reduction in benefits resulting from a single settlement payment made by the tortfeasor's liability insurer. *Id*.

The "duplication" language of the statute has been interpreted to mean a prohibition against an insured "receiving payment under the uninsured motorist coverage where such payment, when added to the other payments received by insured, whether received from 'insurance or other benefits' would exceed the amount of insured's actual damage and, therefore, be in effect a duplication." *State Farm Mut. Auto. Ins. Co. v. Barnette*, 485 S.W.2d 545, 547 (Tenn. 1972). The purpose of this provision is to prevent the insured from receiving a windfall in benefits, not to empower insurers to receive a windfall in offsets or eliminate benefits for which they are obligated to pay. Our holding in *Boyce* makes clear that an uninsured/underinsured motorist insurer is not entitled to a double offset of benefits. *See Sims*, 973 S.W.2d at 601.

Under the terms of the policy at issue in this case, State Auto will not duplicate payment for medical expenses or elements of loss paid for by workers' compensation. It also will not duplicate payment for elements of loss for which Mr. Pieper's liability insurance has paid. Since Mr. Bayless paid the workers' compensation subrogation lien with liability insurance proceeds, he received a net benefit of $33,000 and there is no possibility that he will receive a duplication of benefits or a duplication in payments. Just as in *Boyce*, if we were to agree with State Auto's argument in this case, we would "ignore language included in the statute to protect the rights of insureds against the otherwise unrestricted power of insurance companies to impose on them limitations and offsets which could effectively eliminate the benefits to which their premium payment entitles them." *See Boyce*, at *3. The Plaintiffs are entitled to a judgment in the amount of $107,062.35 which represents total damages of $225,000 less offsets in the amounts of $84,937.65 for workers' compensation benefits and $33,000 for the Bayless's net liability recovery.

## CONCLUSION

The judgment of the trial court is reversed. The cause is remanded for proceedings consistent with this opinion. Costs of appeal are assessed against Appellee State Auto Insurance Company, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE