SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4542-16T2

MELISSA P. SILVERMAN,

Plaintiff-Appellant/
Cross-Respondent,

v.

ROBERT H. DIGIORGIO and
ROBERT V. DIGIORGIO,

Defendants/Third-Party
Plaintiffs-Respondents/
Cross-Appellants,

v.

NEW JERSEY MANUFACTURERS
INSURANCE COMPANY,

Third-Party Defendant-
Respondent,

and

AMERICA MODERN HOME INSURANCE
COMPANY,

Third-Party Defendant.

Submitted March 12, 2018 – Decided April 2, 2018

Before Judges Sabatino and Ostrer.

On appeal from Superior Court of New Jersey, Law Division, Somerset County, Docket No. L-0915-14.

Del Vacchio O'Hara, PC, attorneys for appellant/cross-respondent (Richard Del Vacchio, on the briefs).

Wronko Loewen Benucci, attorneys for respondents/cross-appellants, joins in the brief of appellant/cross-respondent.

Kennedys CMK LLP, attorneys for respondent (John P. Gilfillan and Katrine L. Hyde, of counsel and on the brief).

PER CURIAM

This appeal involves an insurance coverage dispute. Plaintiff Melissa P. Silverman was a passenger in a specialty car, a 1967 Ford Shelby Cobra, driven by defendant Robert H. DiGiorgio. She was badly injured when the driver lost control of the car and it struck a utility pole. The car burst into flames and both plaintiff and the driver were extracted from the vehicle.

The Shelby was owned by the driver's father, defendant Robert V. DiGiorgio. The father allowed the son, who lived with his parents, to have access to the car whenever he wanted to drive it so long as the father was not using it. As a specialty car, the Shelby had historic vehicle "QQ" license plates. The car was driven only a few hundred miles each year.

The Shelby was insured on a $500,000 policy with American Modern Home Insurance Company ("American"), with an annual 3,000

mile usage restriction. In addition to the American policy, the son's mother Jean had a $500,000 auto policy with New Jersey Manufacturers Insurance Company ("NJM") listing four other vehicles of the household as "covered autos," but did not list the Shelby.

Plaintiff sued the father and son for personal injuries. Those defendants, in turn, brought third-party complaints against American and NJM seeking a declaration of coverage for the accident.

Plaintiff settled with defendants for $1 million, memorializing that sum in a consent judgment. American paid an unspecified amount to plaintiff, and was dismissed from the case.

NJM moved for summary judgment, arguing that the terms of its policy did not cover the son's accident. Assignment Judge Yolanda Ciccone granted the motion, construing the NJM policy to exclude the son's operation of the Shelby. The judge rejected defendants' argument that they reasonably expected coverage from NJM for the son's use of the Shelby. In addition, the judge found no basis to hold NJM liable for any portion of the $1 million settlement with plaintiff, observing the record lacked objective evidence establishing that the settlement was reasonable.

Plaintiff now appeals the judge's coverage ruling. Her appeal has been joined by the father and son through a cross-appeal

adopting plaintiff's arguments. Having considered their claims of error, we reject them and affirm.

As a threshold matter, NJM argues that plaintiff, as a non-policyholder passenger injured in the accident, lacks standing to pursue this appeal. We disagree. Under our State's broad approach to the standing of civil litigants, plaintiff manifestly has "a sufficient stake in the outcome," a "real adverseness" concerning the coverage issue, and a "substantial likelihood" that she will suffer harm if the trial court's finding of a lack of coverage is not reversed. In re Camden Cnty., 170 N.J. 439, 449 (2002) (citing N.J. State Chamber of Commerce v. N.J. Election Law Enf't Comm'n, 82 N.J. 57, 67 (1980)).

If we uphold the trial court's ruling that NJM provided no coverage for this accident, then the balance due to plaintiff on the $1 million settlement (taking into account American's already-paid contribution) presumably would be payable out of defendants' personal assets. Plaintiff has a financial interest in avoiding collection impediments in enforcing the judgment. In addition, the cross-appeal filed by the DiGiorgios ameliorates any question of standing, since they clearly have a basis to assert to us their alleged policyholder rights.

We now turn to the merits of the coverage dispute. In doing so, we are mindful that "[t]he interpretation of an insurance

contract is an issue of law which we review de novo, with no special deference to the trial court's interpretation of the law and the legal consequences that flow from the established facts." Arthur Andersen LLP v. Federal Ins. Co., 416 N.J. Super. 334, 345 (App. Div. 2010) (citations omitted). Applying such de novo review, we readily conclude that Judge Ciccone soundly construed the NJM policy to afford no coverage in the circumstances presented.

As a starting point in the analysis of an insurance coverage issue, courts look to the "plain and ordinary meaning" of the words contained in the carrier's policy. Mem'l Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 525 (2012) (citing Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010)). Here, the wording of the NJM policy manifestly supports the trial court's finding of no coverage.

The NJM policy affords liability and indemnity protection to policyholders for their "covered autos," defined in pertinent part to encompass the vehicles listed in the policy's Declarations page. The Shelby was not listed as such a covered auto on the Declarations page.

An "insured" under the NJM policy is defined, in pertinent part, to include "You or any family member for the ownership, maintenance or use of any auto or trailer[,]" as well as "[a]ny

person using your covered auto." Definition A (emphasis added).[1] Thus, even though the Shelby was not listed by the DiGiorgios as a "covered auto," the policy additionally supplies coverage for the use of a non-covered auto by "you" or by "any family member," but subject to the policy's Exclusions.

Notably for our analysis, the NJM policy specifically defines the term "you" to refer to the "named insured shown in the Declarations[,]" and her spouse. Specifically for this case, the term "you" refers to Jean M. DiGiorgio, the mother of the Shelby driver, and her spouse, Robert V. DiGiorgio, i.e. the father. The son, Robert H. DiGiorgio, falls within the policy definition of a "family member," which is "a person related to you [i.e., the named insured and her spouse] by blood, marriage, civil union under New Jersey law or adoption who is a resident of your household." See Definition F.

Nonetheless, as Judge Ciccone aptly recognized, the problem for the appellant and cross-appellants is that the "Exclusions" section of the policy negates any viable claim for coverage in this case.

Specifically, Exclusion B.2(a) disallows coverage for "[a]ny vehicle, other than your covered auto, which is . . . owned by you

[1] For ease of the reader, we omit in this opinion the bold font the policy uses for some of its terms.

. . . ." Indisputably, the Shelby is owned by the father. Exclusion B.2(a) contains no override or exception. Hence, subsection B.2(a) negates the claim of coverage.[2]

The purpose of a policy's exclusionary clause is to allow an insurer to protect itself from covering all automobiles available to the insured's use, even if the policy was bought for one automobile. Am. Cas. Co. v. Lattanzio, 78 N.J. Super. 404, 410-12 (Ch. Div. 1963). "The frequency of the use made of the vehicle does not necessarily govern." Id. at 412.

We reject appellants' contention that the denial of coverage under the NJM policy conflicted with an insured's reasonable expectations. Here, the DiGiorgios "would readily understand that [NJM] did not intend to cover [their son] with respect to an automobile which a reasonable [person] would know ought to be listed in the policy for a further premium allocated to it." DiOrio v. New Jersey Mfrs. Ins. Co., 63 N.J. 597, 603-04 (1973). The Shelby is conspicuously omitted from the Declarations page listing the other four vehicles of the household. The DiGiorgios

[2] In light of the clear applicability of Exclusion B.2, we need not reach whether Exclusion B.3 independently nullifies coverage as well. We recognize that the trial court's analysis focused on B.3, but nevertheless affirm its denial of coverage on a slightly different basis. See Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (observing that orders can be affirmed on appeal on different grounds than those recited by the trial court in its decision).

obviously obtained the American policy to cover the Shelby because that specialty car was not on the NJM policy. Indeed, NJM derived no premium for that extra risk.

We therefore affirm the trial court's decision denying coverage. Having done so, we need not reach the issue of whether the $1 million consent judgment was fair and reasonable, or whether the judgment could bind NJM.

All other arguments presented on appeal lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.