

1967

Julie F. Hays, Guardian Ad Litem For Kathy Shawn Hays v. Raymond Donald Robertson, Defendant and Appellant, State Farm Mutual Automobile Insurance Company and Mrs. Melvin Sanders, Guardian Ad Litem For Paulette F. Sanders v. Raymond Donald Robertson, State Farm Mutual Automobile Insurance Company : Respondent's Brief

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Recommended Citation

Brief of Respondent, *Hays v. Robertson*, No. 10866 (1967).
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IN THE SUPREME COURT OF THE STATE OF UTAH

JULIE F. HAYS, Guardian ad litem
for KATHY SHAWN HAYS,

Plaintiff and Respondent,

vs.

RAYMOND DONALD ROBERTSON,

Defendant and Appellant,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Garnishee and Appellant.

MRS. MELVIN SANDERS, Guardian
ad litem for PAULETTE F. SANDERS,

Plaintiff and Respondent,

vs.

RAYMOND DONALD ROBERTSON,

Defendant and Appellant,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Garnishee and Appellant

Case
No.
10866

RESPONDENT'S BRIEF

Appeal From the Judgment of the Third District Court
in and for Salt Lake County, Utah
The Honorable Stewart M. Hanson, Judge

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AUG 15 1967

~~Clerk, Supreme Court~~
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Case
No.
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RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

Plaintiffs both minor children were injured as a result of a collision between an automobile driven by Raymond Donald Robertson and an automobile driven by one of plaintiffs, Kathy Shawn Hays. Judgment was entered in favor of both the plaintiffs against Robertson, demand was made upon State

Farm Mutual Automobile Insurance Company for payment of the judgment. Said demand was refused, garnishment issued. Issue was joined on the traverse to garnishment answers. The Trial Court entered judgment in favor of the plaintiffs. It determined that State Farm Mutual Automobile Insurance Company was the liability insurer of Raymond Donald Robertson on the date of collision. Plaintiffs were awarded judgment in the amount obtained against Robertson. The Garnishee-Appellant prosecutes this appeal.

Basic question is the meaning of the insurance policy issued by Appellant.

DISPOSITION IN LOWER COURT

Judgment in favor of plaintiffs and against the appellant for the amount of the judgment obtained against its insured, together with interest and costs.

RELIEF SOUGHT ON APPEAL

The insurance carrier, garnishee appellant, seeks a reversal of the judgment of the lower court and entry of judgment that no coverage was provided for defendant Raymond Donald Robertson.

STATEMENT OF FACTS

There is no basic disagreement between the parties as to the happening of the accident and the

injuries sustained by the plaintiffs. The only disagreement relates to the meaning of the State Farm Mutual Automobile Insurance Policy No. 4068 290-E22-44.

For five or six years before the accident, Loyd J. Robertson had purchased public liability insurance from R. W. Steeneck, an agent of State Farm, for himself and family (R 129). Steeneck was well acquainted with the Robertsons, knew the kind of protection they wanted and the persons to be protected (R 130). The family consisted of Loyd, June (wife), and two minor sons, Raymond and Robert (Exhibit D-5, R 130).

Several cars were used by the family over the years and insurance ordered by phone by Robertson from Steeneck. Raymond was born November 21, 1943 and on April 6, 1965 would be 21 years old but still a member of Loyd's household (Exhibit D-5).

Steeneck, on the application, classified the risk as Class 9, which is a youthful male driver (R 133, Exhibit D-5). The exhibit also shows Raymond as the principal driver.

When the insurance was transferred from the 1955 Ford to the 1962 Chevrolet, the car title was not shown to be in Raymond's name, though it is conceded that such was always the fact (R 100).

The Chevrolet was surrendered to the bank when Raymond could not pay the purchase price. On April 5th Raymond purchased the 1958 Chevrolet to replace the 1962 Chevrolet, and the next day the accident occurred. Raymond shows his address as at his father's home on the application for title to the 1958 Chevrolet (Exhibit D-6). His father testified he had all his clothing at home, although he had rented a room to sleep in after he lost his car so that he could catch a ride to work (R 98).

The ambiguity was created in the issuance of the insurance policy. The policy shows on its face that the named insureds are Loyd J. Robertson and June Robertson, that persons insured are Loyd J. Robertson, R. Robertson and R. D. Robertson. Continental Bank of Midvale is shown as lienholder. The vehicle described was a 1962 Chevrolet pickup at all times the property of Raymond.

The policy language assumes that the named insured is the titleholder of the car insured, which was not the fact.

The public liability policy under Definitions states:

“Insured — under coverages A, B, C and M the unqualified word ‘insured’ includes

- (1) the named insured, and
- (2) if the named insured is a person or

persons, also includes his or their spouse(s), if a resident of the same household, and

- (3) if residents of the same household, the relatives of the first person named in the declarations, or of his spouse, and
- (4) any other person while using the owned automobile, provided the operation and the actual use of such automobile are with the permission of the named insured or such spouse and are within the scope of such permission, and***."

The policy defines "owned automobile" in the following language:

"Owned Automobile—means the motor vehicle or trailer described in the declarations, and includes a temporary substitute automobile, a newly acquired automobile,***."

The "owned automobile" described in the policy had been surrendered to the Continental Bank of Midvale and Raymond Donald Robertson had purchased the automobile involved in the collision to replace it.

The language of the policy defines "temporary substitute automobile" and "newly acquired automobile" in the following language:

"Temporary Substitute Automobile—means an automobile not owned by the named insured or his spouse while temporarily used as a sub-

stitute for the described automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.”

“Newly Acquired Automobile — means an automobile, ownership of which is acquired by the named insured or his spouse, if a resident of the same household, if (1) it replaces an automobile owned by either and covered by this policy, or the company insures all automobiles owned by the named insured and such spouse on the date of its delivery, and (2) the named insured within 30 days following such delivery date applies to the company for insurance on such newly acquired automobile. If more than one policy issued by the company could be applied to such automobile the named insured shall elect which policy shall apply. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.”

In addition to providing the coverage on the persons in the same household and the persons using the owned automobile, the policy provided coverage for a non-owned automobile and defines a non-owned automobile as:

“Non-Owned Automobile — means an automobile or trailer not***

(i) (ii)

(iii) furnished or available for the frequent or regular use of the named insured, his

spouse, or any relative of either residing in the same household, other than a temporary substitute automobile."

The Trial Court found that a fair interpretation of the policy provided coverage for Raymond Donald Robertson on the 6th of April, 1965 at the time of the collision between his automobile and the automobile being driven by Kathy Shawn Hays in which Paulette F. Sanders was a passenger.

A reading of the policy and all of its many definitions and terms indicates that it was intended to provide public liability insurance for Raymond Robertson under all of the circumstances which arose, whether he was driving someone else's car, the Chevrolet pickup, a newly acquired car, a substitute automobile, or a non-owned automobile.

ARGUMENT

POINT I

THE FACT THAT TITLE TO THE 1962 AND 1958 AUTOMOBILE WAS IN RAYMOND'S NAME IS IMMATERIAL.

The policy of insurance which is Exhibit P-1 is a State Farm Mutual Automobile policy and a form policy designed to be used in the normal situation where the person described as the named insured is the owner of the vehicle described on the policy. In

the present case, one of the persons to be covered by public liability insurance, namely Raymond Robertson, was the owner of the vehicle but was not the named insured and, as a consequence, there is an ambiguity created which must be resolved by interpreting the policy to arrive at the intentions of the parties.

The evidence is clear that Loyd J. Robertson intended to purchase public liability insurance for himself, his wife, and two boys. It also is clear that the insurance agent, Steeneck, understood the kind of insurance that Robertson wanted and intended to give the Robertson family the coverage that Loyd Robertson desired.

It is plaintiff's position that their interpretation placed on the policy is one which will accomplish the purpose that the parties intended to accomplish.

The risk which Robertsons paid the insurance company to insure is described in the insuring agreement as, "To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury sustained by other persons, and (B) property damage caused by accident arising out of the ownership, maintenance or use, including loading or unloading of the owned automobile.***"

(Exhibit P-1, Coverages A and B, Paragraph 1)

The unqualified word "insured" in the policy is defined as the named insured and his spouse, and if resident of the same household, relatives of the named insured or his spouse. See Definitions—Insuring Agreement I and II.

The ownership of the automobile did not in any way affect the risk, neither increasing or diminishing it. The risk always remained the same to protect, i.e. the Loyd J. Robertson family against public liability loss.

A case exactly in point on this matter is *General Insurance Company vs. Western Fire & Casualty Company*, 241 F 2d 289, 5 CCA, (Brown Judge) Cert. denied, 77 S. Ct. 1294, 354 US 909, No. 941, June 10, 1957. The facts are exactly those in the present case. A son 20 years old, living with his mother, insurance applied for and taken in the mother's name on a car partly owned by the son. This car was traded in for a car titled to the son and it then became involved in an accident within the 30 day period after the new car was acquired. The court there discussed the question of the son being the owner of the new car and the mother having no interest in it. It placed considerable emphasis on the fact that this was the family liability type of policy. It held ownership of the vehicle was immaterial.

People who are not sophisticated in the insurance policy language, who have no intention to deceive,

and do their best to keep the insurance company agent advised, may rely on the company issuing a policy which will give to them the protection that they need for their own benefit and protect the public who might be injured in the use of the vehicles involved.

Judge Brown pointed out that the ownership of the vehicle in no way affected the risk which the insurance company underwrote nor contributed in any way to the happening of the accident and that if it were necessary, he would order that the ownership of the vehicle involved and described in the policy be correctly described and an amendment to the policy ordered.

The question which seems to be dominant in the minds of the courts considering the problem before this court is whether or not the risk which is insured against is increased by the misstatement as to ownership of the vehicle.

An examination of the language of the insurance policy and the various definitions would indicate that the company intended to insure the Loyd J. Robertson family against public liability from the use of motor vehicles. The definitions describe every conceivable contingency that might involve one of the persons to be protected. It specifically protected them when driving a non-owned automobile, an owned

automobile, including an automobile newly acquired if it replaces an automobile covered by the policy and if, within 30 days, notice of the change of automobile is given. This collision occurred on the day after the newly acquired automobile had been purchased.

It is respectfully submitted that the circumstances are exactly the same and that the *General Insurance Company vs. Western Fire & Casualty Company* case is identical on its facts to the case at bar and the reasoning of Judge Brown in that decision is unimpeachable.

In addition to the *General Insurance Company vs. Western Fire & Casualty Company* (*supra*) case, there are a number of cases holding that the state of title is immaterial and does not increase the risk insured against. See *Mid-States Ins. Co. vs. Brandon*, 340 Ill. App. 470, 92 NE 2d 540; *Commonwealth Casualty Company vs. Arrigo*, 160 Md. 595, 154 A 136, 77 ALR 1250; *Pauli vs. St. Paul Mercury Indemnity Company*, 167 Misc. 417, 4 NY Sup. 2d 41, affirmed 255 App. Div. 935, 8 NY Sup. 2d 691, App. Den 280 NY 853, 19 NE 2d 685; *Kuntz vs. Spence*, Tex Civ. App. 1931, 48 S.W. 2d 413.

Blashfield Cyclopedia of Automobile Law and Practice, Perm. Ed. Part I, #3873 Page 537, states as follows:

“The rule requiring possession by the insured of an insurable interest in the property forming the subject matter of the insurance, which prevails generally in casualty insurance, is not applicable to liability indemnity policies.”

“The character of the insurance is quite different from insurance, against injury or loss, of the property insured by fire, theft, collision, or the like, where the insured is required to have some real interest in the property insured; in the case of liability insurance the risk and hazard insured against is not the injury or loss of the property named in the policy, but against loss and injury caused by the use of the property therein named, for which the insured might be liable, and the right of the insured to recover does not depend upon his being the holder, in fact of either a legal or equitable title or interest in the property, but whether he is primarily charged at law or in equity with an obligation for which he is liable.”

Raymond, a member of Loyd's household, was covered by the insurance policy while driving any vehicle. He likewise would be covered while driving the vehicle described regardless of who held title, and no additional risk would be created when he drove a newly acquired automobile, or a replacement vehicle.

POINT II

THE POLICY WHEN CONSTRUED IN ALL ITS TERMS PROVIDES COVERAGE FOR RAYMOND.

The policy must be interpreted favorably to the insured being insured where there is a dispute as to its meaning. See *Appleman*, Vol. 13, Page 36, #7386. *Blashfield Cyclopedia of Automobile Law and Practice*, Perm. Ed., Part I, Vol. 6, #3521, Page 138.

In addition to the general coverage provided for Raymond as a member of Loyd's family and household, the coverage on the automobile described is clear. A newly acquired automobile is covered if notice is given to the insurer. Where an accident occurs before notice, the cases without exception hold that coverage is available.

General Insurance Company vs. Western Fire & Casualty Company, 241 F 2d 289 (5 CCA), Cert. Denied 77 S. Ct. 1294, 354 U.S. 909, No. 941, June 10, 1957.

Western Casualty & Surety Company vs. Lund, 132 F Supp. 867, Aff. 234 F 2d 916, 10 CCA, (Bratton Judge). (Two successive replacements of automobiles in 30 day period, both held covered for 30 days regardless of notice to insurer.)

Civil Service Employees Insurance Company vs. Wilson, 35 Cal Rep 304, 222 Cal. App. 2d 519.

(Several auto covered intepret newly acquired clause, also clause on all autos insured with insurer provision).

7 *Appleman, Chapter 183 P. 84*, states the rule applicable as follows:

“The purpose of automatic insurance is to give coverage to persons who are already insured with the company in question upon acquiring a new vehicle. The coverage extends to the new acquisition when it replaces the sole automobile owned by the insured when the insured owns a number of vehicles and all of them are insured with the company, or when several of the vehicles owned by the insured are covered by the policy and the new acquisition replaces one already covered. It does not apply to new vehicles which are in addition to those insured by the former coverages and which are not used as replacements, unless all vehicles of that insured are covered, in which event it is contemplated that a premium readjustment will be made.”

California jurisdiction has solved the problem created here in a little different manner than the Federal Court in the Fifth Circuit. In *Votaw vs. Farmers Auto Inter-Ins. Exchange*, 15 Cal 2d 24, 97 P 2d 958, 126 ALR 538, the court held that an automobile which had been sold but title not yet transferred while being driven by the buyer, was a person

driving with the owner's permission and the public liability insurance coverage was provided. See also *Clow vs. National Indemnity Company*, 54 Was 2d 198, 339 P 2d 82, where a new automobile was purchased and while it was being readied for delivery, the insured continued to drive his old car.

Raymond is a person included in the unqualified word "insured." He was a resident of the household of Loyd and a person who actually is designated as the principal driver of the vehicle insured originally. Automobiles acquired to replace the Ford or newly acquired, for 30 days would likewise be covered without imposing a new or different risk on the insurer.

If Raymond drove any kind of a motor vehicle, it is respectfully submitted he had public liability insurance for the 30 day period. No hole in his insurance was intended to exist. If non-owned vehicle, coverage is provided, if the described vehicle, coverage is provided, if a replacement vehicle for described vehicle, coverage is provided, if a newly acquired vehicle, coverage is provided for 30 days, the crucial period.

CONCLUSIONS

It is respectfully submitted that a fair interpretation of the policy would provide coverage for Ray-

mond. Judgment of the Trial Court should be affirmed.

Respectfully submitted,

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