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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CHRISTOPHER ROPER,
Plaintiff and Respondent,

v.

SEAN A. PINTCHOVSKI,
Defendant and Appellant.

A131650

(City & County of San Francisco
Super. Ct. No. CGC09492756)

Plaintiff Christopher Roper was injured in a motor vehicle collision and sued the driver of the vehicle that collided with him, defendant Sean A. Pintchovski. Defendant claimed plaintiff was uninsured at the time of the accident and was therefore barred from recovering noneconomic damages. (Civ. Code, § 3333.4, subd. (a)(3).) The trial court found plaintiff was insured and following a jury trial entered a judgment awarding both economic and noneconomic damages. We conclude plaintiff was not insured and therefore shall reverse the judgment and remand with directions to enter a new judgment awarding only economic damages.

FACTS

Plaintiff was riding a motorcycle when he collided with an automobile driven by defendant. Plaintiff had received the motorcycle a few days earlier as a birthday gift from his fiancée, Dawn Hallberg. The motorcycle was not yet registered to either plaintiff or his fiancée. Plaintiff had no proof of insurance with him at the time of the accident but later claimed he was insured under policies issued to his parents and his fiancée's father.

Defendant argued that plaintiff was uninsured and filed an in limine motion to exclude evidence of noneconomic damages. (Civ. Code, § 3333.4, subd. (a)(3).) The trial court deferred ruling on the issue until a verdict was returned. The jury found that defendant was 90 percent at fault for the collision and awarded plaintiff economic damages for lost earnings and medical expenses and noneconomic damages for pain and suffering. The court upheld the award of noneconomic damages, concluding that plaintiff was the permissive user of a vehicle owned and newly acquired by his fiancée, who was jointly insured with her father under a policy issued by the Interinsurance Exchange of the Automobile Club (Auto Club policy). The court entered judgment for plaintiff in the amount of \$458,551.31, including \$315,000 in noneconomic damages.

DISCUSSION

“Civil Code section 3333.4, enacted by the voters in the 1996 General Election as part of Proposition 213, precludes recovery of ‘non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages’ by an uninsured motorist ‘in any action to recover damages arising out of the operation or use of a motor vehicle.’ ” (*Hodges v. Superior Court* (1999) 21 Cal.4th 109, 111.) A primary aim of Civil Code section 3333.4 is to limit claims by uninsured motorists against insured motorists. (*Id.* at p. 115.)

Plaintiff did not have liability insurance of his own but claims his use of the motorcycle was covered under the Auto Club policy issued to Roy Hallberg, the father of plaintiff’s fiancée. The trial court found that plaintiff’s fiancée, Dawn Hallberg, owned the motorcycle at the time of the accident, and defendant does not dispute that finding on appeal. The Auto Club policy lists Roy Hallberg as the named insured and also lists Dawn Hallberg as a driver of one of several automobiles.¹ The motorcycle is not listed as a covered vehicle but insured vehicles are defined to include a vehicle newly acquired by

¹ The Auto Club policy in the record contains an endorsement that excludes coverage for Dawn Hallberg but this version of the policy may have post-dated the accident. We accept the parties’ representation that at all times relevant here the policy listed Dawn Hallberg as a driver.

the named insured for 30 days after taking delivery. The trial court determined Dawn Hallberg was a named insured and that the motorcycle she obtained three days before the accident was therefore an insured vehicle. Accordingly, the court concluded that plaintiff's permissive use of the motorcycle was covered under the Auto Club policy.

Dawn Hallberg, however, was not a named insured. Coverage for newly acquired vehicles is limited to vehicles acquired by "you," which is defined as "any insured named in Item 1 in the declarations." The only insured named in "Item 1 in the declarations" is Roy Hallberg. Plaintiff argues that Dawn Hallberg became a named insured when she was listed as a driver, reasoning that "a policy that adds additional insureds by name adds them as named insureds." The argument fails to appreciate the distinction between a named insured and an insured driver.

"Generally speaking, a 'named insured' is a person specifically named as covered in the policy, as opposed to others merely designated as 'insured,' who enjoy coverage by virtue of their status, such as family members, resident relatives, or permissive users." (39A Cal.Jur.3d Ins. (2012) Contracts and Coverage, § 477.) "[O]ne listed in the policy, but only in the status of a driver of the vehicle, is not a named insured despite the fact that such person's name was physically in the policy." (7A Couch, Insurance (3d ed. 2011) § 110:1 [collecting cases]; see *Mercury Ins. Co. v. Pearson* (2008) 169 Cal.App.4th 1064, 1071 [a named driver does not receive the same coverage as a named insured for every type of loss or liability].) A person may be expressly named in the policy, as a driver or otherwise, but is not a named insured unless expressly designated as a named insured. (E.g., *Kanamaru v. Holyoke Mutual Ins. Co.* (Mass. App.Ct. 2008) 892 N.E.2d 759, 762-763; *Waller v. Rocky Mountain Fire & Casualty Co.* (Ore. 1975) 535 P.2d 530, 533-534.)

In *Giovanna v. Vigilant Ins. Co.* (1984) 156 Cal.App.3d 368, 369-371, this court considered a situation similar to the one presented here. In that case, the named insured added his daughters as "drivers" in an automobile liability policy. (*Id.* at p. 371.) The daughters were "described by sex and birth date under Item 6, 'Driver Information,' on the declarations page." (*Ibid.*) "The phrase 'change named insured—add driver No. 2, 3' " was also on the declarations page. (*Ibid.*) We held that the phrase "merely reflects the

addition of appellant's daughters as *drivers* of the automobile" and found "no basis for interpreting the phrase . . . as sweeping 'occasional operators' such as appellant's two daughters into the category of 'named insured.'" (*Ibid.*) Likewise, the Auto Club policy's reference to Dawn Hallberg as a driver does not make her a named insured.

At oral argument, plaintiff's counsel suggested that this court would be overstepping Code of Civil Procedure section 909 by making factual determinations contrary to those made by the trial court were we to find that Dawn Hallberg is not a named insured under the Auto Club policy. But interpretation of the insurance policy presents a question of law, not a question of fact. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) We look to the language of the Auto Club policy, and that language plainly states that newly acquired vehicles are covered when "acquired solely by you," and "you" is defined as "any insured named in Item 1 in the declarations," which is Roy Hallberg alone. There is no ambiguity.

Plaintiff provides no other reasoned argument for asserting that the motorcycle owned by Dawn Hallberg and operated by plaintiff was insured under the Auto Club policy. Plaintiff does suggest, in a footnote, that Dawn Hallberg was covered "as a member of her father's household." But Dawn Hallberg was living in San Francisco, not in her father's Southern California home, at the time of the accident.² In any event, relatives living with the named insured are covered only for the use of insured vehicles, and Dawn Hallberg's motorcycle was not an insured vehicle.

Plaintiff argues that the trial court's determination should be affirmed if right for any reason and that, even if not insured under the Auto Club policy, he was insured under his parents' policy with Ameriprise Auto & Home Insurance (Ameriprise).³ The trial court rejected this coverage claim, finding plaintiff was not an insured under this policy

² We grant defendant's request that we take judicial notice of the fact that Reseda, the residence of Ray Hallberg, is in Southern California.

³ Plaintiff filed a motion to augment the record with the deposition transcript of an Ameriprise claims manager. The motion is denied because the deposition is unnecessary to resolution of the issues on appeal.

because he was not living in his parents' household at the time of the accident. The court also found that the Ameriphase policy excludes liability coverage in the use of a motorcycle. The court was right. The Ameriprise policy pays "damages for which an insured person is legally liable because of bodily injury or property damage resulting from the ownership, maintenance or use of a car" An "insured person" is defined to include a "relative" but the meaning of "relative" is limited to those "living in [the named insureds'] household." Plaintiff was 28 years old and living in San Francisco with his fiancée at the time of the accident, not in his parents' Southern California household. Also, as the trial court found, the Ameriprise policy expressly excludes liability coverage for damages "resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels," like the motorcycle here. Plaintiff was uninsured at the time of the accident and therefore precluded from recovering noneconomic damages.

DISPOSITION

The judgment is reversed to the extent that it awards plaintiff damages for noneconomic injuries. In all other respects, the judgment is affirmed. The case is remanded to the trial court with directions to enter a new judgment awarding economic damages alone. Defendant shall recover costs incurred on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 8.278(c)(1).)

Pollak, J.

We concur:

McGuinness, P. J.

Jenkins, J.