

IN THE CIRCUIT COURT OF
BUCHANAN COUNTY, MISSOURI

LARRY E. SPRINGS,

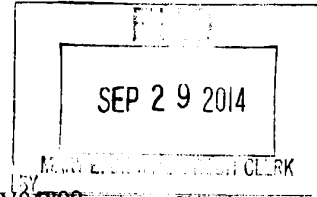
Plaintiff,

vs.

MADISON R. CURRAN, et al.

Defendants.

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) Case No. 13BU-CV04899.
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) Division No 1.
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Order Granting Partial Summary Judgment

Comes now the Court this 29th day of September, 2014, and takes up Defendant Curran's partial summary judgment motion on her declaratory judgment petition. On September 4, 2014, the court held an informal hearing with counsel in which all parties agreed that the Curran's motion involves no genuine issue of material fact and presents only a question of law. After reviewing the parties' motions, the summary judgment record, and the parties' argument, this court enters judgment for Curran.

In the underlying tort case, the plaintiff has alleged that Curran caused a motor vehicle collision that resulted in his wife's death. The parties agree that American Family issued five family car policies to Curran's family. American Family also concedes that Curran is an insured under the five policies. The parties also agree that American Family has offered to pay its limits under one policy. The parties dispute whether or not the other four policies apply and whether or not American Family must pay \$25,000 under each of the other four policies. In its answer, American Family argues the other four policies do not apply because each contain a regular use exclusion and various anti-stacking provisions.

The Regular Use Exclusion

The parties agree that American Family's policies cover the use of a non-owned vehicle

so long as the insured was not engaged in regular use of it. American Family's policies also exclude coverage for the use of any vehicle that is either owned or furnished for regular use.

1) The court concludes that there is no genuine dispute on the material facts.

In its response, American Family first argues that the circuit court cannot enter summary judgment for Curran because whether or not an insured's use of a vehicle constitutes regular use is a factual inquiry. This court agrees that it must look at the facts surrounding the insured's use of the vehicle to determine whether or not the regular use exclusion applies. But American Family's allegation that the regular use exclusion depends on the underlying facts of the insured's use does not automatically mean that the court cannot resolve the issue by summary judgment. Summary judgment is appropriate when the parties have no genuine dispute regarding the material facts. Rule 74.04(c)(6); *Missouri Emp'rs Mut. Ins. Co. v. Nichols*, 149 S.W.3d 617, 623 (Mo. Ct. App. 2004).

A genuine dispute occurs when the parties disagree on the existence of material facts or offer plausible but contradictory accounts of the essential facts. *Armonit v. Ezell*, 59 S.W.3d 628, 631 (Mo. Ct. App. 2001). No genuine dispute of fact occurs when the parties agree on the material facts but disagree on the legal effect and consequences of those facts. *Medley v. Valentine Radford Commc'ns, Inc.*, 173 S.W.3d 315, 319 (Mo. Ct. App. 2005).

In this case, there is no material dispute on the facts. Both parties agree that: 1) Curran normally drove a Ford Escape; 2) her Escape was in the repair shop; 3) since the Escape was in the repair shop, she was driving her grandfather's vehicle; 4) she started driving her grandfather's vehicle at some point in December; 5) she would stop driving her grandfather's vehicle once her vehicle was repaired; and 6) she did not own or otherwise intend to keep her grandfather's vehicle permanently. Since the parties agree on the facts and disagree only on the

legal significance of those facts, the court can apply the facts to the policy language and grant summary judgment in this case. *Miller*, 400 S.W.3d at 784; *Gibbs*, 938 S.W.2d at 603.

2) This court concludes that Curran's use did not constitute regular use

American Family's policies do not define regular use. But, this court concludes that American Family did not intend for the "regular use" exclusion to exclude a person's temporary use of a vehicle because the insured vehicle was out of service. While American Family's policies expressly exclude coverage for regular use, they also expressly provides coverage for any vehicle used "as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its a. breakdown; b. repair; c. servicing; d. loss; or destruction"

By reading these two provisions together, this court concludes that an insured's use of a temporary substitute vehicle cannot constitute regular use. Because if an insured's use of a temporary substitute vehicle constituted regular use of that vehicle then Defendant American Family's policies could never actually provide coverage to a temporary substitute vehicle. That would render the temporary substitute coverage meaningless. Thus, regular use must mean the opposite of temporary.

American Family's insurance policies also do not define temporary. The court has explained that the word temporary is an ambiguous and elastic word that has no "fixed meaning in the sense that it designates any fixed period of time." *Kahn v. Lockhart*, 392 S.W.2d 30, 34 (Mo. Ct. App. 1965). Rather, the court defines temporary to mean the opposite of permanent. Thus, the court has explained that it does not look at the duration or frequency of use when determining whether or not the insured's use is temporary. *Nat'l Indem. Co. v. Ryder Truck Rental, Inc.*, 472 So. 2d 856, 858 (Fla. Dist. Ct. App. 1985). Instead the court looks to the

parties' intent to determine whether or not they intended for the insured to use the vehicle permanently. *Id.*

This case law is consistent with Missouri case law on the regular use exclusion, which focuses less on the duration of use and more on the purpose and intent behind the insured's use of the non-owned vehicle. *State Farm Mut. Auto. Ins. Co. v. W. & Sur. Co.*, 477 S.W.2d 421, 424 (Mo. banc 1972) (en banc). In *State Farm*, the court found that the insureds were driving the non-owned vehicle for at least 6 weeks. *Id.* Despite using the non-owned vehicle for 6 weeks, the court concluded that the regular use exclusion did not apply. *Id.*

Since *State Farm*, Missouri courts have determined the applicability of the regular use exclusion by placing significant emphasis on whether or not the insured was driving the non-owned vehicle and the owned vehicle during the same period. *Farmers Ins. Co. Inc., v. Morris*, 541 S.W.2d 66 (Mo. Ct. App. 1976), *Government Employees Insurance Co. v. Johnson*, 586 S.W.2d 367, 367 (Mo. Ct. App. 1979); *Kenilworth Insurance Co. v. Cole*, 587 S.W.2d 93 (Mo. Ct. App. 1979).

Under these principles, the evidence is sufficient for the court to conclude as a matter of law that Curran's use of her grandfather's vehicle was temporary and not regular use. As the court notes above, the parties agree that Curran was using her grandfather's vehicle solely because her vehicle was in the shop and that she would stop driving her grandfather's vehicle once her vehicle was repaired. And, in fact, the parties also agree that Curran returned to driving her Escape once it was repaired.

Furthermore, American Family could have defined temporary or regular use in its policies. Since it did not define these words, this court construes any ambiguity in whether or not Curran's use meets these definitions against American Family. This court, therefore, concludes that the regular use exclusion does not apply.

Missouri's Motor Vehicle Financial Responsibility Law

But even if the court were to find that the exclusion would normally apply, the court should conclude that Missouri's Motor Vehicle Financial Responsibility Law invalidates both the exclusion and Defendant American Family's anti-stacking provisions because the Missouri Supreme Court has held that each policy must provide the minimum limits of \$25,000. Along with pleading that the regular use exclusion applies, Defendant American Family has pleaded that it is not obligated to pay any amount on the other four policies because of its policies' anti-stacking language.

Missouri's financial responsibility law requires each owner's policy to provide bodily injury liability coverage of at least \$25,000 per person. Missouri's financial responsibility law also requires each operator's policy to provide bodily injury liability coverage of at least \$25,000 per person. The financial responsibility laws do not restrict the minimum liability payments to a single insurance policy if coverage is provided under multiple policies. *Karscig v. McConville*, 303 S.W.3d 499, 504 (Mo. banc 2010). The anti-stacking provisions of the other policies are invalid, as against Missouri's statutes and public policy, to the extent they seek to eliminate coverage required by the financial responsibility laws.

This court acknowledges that the Missouri Supreme Court will soon hear arguments on *Dutton v. American Family*, which involves similar issues. In *Dutton*, the tortfeasor was driving a Nissan that she owned. She also owned a Ford, which was not involved in the accident. She had both vehicles insured under separate policies with American Family. *Dutton v. American Family Mut. Ins. Co.*, 2014 WL 211453 (Mo.App. W.D.), 1 (Mo.App. W.D., 2014). Thus, *Dutton* deals with whether multiple policies cover an insured's use of an owned vehicle.

The majority opinion concluded that the financial responsibility laws required that both policies provide minimum coverage. The dissents in *Dutton* dissented primarily on the basis that

the tortfeasor was driving another owned vehicle. *Id.* (Ahuja, J., dissenting, page 11, Martin, J., dissenting, page 21-22). Since it was an owned vehicle, the tortfeasor's use did not fall within the other policy's designated vehicles.

In this case, of course, the parties agree that Curran was driving a non-owned vehicle, which meets all the policies' list of designated vehicles. Thus, even if the Missouri Supreme Court were to find no coverage under the facts of *Dutton*, that would not change the result of this case. The court, therefore, concludes that each of American Family's other four policies apply and provide minimum coverage.

The court, therefore, finds in favor of Madison Curran and enters partial summary judgment in accordance with the foregoing on her summary judgment motion.

September 29, 2014
Date signed

COURT SEAL OF



BUCHANAN COUNTY

Handwritten signature of Randall R. Jackson in cursive script.

Randall R. Jackson
Circuit Judge