IN THE COURT OF APPEALS OF IOWA

No. 1999-491 (9-748) / 99-0165
Filed April 12, 2000

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CLERK SUPREME COURT

WEST BEND MUTUAL INSURANCE COMPANY,
Plaintiff-Appellant,

vs.

JEFFREY FARMER, ANDREW HOLTZ, MATTHEW RINAS, and JOSHUA MULLHOLLAND, minors, TOBY WARD and DAVID FARMER, individually and as natural parents and Next Friend of JEFFREY FARMER, PAMELA HOLTZ and RONALD HOLTZ, individually and as natural parents and next friend of ANDREW HOLTZ, JENNIFER RINAS and JOE RINAS, individually and as natural parents and Next Friend of MATTHEW RINAS, JUDITH MULLHOLLAND and JOHN MULLHOLLAND, individually and as natural parents and Next friend of JOSHUA MULLHOLLAND, and DEAN COTE,
Defendants-Appellees,

MOTOR CLUB OF IOWA,
Intervenor-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

The plaintiff insurer appeals from the district court's ruling in a declaratory judgment action that a minor was entitled to indemnity and a defense under the terms of his mother's automobile liability policy. **REVERSED.**

James M. Powers of Powers & Beard, L.L.P., Cedar Rapids, for appellant.

Jack C. Paige of Elderkin & Pimie, P.L.C., Cedar Rapids, for intervenor-appellee.

Linda Hansen Robbins of Irvine & Robbins, Cedar Rapids, for defendants-appellees.

Considered by Mahan, P.J., Zimmer and Vaitheswaran, JJ.

MAHAN, P.J.

West Bend Mutual Insurance Company (West Bend) appeals from the district court's ruling in a declaratory judgment action that a minor was entitled to indemnity and a defense under the terms of his mother's automobile liability policy. West Bend claims the district court erred in determining the coverage was not barred by a policy exclusion and in determining Farmer was a permissive driver under Iowa Code section 321.493 (1997). We reverse.

In May 1997, Toby Ward obtained an automobile liability insurance policy from West Bend for a 1993 Ford Tempo, which she owned. The car was driven primarily by Ward's son, Jeffrey Farmer, who was a minor. Farmer's parents were divorced and he moved back and forth between his parents' residences.

Farmer used the vehicle for his paper route and to drive to school. He usually asked Ward's permission to use the car, or at least informed her he was taking the car. At times, he had the car in his possession at his father's residence, and then he did not ask Ward for further permission to use the car.

In June 1997, Farmer asked Ward if he could take the Ford Tempo to Minneapolis, Minnesota. Ward denied this request. Farmer then untruthfully told his mother a friend's brother had agreed to drive him and some friends from Anamosa, Iowa, to Minneapolis. She agreed to allow him to drive the car to Anamosa. Instead of driving the car to Anamosa, however, Farmer and his friends went to Arizona. While in Arizona and while Farmer was driving, the vehicle was in an accident and a passenger, Matthew Rinas, was injured.

West Bend filed a petition for declaratory relief, claiming it should not be required to indemnify or defend Farmer. The district court denied the petition.

The court determined the coverage was not barred by the policy's exclusion for the use of a vehicle without a reasonable belief the insured is entitled to do so. The court also determined Farmer was a permissive driver under section 321.493. The court denied West Bend's post-trial motion made pursuant to Iowa Rule of Civil Procedure 179(b). West Bend appealed.

I. Our review is for corrections of errors at law. Iowa R. App. P. 4. The district court's findings of fact are binding if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

II. Ward's insurance policy with West Bend contained an exclusion which provided:

> We do not provide Liability Coverage for any "insured":
>
> * * *
>
> 8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so.

This exclusion was considered in *Farm & City Ins. Co. v. Gilmore,* 539 N.W.2d 154, 157 (Iowa 1995). There, the driver had permission to use the vehicle, but no driver's license. *Gilmore,* 539 N.W.2d at 156. The supreme court found the word "entitled" in the exclusion was ambiguous and should be given an interpretation most favorable to the insured. *Id.* at 157. The court concluded the policy did not exclude coverage for unlicensed drivers. *Id.*

In the present case, the district court stated:

> In the *Gilmore* case, the driver had permission, but no driver's license; as opposed to this situation where the driver had an operator's license but, according to the Plaintiff, no permission; the result is the same given the interpretation most favorable to the insured.

We find the district court improperly interpreted *Gilmore*. The situation where a driver has a driver's license, but no permission, is different from the situation where the driver has permission, but no license. The supreme court determined the provision in question excluded coverage when a person was using a vehicle without a reasonable belief he or she had permission of the owner or apparent owner to do so. *Id.*

We find Farmer did not reasonably believe he had permission to use the vehicle at the time of the accident. He admitted he did not tell his mother he was planning to take the car to Arizona. He testified if he had told her he wanted to drive to Arizona, "there was no way that she'd let me." Ward testified she would not have given Farmer permission to go to Arizona, and if she had known he was planning to go she would have tried to stop him.

We conclude the exclusion in question applies because Farmer was using the vehicle without a reasonable belief he was entitled to do so. We reverse the decision of the district court on this issue.

III. West Bend's petition for declaratory judgment sought a determination of its responsibilities to Farmer under the terms of the insurance policy. Although none of the parties raised the issue, the district court determined Farmer was a permissive driver under section 321.493.

Section 321.493 holds an owner liable for a driver's negligence unless the owner can overcome the presumption the vehicle was operated with the owner's consent. *Benson v. Webster*, 593 N.W.2d 126, 131 (Iowa 1999). We determine the district court improperly addressed Ward's legal responsibility under section 321.493 because it was not an issue before the court. A court has no obligation

to consider issues not raised in the petition. *Manning v. Engelkes,* 281 N.W.2d 710 (Iowa 1979). Ward's responsibility under section 321.493 may be addressed in the event of a suit against her.

We reverse the decision of the district court. Costs of this appeal are assessed to appellee Motor Club of Iowa.

REVERSED.