

15-0521



IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

ERIE INSURANCE PROPERTY
AND CASUALTY COMPANY,

Plaintiff,

v.

CIVIL ACTION NO.: 14-C-218
Hon. Judge John W. Hatcher, Jr.

JERRY L. WHITE, and
REBECCA WHITE,

Defendants,

AND

REBECCA WHITE,

Counterclaim Plaintiff,

v.

ERIE INSURANCE PROPERTY
AND CASUALTY COMPANY,

Counterclaim Defendant.

ERIE INSURANCE
PROPERTY AND
CASUALTY COMPANY

**ORDER GRANTING ERIE INSURANCE PROPERTY AND CASUALTY COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

On the 3rd day of April, 2015, all parties appeared by their respective counsel of record for a hearing on "Erie Insurance Property and Casualty Company's Motion for Summary Judgment." The Court, having reviewed the Motion for Summary Judgment, "Counterclaim Plaintiff's Cross-Motion for Summary Judgment", "Erie Insurance Property and Casualty Company's Reply to Counterclaim Plaintiff's Cross-Motion for Summary Judgment," and the other papers and pleadings filed by the parties, and following the hearing on said Motion for Summary Judgment, is of the opinion that the Motion for Summary Judgment is proper and should be GRANTED and makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Erie is a foreign corporation licensed to do business in the State of West Virginia.
2. Jerry L. White is a resident of Smithers, Fayette County, West Virginia.
3. Rebecca White is a resident of Dripping Springs, Hays County, Texas.
4. Rebecca White is the adopted daughter of Jerry L. White.
5. Jerry L. White and Rebecca White's mother divorced more than fifteen (15) years ago.
6. Rebecca White's mother moved to Texas approximately five (5) years ago.
7. Rebecca White lived in Austin, Texas, until she graduated from high school in 2008. At that time, Jerry White moved from Austin, Texas to West Virginia. Jerry White's home and residence in West Virginia was never Rebecca White's home.
8. Rebecca White visited Jerry White in West Virginia.
9. In her records at Austin Community College, Rebecca White identified her address as 1400 Renaissance Court, Austin, Texas.
10. Jerry L. White purchased a Family Auto Insurance Policy from Erie, policy number Q08 5111202 W, effective August 1, 2012, through August 1, 2013. A copy of the policy is attached hereto as **Exhibit A to the parties' "Stipulation of Facts."**
11. Said Erie policy provided underinsured motorist bodily injury coverage, pursuant to the policy's terms, conditions, provisions and endorsements, in the amount of One Hundred Thousand Dollars (\$100,000.00) per person, Three Hundred Thousand Dollars (\$300,000.00) per accident and underinsured property damage coverage in the amount of Ten Thousand Dollars (\$10,000.00) per accident.
12. According to the Erie policy, a "relative" is defined as:

'Relative' means a **'resident'** of **'your'** household who is a:

1. person related to **'you'** by blood, marriage or adoption; or
2. ward of any other person under 21 years old in **'your'** care.

13. A "resident" is defined by the Erie policy as "a person who physically lives with **'you'** in **'your'** household on a regular basis. **'Your'** unmarried, unemancipated children attending school full time, living away from home, will be considered **'residents'** of **'your'** household."

14. On May 19, 2013, in or near Austin, Travis County, Texas, Rebecca White was a guest passenger on a motorcycle which was being operated by Alexander Polanco-Lopez, when it was struck in the rear by a motor vehicle operated by Kristina Elena Gonzalez.

15. As a result of the May 19, 2013 motor vehicle accident, Rebecca White sustained bodily injuries.

16. Rebecca White recovered the available insurance policy limits from the carrier providing coverage for the vehicle operated by Kristina Elena Gonzalez.

17. There was no available automobile insurance coverage in effect providing coverage for the motorcycle operated by Alexander Polanco-Lopez.

18. There was no available automobile insurance coverage in effect providing coverage for Alexander Polanco-Lopez.

19. At the time of the accident, Rebecca White was twenty-three (23) years old.

20. At the time of the accident, Rebecca White lived with her mother in Texas, and she did not identify Jerry L. White's address as her own for school records.

21. At the time of the accident, Rebecca White was an unmarried, unemancipated child of Jerry White, who was attending school in Texas.

CONCLUSIONS OF LAW

1. “If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party; (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the West Virginia Rules of Civil Procedure.” Syl. Pt. 3, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995).

2. “The mere fact that a particular cause of action contains elements which typically raise a factual issue for jury determination does not automatically immunize the case from summary judgment. The plaintiff must still discharge his or her burden under West Virginia Rule of Civil Procedure 56(c) by demonstrating that a legitimate jury question, i.e. a genuine issue of material fact, is present.” Syl. pt. 1, *Jividen v. Law*, 194 W.Va. 705, 461 S.E.2d 451 (1995).

3. No genuine issues of material fact exist with respect to the issues presented in the Motion for Summary Judgment.

4. The Supreme Court of Appeals of West Virginia has instructed that “[d]etermination of the proper coverage of an insurance contract when the facts are not in dispute is a question of law.” Syl. Pt. 1, *Tennant v. Smallwood*, 211 W.Va. 703, 568 S.E.2d 10 (2002).

5. Rebecca White does not satisfy the clear and unambiguous definition of “anyone we protect” as that term is defined by the Erie Policy. While Ms. White is Jerry White’s adopted daughter, Ms. White was not a resident of Jerry White’s household on May 19, 2013.

Furthermore, Ms. White did not and does not physically live in Jerry White's home on any basis, let alone on a regular basis.

6. Applying the undisputed facts to the clear and unambiguous terms of the Family Auto Insurance Policy purchased by Jerry L. White from Erie, policy number Q08 5111202 W, effective August 1, 2012, through August 1, 2013, the Court concludes that said policy of insurance does not provide underinsured motorist coverage for bodily injuries sustained by Rebecca White in the May 19, 2013 motorcycle accident.

It is ORDERED, ADJUDGED, and DECREED that Erie's Motion for Summary Judgment is GRANTED;

It is further ORDERED, ADJUDGED, and DECREED that Erie has no obligation to pay underinsured motorist coverage to or on behalf of Rebecca White;

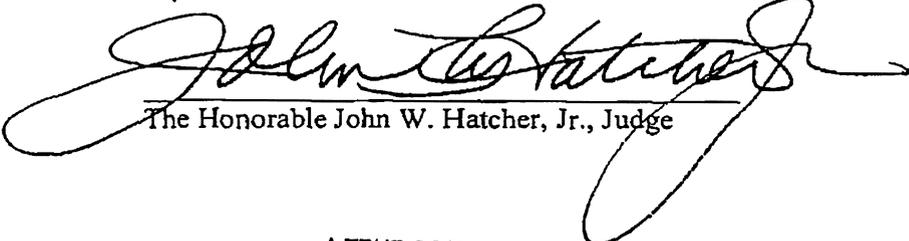
It is further ORDERED, ADJUDGED, and DECREED that the claims by and against Erie are DISMISSED WITH PREJUDICE. Pursuant to Rule 54 of the West Virginia Rules of Civil Procedure, this is a final judgment order that completely resolves all claims in this civil action. There is no just reason for delay and any appeal should be taken in accordance with the West Virginia Rules of Appellate Procedure; and

It is further ORDERED, ADJUDGED, and DECREED that Counterclaim Plaintiff's Cross-Motion for Summary Judgment is DENIED;

The parties' objections and exceptions are duly noted and saved.

The Court further instructs the Clerk of Court to send a certified copy of this Order to all counsel of record.

Enter this 27th day of April, 2015. JW
NUNC PRO TUNC TO April 03, 2015


The Honorable John W. Hatcher, Jr., Judge

Order prepared by:

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A TRUE COPY of an order entered
April 27, 2015
Teste: Danielle Wright
Circuit Clerk Fayette County, WV

Order approved for entry by:

Lonnie C. Simmons by KMM
Lonnie C. Simmons, Esq. ✓ (w/ permission)
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Attested Copies to:

LCB 1 _____
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_____ 1 _____
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Date: April 27, 2015
Initials: AV