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COURT OF APPEAL FOR ONTARIO

LASKIN, GOUDGE AND FELDMAN JJ.A.

B E T W E E N:	)	
	)	
JOHN CHRISTOPHER TAGGART,	)	
By his litigation guardian, THOMAS TESSIER, LINDA TAGGART, THOMAS TESSIER, AND KELLY PARKER	)	**Bert Raphael, Q.C.** **for the appellant** **Linda Taggart**
	)	**Robert E. Seabrook**
Plaintiffs (Appellants)	)	**for the appellant** **Cory Matthew Simmons**
	)	
-and-	)	**David B. Williams**
	)	**for the respondent**
CORY MATTHEW SIMMONS	)	**Pilot Insurance**
	)	
Defendant (Appellant)	)	
	)	
PILOT INSURANCE COMPANY	)	
	)	
Defendant (Respondent)	)	
	)	
	)	
- and -	)	
	)	
NANCY JEAN PICKERING	)	
	)	
Defendant	)	**Heard: September 15, 2000**

On appeal from the judgment of Justice Gordon P. Killeen dated January 4, 2000.

GOUDGE J.A.:

[1] The appellant John Taggart was catastrophically injured on September 3, 1995 when the car in which he was riding went off the road. In this action, in addition to suing the owner and driver, he seeks indemnification from the respondent Pilot Insurance Company ("Pilot") under a policy which Pilot had issued to Thomas Tessier. At the time of the accident, John Taggart was living with Mr. Tessier in a relationship which was described by Killeen J. as "close to a child-parent relationship".

[2] Pilot moved successfully before Killeen J. for summary judgment dismissing the claim against it. Killeen J. found firstly that John Taggart was not a "person insured under the contract" pursuant to s. 265 of the *Insurance Act*, R.S.O. 1990, c. I.8 as amended ("the Act"). Secondly, he found that John Taggart was not a "relative" so as to come within the underinsured endorsement purchased by Mr. Tessier as part of his Pilot policy.

[3] For the reasons that follow I would disagree with both conclusions. I would therefore allow the appeal and dismiss Pilot's motion for summary judgment.

THE FACTS

[4] The affidavits before Killeen J. which were not cross-examined upon, paint the following picture. John Taggart was born on October 27, 1973. His mother Linda Taggart and his biological father John Gaughan, separated many years ago. Since then, John Taggart has had virtually no contact with Mr. Gaughan. Around 1986, when John was 13 years old, his mother began to have serious difficulties in disciplining him. At about that time, John met Mr. Tessier through his involvement in a community sports program in Windsor that Mr. Tessier helped to run. With the full support of his mother, John developed a close relationship with Mr. Tessier. As Killeen J. put it, Mr. Tessier became "something of a surrogate father to the boy". In fact, the relationship stabilized John's life.

[5] In 1989 Mr. Tessier was transferred to Chatham by his employer. As a result, John asked his mother for permission to go to Chatham to live with Mr. Tessier and attend school there. Mr. Tessier arranged for John to attend Chatham-Kent Secondary School and Ms. Taggart signed a guardianship form which permitted John to enter this school under Mr. Tessier's sponsorship. Mr. Tessier was named as guardian on John's school registration card and as parent on his Ontario student record. All contact by the school with an adult on John's behalf was with Mr Tessier.

[6] John graduated successfully from the Chatham school and, in August 1995, Mr. Tessier assisted him to obtain his first fulltime job. From 1989 through to the date of the accident, September 3, 1995, John lived with Mr. Tessier, with the exception of a few days in June 1995 when John unsuccessfully tried living on his own. Throughout this time, Mr. Tessier paid for all of John's school, household and personal expenses. Mr. Tessier did all of the cooking, laundry and cleaning for the two of them. He took John on family vacations. He listed John as his dependent on his group supplemental health coverage with his employer. John considered Mr. Tessier to be his father and Mr. Tessier considered John to be his son.

[7] On September 3, 1995, John was a passenger in a car owned by the defendant Nancy Jean Pickering and driven by the defendant Cory Simmons. Neither the owner nor the driver were insured. Mr. Simmons lost control of the car sending it into a ditch. As a result, John Taggart suffered a brain injury and was rendered a quadriplegic.

[8] In December 1998, John was released from hospital and into Mr. Tessier's care. Prior to that, a court order made on July 3 1996 appointed Mr. Tessier as the guardian of the person and the property of John Taggart under the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30. Although Ms. Taggart and Mr. Gaughan were served with the application, neither opposed it nor appeared at the hearing.

[9] At the date of the accident, Mr. Tessier had a motor vehicle policy issued by Pilot. In addition to the standard uninsured coverage required by s. 265 of the Act, Mr. Tessier had purchased the underinsured coverage provided by the OPCF 44-Family Protection Coverage endorsement, with an upper limit of $1 million.

[10] This action was commenced on behalf of John Taggart claiming damages for negligence against the owner and driver of the car and indemnity against Pilot under the statutory uninsured provisions and the underinsured endorsement of the policy. This appeal is from the summary judgment granted to Pilot by Killeen J. dismissing the claims for indemnity against Pilot.

ANALYSIS

[11] This appeal presents two issues. First, was Killeen J. correct in finding that John Taggart had no claim to the coverage mandated by s. 265 of the Act? Second, was Killeen J. correct in finding that John Taggart had no claim to coverage under the OPCF 44-Family Protection Coverage endorsement in Mr. Tessier's policy? I will deal with each of these issues in turn.

THE S. 265 ISSUE

[12] The effect of s. 265 of the Act together with the regulations to the Act is that every motor vehicle insurance policy must provide uninsured coverage up to $200,000 to those within the reach defined by that section.

[13] The question is whether John Taggart qualifies for this coverage under Mr. Tessier's Pilot policy or whether he must resort to the Uninsured Motor Vehicle Accident Claims Fund for this amount. The relevant portion of s. 265(1) reads as follows:

> *Limited Accident Insurances*
>
> 265. (1) **Uninsured automobile coverage.—**Every contract evidenced by a motor vehicle liability policy shall provide for payment of all sums that,
>
> (a) *a person insured under the contract* is legally entitled to recover from the owner or driver of an uninsured automobile or unidentified automobile as damages for bodily injuries resulting from an accident involving an automobile. (Emphasis added)
>
> …
>
> subject to the terms, conditions, provisions, exclusions and limits as are prescribed by the regulations.

[14] The question of John Taggart's entitlement begins with the definitions found in s. 265(2). The relevant part of that subsection is as follows:

> (2) **Definitions.—**For the purposes of this section,
>
> …
>
> **"person insured under the contract".—**"person insured under the contract" means,
>
> …
>
> (c) in respect of a claim for bodily injuries or death,
>
> …

(ii) *the insured* and his or her spouse and any dependent relative of either,

A. while an occupant of an uninsured automobile, …

(emphasis added)

[15] The appellant's argument also relies on the description of "insured" found in s. 224(1) of the Act and the definition of "insured person" found in Regulation 776/93 which defines entitlement to statutory accident benefits under a motor liability policy. The relevant part of s. 224(1) reads as follows:

224. (1) **Definitions.—**In this Part,

…

"insured".—"insured" means a person insured by a contract whether named or not and *includes every person who is entitled to statutory accident benefits* under the contract whether or not described therein as an insured person; (emphasis added)

[16] The relevant part of Regulation 776/93 is as follows:

1. In this Regulation,

…

"insured person".—"insured person", in respect of a particular motor vehicle liability policy, means,

(a) the named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured, and *any dependant of the named insured or* spouse, if the named insured, specified driver, spouse or dependant

> (i) is involved in an accident in or outside of Ontario that involves the insured automobile or another automobile, …
>
> (emphasis added)

[17] Killeen J. determined that, because of its opening words, s. 265(2) should be interpreted without reference to s. 224(1) of the Act and that the definition in s. 265(2)(c)(ii) was confined to the named insured his or her spouse and any dependent relative of either. He concluded that since John Taggart was not the named insured nor Mr. Tessier's relative, the uninsured coverage required of the Pilot policy by s. 265 of the Act does not extend to him.

[18] With respect, I do not agree. Section 265(2)(c)(ii) extends this uninsured coverage to the insured (his or her spouse and any dependant relative of either). It does not confine this coverage to the named insured (and his or her spouse and any dependant relative of either). In my view, on straightforward principles of statutory interpretation, John Taggart is an "insured" within the definition set out in s. 265(2)(c)(ii) and therefore within the uninsured coverage that is required pursuant to s. 265.

[19] Section 265(1) mandates uninsured automobile coverage for "a person insured under the contract". The definition in s. 265(2)(c)(ii) of a "person insured under the contract" includes the "insured". While "insured" is not further defined in s. 265, it is defined in s. 224(1) which explicitly defines the term for the purposes of Part VI of the Act. That part governs automobile insurance and includes s. 265. There is nothing in s. 265 to negate the clear legislative intention that the definition of "insured" in s. 224(1) applies to s. 265(2)(c)(ii). The phrase at the beginning of s. 265(2) "for the purposes of this section" cannot be read as "for the purposes of this section and without regard to s. 224(1)".

[20] The s. 224(1) definition of "insured" includes every person who is entitled to statutory accident benefits under the policy. If John Taggart was a dependant of the named insured Mr. Tessier (an issue which would be litigated at trial) then he was clearly entitled to statutory accident benefits under the Pilot policy pursuant to s. 1 of Regulation 776/93 of the Act. On this basis, John Taggart would be an "insured" and therefore a "person insured under the contract" for the purposes of s. 265. He would therefore be entitled to uninsured coverage under the Pilot policy if he can prove dependency.

[21] In other words, while the issue of dependency remains to be litigated, John Taggart's claim against Pilot under s. 265 of the Act cannot be dismissed at this stage of the proceeding on the basis that he cannot come within the meaning of "insured" in s. 265(2)(c)(ii).

[22] Pilot argues that this approach is inconsistent with a statement by this court made by way of *obiter* in *Warwick et al. v. Gore Mutual Insurance Company et al.* (1997), 32 O.R. (3d) 76 (C.A.) at 84, that s. 224(1) cannot be used to expand the definition of "person insured under the contract". I see no inconsistency. The use being made here of the definition of "insured" in s. 224(1) is to provide the definition of the same word in s. 265(2)(c)(ii), not to expand the definition of that term or the term "person insured under the contract". Indeed, the use of s. 224(1) definitions to inform the meaning of terms in s. 265 has been sanctioned by this court in other contexts such as the meaning of "automobile". See, for example, *Morton v. Rabito, et al.* (1998), 42 O.R. (3d) 161 (C.A.).

[23] Pilot also argues that this approach leads to an absurd conclusion by, for example, extending uninsured coverage not just to John Taggart but to his spouse or a dependant relative of his if such existed. We do not need to determine if such a conclusion can be drawn but even if it could be, that is no reason invalidate this approach, particularly given that the very purpose of s. 265 is to require the extension of uninsured coverage to those insured by the policy.

[24] Having come to the conclusion that, provided he is a dependant of Mr. Tessier, John Taggart comes within the definition of "person insured under the contract" in s. 265(2) as an "insured", there is no need to determine whether in the alternative he could do so as a "dependant relative" of Mr. Tessier, the named insured, pursuant to the same subsection.

[25] In summary therefore, I conclude that if John Taggart can satisfy the dependancy requirement he is a person insured under the Pilot policy for the purposes of s. 265 of the Act. Therefore his claim for uninsured coverage pursuant to that section should not have been dismissed on summary judgment.

THE OPCF 44-FAMILY PROTECTION ENDORSEMENT ISSUE

[26] As I have indicated, Mr. Tessier purchased this optional underinsured coverage as part of his Pilot policy. The endorsement provided additional underinsured coverage to Mr. Tessier and those covered by its terms beyond the standard $200,000 required by s. 265 of the Act up to the policy limit of $1 million.

[27] The endorsement extends coverage to any dependant relative of the named insured. It does this by defining "insured person" to include the named insured, his or her spouse and any dependant relative of either. It then defines the term "dependant relative" as follows:

OPCF 44 – FAMILY PROTECTION COVERAGE

1.2 "dependent relative" means

(a) a person who is principally dependent for financial support upon the named insured or his or her spouse, and who is

(i) under the age of 18 years;

(ii) 18 years or over and is mentally or physically incapacitated;

(iii) 18 years or over and in full time attendance at a school, college or university;

(b) a relative of the named insured or of his or her spouse, who is principally dependent on the named insured or his or her spouse for financial support;

[28] Since John Taggart was over 18 at the date of the accident, and was not mentally or physically handicapped nor going to school, he does not come within s. 1.2(a) of this definition. Rather, this claim for indemnity requires that he bring himself within s. 1.2(b) of the definition.

[29] Killeen J. allowed Pilot's motion for summary judgment dismissing John Taggart's claim under the OPCF 44-Family Protection Coverage endorsement. He found that the term "relative" must be given its "ordinary work-a-day meaning" and agreed with the position of Pilot that this term provides coverage only to a person connected to the named insured by blood, marriage or adoption. Since John Taggart was not within these categories, Killeen J. found that he could not fall within the "dependent relative" coverage of this endorsement and his claim for indemnity on this basis was therefore doomed to failure.

[30] In my view, on the facts of this case, it is too narrow an approach to exclude John Taggart because he is not connected to Mr. Tessier by blood, marriage or adoption. The term "relative" is not defined either in the endorsement or in the Act. The question is whether in the context of its use in this endorsement it can take in someone with the relationship John Taggart has to Mr. Tessier.

[31] Unlike Killeen J., I do not find dictionary definitions helpful in answering this question. The *Concise Oxford Dictionary* defines "relative" as "a person connected by blood or marriage". This would exclude an adopted family member. On the other hand, *Black's Law Dictionary* defines "relation" to include the connection between two persons "… who are associated whether by law, by their own agreement or by kinship in some social status or union for the purposes of domestic life; …"

[32] Equally, I do not find helpful the express definition of "relative" in the several Ontario statutes that have specifically defined the term. For example, in the *Credit Union and Caisses Populaires Act, 1994*, S.O. 1994, c. 11, "relative" is defined to mean "a relative by blood marriage or adoption; ("parent")". While this is the meaning taken by Killeen J., this definition also leaves the implication that this definition describes a subset of "relative" and that there can be relatives who are not connected by blood, marriage or adoption. More importantly, however, this statute was designed for a specific purpose quite unrelated to automobile insurance. The legislature chose not to specify the same definition for "relative" in the Act.

[33] The respondent also relies on *Leroux v. Co-Operators General Insurance Co.* (1990), 71 O.R. (2d) 641 (H.C.). That case did not involve the endorsement we are dealing with in this case. Moreover, while Arbour J. enunciated a definition of "relative" essentially similar to that used by Killeen J. here, I regard her comment as *obiter* because although she did not extend coverage to the plaintiff on the basis that he was a relative of the named insured, she did extend coverage to the plaintiff on another basis.

[34] In my view, the task of determining whether John Taggart is a "relative" of Mr. Tessier in the circumstances of this case must begin with the endorsement itself. There is nothing in the definition of "dependent relative" that expressly limits this class of insured persons to those linked by marriage, blood or adoption to the named insured. Clearly s. 1.2(a) of the definition quoted above does not do so. Indeed, it focuses on dependancy on the named insured rather than on any particular familial relationship with the named insured. It would be inconsistent with this approach to narrowly circumscribe the familial relationship contemplated by s. 1.2(b) of the same provision by limiting it to a connection with the named insured by blood, marriage or adoption.

[35] Moreover, it is to be remembered that we are dealing with an endorsement that extends coverage. Such a provision is to be interpreted liberally or broadly in favour of the insured. See *Lloyd's London Nonmarine Underwriters v. Chu*, [1977] 2 S.C.R. 400.

[36] Finally, as its title makes clear, this endorsement was sold to Mr. Tessier as "Family Protection Coverage". Mr. Tessier clearly (and I think reasonably) regarded John Taggart as family.

[37] Given these considerations I think, a liberal approach to the term “relative” requires that the coverage extend to someone with whom the named insured has a *de facto* parent-child relationship. In this case, Mr. Tessier regarded John Taggart as his son and vice versa. John’s natural father has not been around for many years. Mr. Tessier and John Taggart have been living together as family with Mr. Tessier supporting him, looking after him and seeing to his education as any father would.

[38] In these circumstances, it is my view that the family protection coverage provided by this endorsement extends to John Taggart as a “relative” of Mr. Tessier, provided he can demonstrate at trial the dependancy also required by s. 1.2(b) of the endorsement. It is just and equitable that this endorsement provide coverage not just for those tied by blood, marriage and adoption to the named insured, but also to those like John Taggart linked by the reality of a *de facto* parental relationship. His claim for indemnity on this basis should not have been dismissed on summary judgment.

[39] In the result, I would allow the appeal with costs. I would set aside the order of the motions judge, and dismiss Pilot’s motion for summary judgment. Given that it was reasonable to bring the motion, the appellant should have his costs of the motion but on a party and party basis.

Released: February 27, 2001