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SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee, Western Section at  
Nashville.

AUTO-OWNERS (MUTUAL) INSURANCE COMPANY,  
Plaintiff-Appellee,

v.

ESTATE OF Arlene W. HARRIS, Deceased, John R.  
Ragan, Executor and Shawn Rennie, Defendants-Appel-  
lants.

No. 01A01-9306-CH-00269.

Dec. 29, 1993.

From the Chancery Court, Part One, at Nashville, No.  
01-A01-9306-CH-00269; Irvin H. Kilcrease, Jr., Chancellor.

[James D. Kay, Jr.](#), Nashville, for plaintiff-appellee.

[David B. Scott](#), Nashville, for defendant-appellant, Shawn  
Rennie.

[CRAWFORD](#), Judge.

\*1 This case involves reinstatement of a lapsed automobile liability insurance policy. Plaintiff, Auto Owners (Mutual) Insurance Company filed this declaratory judgment suit against John R. Ragan, Executor of the Estate of Arlene W. Harris, deceased, and Shawn Rennie, seeking a declaration that defendants have no coverage under the automobile liability insurance policy issued to Arlene W. Harris.

The Auto Owners policy was subject to renewal for a six month period on July 1, 1990. Because the insured, Ms. Harris, had been in a state of declining physical and mental health, her niece, Etoile Rennie, handled her financial affairs. In August of 1990, Ms. Rennie discovered an overdue insurance premium bill addressed to Ms. Harris. Sometime between August 12 and August 14, 1990, Ms. Rennie contacted Harris' insurance agent, Joel Haley Insurance Agency, by telephone and spoke with an employee of the agency, Beth Woodard, concerning the reinstatement of the policy. Ms. Woodard told Ms. Rennie that she would obtain instructions concerning reinstatement, and when she contacted Auto Owners, an underwriter informed Ms. Woodard that a full premium payment and a no-loss letter were necessary for reinstatement of coverage.

After consulting with Auto Owners, Ms. Woodard informed Ms. Rennie that in order to reinstate the policy, she should submit a full premium payment as well as a no-loss letter signed by the insured. Ms. Woodard was aware that there was going to be "power of attorney signature," and had informed the underwriter that the letter would be signed in this manner. On August 15, 1990, the agency received a check for the full six month premium in addition to a no-loss letter signed by Ms. Rennie with the phrase "power of attorney" typed under her signature. The agency forwarded the check and the no-loss letter to Auto Owners with a cover memo requesting reinstatement, and the insurance company deposited the premium payment check in its escrow account. Subsequently, on September 6, 1990, Auto Owners sent a premium refund check payable to Ms. Harris; the accompanying letter stated that the no-loss letter must be signed by the insured. Ms. Rennie deposited the refund check in Ms. Harris' account by endorsing the check in her behalf and never sent a no-loss letter signed by the insured.

On August 30, 1990, Shawn Rennie, Ms. Rennie's son, was driving the Harris automobile when he was involved in an accident that resulted in personal injuries and property damage to a third party. Auto Owners was never given any notice of this accident and had no knowledge of the accident until September, 1991, after the injured third party filed suit party against Shawn Rennie and John Ragan in his capacity as Executor of Ms. Harris' estate.

At trial, Etoile Rennie testified that Ms. Woodard had informed her that she did not think there would be any problem with reinstatement of the policy, and that she should send the no-loss letter and the premium payment, but she did not tell Ms. Rennie that coverage would go into effect immediately upon sending the letter and check. In addition to talking with Ms. Woodard at the Joel Haley Agency, Ms. Rennie testified that prior to the time that her son was involved in the accident, she had two discussions with a person she thought was Joel Haley. It was through these conversations that she learned that the insurance company wanted a letter signed by the insured, Ms. Harris.

\*2 Ms. Rennie further testified that she deposited the premium refund check in Ms. Harris' account, and that she never notified Auto Owners of Shawn's accident. She explained

that Shawn had informed her that his insurance company was taking care of the matter, and when she received Auto Owner's refund check she "realized that, you know, it was cancelled. So I didn't see any need to call them."

After commencement of the action against Ragan and Rennie, Auto Owners entered into a defense under a reservation of rights, which specified a dispute as to whether there had been a reinstatement of the Harris policy after it had been cancelled.

After a non-jury trial, the chancellor found that Ms. Rennie had been advised, "that to reinstate the policy, six month premium must be paid with a no-loss letter signed by the insured, Arlene M. Harris." The court also found, *inter alia*:

On August 15, 1990, Ms. Rennie, who did not have Arlene M. Harris' power of attorney, signed a no-loss letter as power of attorney for Arlene M. Harris and sent it with a check for the premium to Auto Owners' home office in Lansing, Michigan. Auto Owners refused to reinstate the policy because the no-loss letter was not signed by the insured, Arlene M. Harris. Auto Owners refunded the premium by check and advised that it required the no-loss letter to be signed by Arlene M. Harris to reinstate the policy. On September 9, 1990, Ms. Rennie endorsed the refunded premium check and deposited the check in Arlene M. Harris' bank account. Ms. Rennie nor Ms. Harris took any further action to reinstate the policy.

The trial court concluded that coverage under the Harris policy terminated when it was cancelled in July of 1990 due to the failure "to comply with the provisions of the policy for the policy's reinstatement." The court further concluded that even if the policy had been reinstated, there could be no coverage for Shawn Harris's accident due to the failure to comply with the notice of accident and loss provisions of the policy.

Defendant, Shawn Rennie, has appealed and the first issue we will consider is whether the trial court erred in holding that there is no coverage under the policy because it was not reinstated. Appellant asserts that the trial court erred in holding that the policy was never reinstated because there are no policy provisions concerning reinstatement. We agree with appellant that there are no such policy provisions;

however, it appears that the trial court was in fact referring to the insurance company's requirements for reinstatement. The trial court found that the requirements for reinstatement imparted to Ms. Rennie were that she must submit to the company a no-loss letter signed by the insured as well as a premium payment. Moreover, Ms. Rennie testified that prior to the time that her son was involved in an automobile accident with the Harris automobile, she was told on two occasions by a representative of the insurance agency that a no-loss letter signed by Ms. Harris was necessary. She failed to procure such a letter, and upon receipt of the premium refund check she deposited it in Ms. Harris' account and made no further efforts to obtain the required no-loss letter.

\*3 Since this case was heard by the trial court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d).

The record reflects that Ms. Rennie was aware of the reinstatement requirements but failed to comply with them. Her acceptance of the refund check is indicative of her knowledge that she had failed to comply and that the policy cancellation remained in effect. The evidence does not preponderate against the trial court's finding that there was a failure to comply with the reinstatement provisions established by the insurance company and therefore no coverage under the policy.

In view of our decision concerning this issue, we premit the remaining issue presented for review.

The judgment of the trial court is affirmed and this case is remanded to the trial court for such further proceedings as may be necessary. Costs of the appeal are assessed against the appellant.

[TOMLIN](#), P.J., W.S., and [HIGHERS](#), J., concur.

Tenn.App.,1993.

Auto-Owners (Mut.) Ins. Co. v. Estate of Harris

Not Reported in S.W.2d, 1993 WL 541069 (Tenn.Ct.App.)

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