60 S.W.2d 658
St. Louis Court of Appeals, Missouri.

NEWBILL
v.
UNION INDEMNITY CO.

No. 22272.
|
May 31, 1933.

Synopsis
Appeal from St. Louis Circuit Court; Albert D. Nortoni, Judge.

"Not to be officially published."

Garnishment proceeding by Muriel Newbill against the Union Indemnity Company, garnishee of Vincent Calamia, defendant and judgment debtor. From an adverse judgment, the garnishee appeals.

Reversed.

West Headnotes (6)

[1] Evidence
Identification of Parties
157 Evidence
157XI Parol or Extrinsic Evidence Affecting Writings
157XI(D) Construction or Application of Language of Written Instrument
157k459 Identification of Parties
157k459(1) In General
(Formerly 157k459)
Where automobile liability policy indicates that it is for benefit of unnamed third party, parol evidence is admissible to show identity of such party and his interest in property insured.

[2] Evidence
Identification of Parties
157 Evidence
157XI Parol or Extrinsic Evidence Affecting Writings
157XI(D) Construction or Application of Language of Written Instrument
157k459 Identification of Parties
157k459(1) In General
(Formerly 157k459)
Where automobile liability policy was issued for benefit of service car association and individuals whose names appeared in indorsements to policy, that indorsement contained notation that it formed part of policy issued to association "et al." held not to render policy ambiguous so as to authorize introduction of parol evidence to show that member of association not named in indorsement was intended to be insured.

3 Cases that cite this headnote

[3] Evidence
Identification of Parties
157 Evidence
157XI Parol or Extrinsic Evidence Affecting Writings
157XI(D) Construction or Application of Language of Written Instrument
157k459 Identification of Parties
157k459(1) In General
(Formerly 157k459)
Where automobile liability policy was issued for benefit of service car association and individuals, that names of individuals did not appear in policy proper but only in indorsements held not to render parol evidence admissible as to other individuals intended to be insured.

1 Cases that cite this headnote

[4] Insurance
Policies Considered as Contracts
217 Insurance
217XIII Contracts and Policies
217XIII(A) In General
217k1711 Nature of Contracts or Policies
217k1713 Policies Considered as Contracts
(Formerly 217k156(1))

Ordinary insurance contract is personal, and does not attach to property.

[5] **Insurance**

Persons Covered

217 Insurance
217XXII Coverage--Automobile Insurance
217XXII(F) Garage or Automobile Service Liability
217k2864 Persons Covered
217k2865 In General
(Formerly 217k435.23(4))

Insurer issuing automobile liability policy for benefit of service car association and individuals whose names appeared in indorsements to policy could not be compelled to pay judgment recovered against husband driving service car, where he was not named in indorsements, notwithstanding wife who allegedly owned car driven by husband was named in indorsements.

2 Cases that cite this headnote

[6] **Insurance**

Questions of Law or Fact

217 Insurance
217XXII Coverage--Automobile Insurance
217XXII(A) In General
217k2695 Questions of Law or Fact
(Formerly 217k668(1))

In garnishment proceedings against insurer by pedestrian who had recovered judgment against husband driving service car causing injuries, whether wife was owner or operator of service car held for jury.

Attorneys and Law Firms

***658** Leahy, Saunders & Walther and Lyon Anderson, all of St. Louis, for appellant.

Emmett Golden and John E. O'Brien, both of St. Louis, for respondent.

Opinion

BENNICK, Commissioner.

This is a proceeding in garnishment in aid of an execution. Muriel Newbill is the plaintiff and judgment creditor, while the Union Indemnity Company, a corporation, is the garnishee of Vincent Calamia, the defendant and judgment debtor in the original action.

The judgment, which was by default, was one for $5,000 in an action for damages for personal injuries sustained by plaintiff when struck by a service car being driven by defendant along the regular route in the city of St. Louis designated for the particular service car at the time of the accident.

Two executions were issued on the judgment, both of which were returned nulla bona; and thereafter the present garnishment proceeding was instituted, the issue being the question of the liability of the garnishee upon a certain policy of liability insurance theretofore issued by it pursuant to the requirements of an ordinance of the city of St. Louis, designed to regulate the use and operation of service cars upon the streets.

The material section of the ordinance (section 7 of Ordinance No. 37019) was as follows: "Each applicant for a license to operate a service car as herein defined shall in ***659** addition to the requirements herein mentioned maintain and carry liability insurance in the sum of Five thousand Dollars for any one person, and the sum of Ten thousand Dollars for any two or more persons who may be injured at any one time by reason of the carelessness or negligence of the driver or operator of said service car. ***"

It will be observed from the language of the ordinance that a distinction is to be drawn between the terms "operator" and "driver," the "operator" of a service car being the person who is licensed to have the car upon the streets in the business of carrying passengers for hire, while the "driver" is the one who actually drives the car. However, in the actual prosecution of the business, it was possible for the same person to be

both operator and driver, and there were undoubtedly many instances where such a situation existed.

Evidently about the time of or shortly following the enactment of the ordinance regulating the use and operation of service cars and requiring each operator to carry liability insurance, there was organized the St. Louis Service Car Association, which was incorporated under a pro forma decree entered in regular course by the circuit court of the city of St. Louis. The association was made up of persons who operated and drove service cars, and in the ordinary course of affairs its membership fluctuated from month to month. Defendant was a member of the association in good standing, making monthly payments of his dues, a portion of which was applied by the association towards the cost of the insurance.

[1] The difficulty in the case arises from the connection of defendant's wife, Catarina Calamia, with the ownership and operation of the particular car which struck and injured plaintiff, and from the fact that defendant's name was not mentioned in the policy. It seems to be a conceded fact that the license plates for the car had been issued to Catarina Calamia, and defendant himself, who was put upon the stand as a witness for plaintiff, testified that the car had been purchased with his wife's money, and that the title was in her name. Furthermore, the records of the department of streets and sewers of the city of St. Louis were identified by the secretary of such department, who had been called as a witness for plaintiff, and these records, introduced in evidence as a part of the garnishee's case, disclosed that Catarina Calamia had been granted an operator's license and defendant only a driver's license. However, Catarina Calamia herself testified for plaintiff that she neither owned nor operated a service car, and so we presume that the issue of her status was one for the jury to determine to whatever extent it was material upon the ultimate decision in the case.

Following the incorporation of the association, and in line with the requirements of the ordinance, the garnishee issued the policy now involved in this proceeding, and caused it to be filed with the proper city authorities. Under the heading "Name of the Assured" appeared the words "St. Louis Service Car Association and/or individuals listed herein." The names of the individuals, approximately one hundred in all, did not appear in what might be termed the policy proper, but were listed in various indorsements thereon without any uniformity of expression, certain of the indorsements containing two names, and others only one name. As regards the case at hand, it will suffice to say that the name of Catarina Calamia alone appeared in the indorsement to the policy which purported to extend the coverage of the policy to the use and operation of the car which struck and injured plaintiff.

Conceding that the name of defendant was not indorsed upon the policy, it was and is the position of plaintiff that the policy was ambiguous on its face so as to permit the introduction of extrinsic evidence to show the meaning of the contract, and that, inasmuch as defendant was a member of the St. Louis Service Car Association in good standing, the policy was one for his benefit, and he was as fully insured thereunder as though his name had appeared in the policy. The garnishee put its defense upon a denial that defendant was covered by the policy, or that it was ambiguous so as to warrant the introduction of parol evidence to explain its terms; and thus the issues, so far as we need consider them, were made up.

Judgment was rendered in favor of plaintiff, and against the garnishee, in the sum of $5,406; and, following the refusal of its motion for a new trial, the garnishee has duly appealed.

The chief insistence of the garnishee is that its requested peremptory instruction in the nature of a demurrer to all the evidence should have been given; the parties joining issue upon the several propositions which have been heretofore disclosed. Though the matter is not without its difficulties, we cannot escape the conclusion that the law of the case is with the garnishee.

[2] The ordinary contract of insurance is a personal one, appertaining to the insured alone, and not attached or incidental to or running with the property or thing which is the subject of the risk against which the insured is protected. In other words, though in this instance it was the risk from the use and operation of the particular service car which was insured against, the insurance did not follow the car so as to have protected any one who might have been driving it at the moment the risk attached, but instead the insurance was of a character wholly personal to such parties as were covered by the policy. ***660** Millard v.

Beaumont, 194 Mo. App. 69, 185 S. W. 547; Doggett v. Blanke, 70 Mo. App. 499.

Now the parties specifically insured were the St. Louis Service Car Association, a corporate entity, and the several individuals whose names appeared in the indorsements to the policy. Defendant's name was not listed, though the name of his wife, Catarina Calamia, did appear. He therefore was not insured under the policy, unless it be that it was so drawn as to indicate that it was for the benefit of some class of persons of whom he might be one, or that it was ambiguous on its face so as to warrant the introduction of parol evidence to explain the intention of the parties.

[3] It is true that in a policy of insurance the insured may be described in such a way that any person may be comprehended and become entitled to the benefits of the contract by proof that he was the party intended by the policy, but, where the policy contains no language indicative that the interest of any person other than the one named in the policy was intended to be covered by it, then the insurance can be applied only to the designated insured's own interest or liability. Of course, where the policy does indicate on its face that it is for the benefit of some unnamed third person, parol evidence will be admissible to show, not only the identity of the party to be covered, but his interest in the property insured as well; the admissibility of such evidence resting upon the fact that it does not in any way change or contradict the terms of the policy, but only serves to develop and explain a latent ambiguity. Wise v. St. Louis Marine Insurance Co., 23 Mo. 80; Platho v. Merchants' & Manufacturers' Insurance Company of St. Louis, 38 Mo. 248.

[4] [5] Now, if we take the policy as written, there is nothing to indicate that it was intended to insure or be for the benefit of any one save the St. Louis Service Car Association and the individuals whose names appeared in the several indorsements to the policy. Nor do we think that there is any ambiguity, either patent or latent, about the designation of the parties covered by the policy. The one is a corporate entity, which, whether or not it could be held liable to respond in damages for injuries resulting from its negligence, nevertheless had a right to secure insurance. Indeed, the reason for the inclusion of the association among the assureds lies in the conceded fact that the individuals insured were thereby able to secure a fleet or cheaper rate of insurance. And, granting that the names of the individuals did not appear in the policy proper, but only in the endorsements to it, there was still no ambiguity about the situation, since the indorsements, when attached to the policy, became as much a part of it as though originally written therein, especially in view of the fact that the face of the policy bore the notation "See Endorsements Attached." Epperson v. New York Life Insurance Co., 90 Mo. App. 432, 438; O'Connor v. Columbia Insurance Co., 169 Mo. App. 150, 152 S. W. 396; Taylor v. Loyal Protective Insurance Co. (Mo. App.) 194 S. W. 1055; Rowland v. Missouri State Life Insurance Co. (Mo. App.) 48 S.W. (2d) 31, 34.

[6] As supporting her contention of an ambiguity, plaintiff refers to the indorsement to the policy which extended its coverage to Catarina Calamia, and particularly to the notation therein that it was attached to and formed a part of the policy issued by the garnishee to "St. Louis Service Car Association et al." In other words, her point is that the use of the expression "et al." justified the introduction of parol evidence to show what other parties were intended to be insured. Under some circumstances, her point would be well taken, but not in the situation here. The only purpose served by the language of the indorsement was to connect the indorsement with the policy proper where the insuring clause was to be found, and such insuring clause did not use the expression "et al.," but specifically designated the assured as "St. Louis Service Car Association and/or individuals listed herein."

[7] Of course, if there was an ambiguity about the policy, and if it was susceptible of two interpretations equally reasonable, then the interpretation most favorable to the insured would have to be adopted. But we find no ambiguity about the policy, and therefore there is no room for the above rule of interpretation to apply or for us to attempt to construe the policy, and we are therefore left with the duty simply to apply its terms as written. State ex rel. v. Cox, 322 Mo. 38, 14 S.W.(2d) 600; Grover v. Hartford Accident & Indemnity Co. (Mo. App.) 51 S.W.(2d) 210; Kimbrough v. National Protective Insurance Ass'n, 225 Mo. App. 913, 35 S.W.(2d) 654; Cochran v. Standard Accident Insurance Co., 219 Mo. App. 322, 271 S. W. 1011; Spilman v. Masonic Mutual Accident Co. (Mo. App.) 235 S. W. 479; Banta v. Continental Casualty Co., 134 Mo.

App. 222, 113 S. W. 1140; Maupin v. Southern Surety Co., 205 Mo. App. 81, 220 S. W. 20; Robyn v. New Amsterdam Casualty Co. (Mo. App.) 257 S. W. 1065.

It may well be that defendant was entitled to be covered by the policy, and that the omission of his name was the result of a mistake of a nature to have warranted the reformation of the policy in a proper proceeding. But in this proceeding the contract must stand and be applied as actually written, and the court will not be permitted either to add to or to take away from the language used in order to express what the parties may perhaps have intended, or to make for them such a contract as the court might ***661** think ought to have been made under the circumstances.

The name of defendant not having been included in the policy, there being nothing on the face of the same to indicate that it was written for his personal benefit, and there being no ambiguity in its language so as to have warranted proof by parol evidence that he was intended to be covered by it, it follows that the insuring of his liability must be held to have been outside of and no part of the undertaking of the garnishee. United Zinc Companies v. General Accident Assurance Corporation, 125 Mo. App. 41, 102 S. W. 605.

The judgment rendered by the circuit court should therefore be reversed; and the commissioner so recommends.

PER CURIAM.

The foregoing opinion of BENNICK, C., is adopted as the opinion of the court.

The judgment of the circuit court is, accordingly, reversed.

BECKER, P. J., and KANE and McCULLEN, JJ., concur.

All Citations

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Citing References (8)

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	**1. Graham v. Gardner** 233 S.W.2d 797, 800+ , Mo.App. Proceeding in garnishment in aid of execution by F. J. Graham and Kathryn Graham against C. Newt Gardner and P. Lewis Gardner, wherein Utilities Insurance Company, a corporation,...	Oct. 02, 1950	Case		—
Cited by	**2. Clinton v. Metropolitan Life Ins. Co.** 94 S.W.2d 1080, 1082 , Mo.App. Appeal from Circuit Court, St. Francois County; Taylor Smith, Judge. "Not to be published in State Reports." Action by Louis Clinton against the Metropolitan Life Insurance...	June 02, 1936	Case		—
Cited by	**3. Adams v. Metropolitan Life Ins. Co.** 74 S.W.2d 899, 903 , Mo.App. Appeal from Circuit Court, Butler County; Robert I. Cope, Judge. Action by Charles F. Adams against the Metropolitan Life Insurance Company. From a judgment for plaintiff,...	Aug. 24, 1934	Case		—
Cited by	**4. Ocean Acc. & Guar. Corp. v. Missouri Engineering & Contracting Co.** 63 S.W.2d 196, 199 , Mo.App. Appeal from St. Louis Circuit Court; James F. Green, Judge. “Not to be published in State Reports.” Action by the Ocean Accident & Guarantee Corporation, Limited, against the...	Sep. 12, 1933	Case		—
Mentioned by	**5. Puritan Ins. Co. v. Yarber** 723 S.W.2d 98, 102 , Mo.App. E.D. Insurer petitioned for declaratory judgment, alleging that lessee, owner and lienholder of mobile home trailer did not have insurable interest in the trailer. The Circuit Court,...	Jan. 20, 1987	Case		—
Mentioned by	**6. Dixon v. Travelers Protective Ass'n of America** 113 S.W.2d 1086, 1089 , Mo.App. Appeal from St. Louis Circuit Court; Robert J. Kirkwood, Judge. Action to recover accident insurance by Gertrude K. Dixon against the Travelers Protective Association of America. ...	Mar. 01, 1938	Case		—
—	**7. Couch on Insurance s 110:23, § 110:23. Restriction of coverage to named and additional insureds, generally—Effect on coverage of insured when operated by driver not specified in clause** Where a policy limits its coverage to the operation of an automobile by a particular person, it necessarily follows that there is no coverage when the automobile is driven by...	2019	Other Secondary Source	—	—

Treatment	Title	Date	Type	Depth	Headnote(s)
—	**8.** **CJS Evidence s 1540, § 1540. Generally** CJS Evidence The parol evidence rule has been said to be applicable in the area of who is to be bound or not bound. In order for a person who is not a party to a written contract to maintain an...	2019	Other Secondary Source	—	—

Table of Authorities (17)

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Mentioned	**1. Banta v. Continental Cas. Co.** 113 S.W. 1140, Mo.App., 1908 Appeal from St. Louis Circuit Court; Jesse A. McDonald, Judge. Action by Albert J. Banta against the Continental Casualty Company. From a judgment for plaintiff, defendant...	Case			660
Mentioned	**2. Cochran v. Standard Acc. Ins. Co. of Detroit, Mich.** 271 S.W. 1011, Mo.App., 1925 Appeal from Circuit Court, Jackson County; Charles R. Pence, Judge. Action by Helen E. Cochran, as administratrix of the estate of P. O. Cochran, deceased, against the Standard...	Case			660
Mentioned	**3. Doggett v. Blanke** 70 Mo.App. 499, Mo.App., 1897 Suit begun before a justice of the peace upon the following statement of account: "J. A. Blanke, Dr. to Mrs. Grace M. Doggett. To amount assumed and promised to pay: Policy...	Case			660
Cited	**4. Epperson v. New York Life Ins. Co.** 90 Mo.App. 432, Mo.App., 1901 This action is based on a policy of life insurance issued to plaintiff's deceased husband in his lifetime by defendant, an insurance company organized in the State of New York....	Case			660
Mentioned	**5. Grover v. Hartford Acc. & Indem. Co.** 51 S.W.2d 210, Mo.App., 1932 Appeal from Jackson County; A. Stanford Lyon, Judge. Action by John C. Grover against the Hartford Accident & Indemnity Company. Judgment for plaintiff, and defendant appeals....	Case			660
Mentioned	**6. Kimbrough v. National Protective Ins. Ass'n** 35 S.W.2d 654, Mo.App., 1930 Appeal from Circuit Court, Ray County; Ralph Hughes, Judge. Suit by H. T. Kimbrough against the National Protective Insurance Association. From an order granting defendant's motion...	Case			660
Mentioned	**7. Maupin v. Southern Sur. Co.** 220 S.W. 20, Mo.App., 1920 Appeal from Circuit Court, Cedar County; B. G. Thurman, Judge. Action by Laura L. Maupin against the Southern Surety Company. Judgment for plaintiff, and defendant appeals....	Case			660

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Cited	**8. Millard v. Beaumont** 185 S.W. 547, Mo.App., 1916 Appeal from Circuit Court, Texas County; L. B. Woodside, Judge. Suit by Homer S. Millard and others against Charles M. Beaumont, executor of the estate of E. M. Millard, and...	Case			659
Mentioned	**9. O'Connor v. Columbia Ins. Co.** 152 S.W. 396, Mo.App., 1912 Appeal from St. Louis Circuit Court; James E. Withrow, Judge. Action by William O'Connor against the Columbia Insurance Company. Judgment for plaintiff, and from an order granting...	Case			660
Mentioned	**10. Platho v. Merchants' & Manufacturers' Ins. Co.** 38 Mo. 248, Mo., 1866 The plaintiff sues as the party insured, on a policy by which the defendant caused "S. M. Gray, agent," to be insured "in such sums on property from and to such places, and on...	Case			660
Mentioned	**11. Robyn v. New Amsterdam Cas. Co.** 257 S.W. 1065, Mo.App., 1923 Appeal from St. Louis Circuit Court; Franklin Miller, Judge. Action by Frieda Robyn against the New Amsterdam Casualty Company. Judgment for plaintiff, and defendant appeals....	Case			660
Mentioned	**12. Rowland v. Missouri State Life Ins. Co.** 48 S.W.2d 31, Mo.App., 1932 Appeal from Circuit Court, St. Louis County; Amandus Brackman, Judge. “Not to be officially published.” Action by Blanche Rowland against the Missouri State Life Insurance Company....	Case			660
Mentioned	**13. Spilman v. Masonic Mut. Acc. Co.** 235 S.W. 479, Mo.App., 1921 Appeal from Circuit Court, Phelps County; L. B. Woodside, Judge. Action by James A. Spilman against the Masonic Mutual Accident Company. Judgment for plaintiff, and defendant...	Case			660
Cited	**14. State ex rel. Commonwealth Cas. Co. v. Cox** 14 S.W.2d 600, Mo., 1929 Certiorari to Springfield Court of Appeals. Certiorari by the State, at the relation of the Commonwealth Casualty Company, a corporation, to Argus Cox and others, as Judges of the...	Case			660
Mentioned	**15. Taylor v. Loyal Protective Ins. Co.** 194 S.W. 1055, Mo.App., 1917 Appeal from Circuit Court, Clinton County; Alonzo D. Burns, Judge. "Not to be officially reported." Action by John E. Taylor against the Loyal Protective Insurance Company. From...	Case			660

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Cited	**16. United Zinc Cos. v. General Acc. Assur. Corp.** 102 S.W. 605, Mo.App., 1907 Appeal from Circuit Court, Lawrence County; F. C. Johnston, Judge. Action by the United Zinc Companies against the General Accident Assurance Corporation. From a judgment for...	Case			661
Cited	**17. Wise v. St. Louis Marine Ins. Co.** 23 Mo. 80, Mo., 1856 It is a rule of law that, if an insurance is made by a person in his own name only, without any indication in the policy that any other is interested, it can be applied only to his...	Case			660

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