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Clerk, Supreme Court of Appeals
Richmond, Va.

Box VA 244

Record No. 6207

In the Supreme Court of Appeals of Virginia at Richmond

KATIE MOORMAN

v.

NATIONWIDE MUTUAL INSURANCE COMPANY

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF NORFOLK

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6207

VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Friday the 10th day of September, 1965.

KATIE MOORMAN, Plaintiff in error,

against

NATIONWIDE MUTUAL INSURANCE COMPANY, Defendant in error.

From the Court of Law and Chancery of the City of Norfolk
Walter A. Page, Judge

Upon the petition of Katie Moorman a writ of error is awarded her to a judgment rendered by the Court of Law and Chancery of the City of Norfolk on the 8th day of March, 1965, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Nationwide Mutual Insurance Company was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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MOTION FOR JUDGMENT

The undersigned plaintiff moves the Court of Law and Chancery of the City of Norfolk, Virginia, for an award of judgment against you, in the sum of Three Hundred Seventy-four and 60/100 ($374.60) Dollars, with interest from July 9, 1963, for this, to-wit:

1. Plaintiff on July 9, 1963, suffered personal injuries, requiring her to be treated by physicians and by two hospitals, while she was riding as a passenger in an automobile operated by Margaret Louise Wynn, and owned by Mozell J. Wynn, in Chowan County, North Carolina.

2. At the time of said accident, the defendant had in full force and effect a certain liability insurance policy number 53-912-265, covering the automobile in which plaintiff was a passenger, containing an endorsement wherein the defendant agreed to pay all medical expenses incurred by any one riding as a passenger in the insured's automobile, and receiving injuries as a result of the operation of said automobile.

3. Defendant has breached its policy by failing to pay the medical expenses incurred by the plaintiff, although demand was made upon defendant to pay the same.

WHEREFORE, the undersigned plaintiff moves the Court for judgment against the defendant in the amount of Three Hundred Seventy-four and 60/100 ($374.60) Dollars, with interest from July 9, 1963.

KATIE MOORMAN
By HOWARD I. LEGUM
Of Counsel

(Reverse side)

Filed in the Clerk's Office the 25th day of June, 1964.

Teste:
W. L. PRIEUR, JR., Clerk
W. K. McCRORY, D. C. W

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ANSWER AND GROUNDS OF DEFENSE

Now comes the Nationwide Mutual Insurance Company and for its Answer and Grounds of Defense states as follows:

1. It can neither admit nor deny the allegations in paragraph one of the Motion for Judgment.

2. It admits that there was an Automobile Liability Insurance Policy in effect at the time of the accident covering the operation of the motor vehicle in which the plaintiff was a passenger, but it denies that the plaintiff is entitled to recover any sums under the medical payments coverage of such policies.

3. It denies the allegations contained in paragraph three of the Motion for Judgment.

4. By way of affirmative defense the defendant alleges that the plaintiff heretofore commenced suit in the Court of Law and Chancery of the City of Norfolk against the defendant's insured, Margaret Louise Wynn, for personal injuries and medical expenses alleging such damages resulted from the latter's negligent operation of her motor vehicle. Subsequent thereto the defendant, on behalf of its insured made a settlement with the plaintiff for such claims.

page 4] Inasmuch as the plaintiff has already had one full recovery for her personal injuries and medical expenses resulting from the accident, she is not now entitled to affect a double recovery for the medical expenses under the terms of the defendant's policy of insurance.

NATIONWIDE MUTUAL INSURANCE CO.
By FRED P. AUCAMP
Of Counsel

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Court of Law and Chancery Filed 7-13-64.

By: H. L. STOVALL, D. C.

page 5] March 2, 1965

Mr. Howard I. Legum
Fine, Fine, Legum & Schwan
Law Building
Norfolk, Virginia

Mr. Fred P. Aucamp
Rixey & Rixey
Maritime Tower
Norfolk, Virginia

Re: Katie Moorman v. National Mutual Insurance Co. at Law #8629

Gentlemen:

The court has considered the evidence and the authorities cited by counsel.

Some courts allow a recovery under the medical payment provisions of a policy on the theory that this is totally distinct coverage and in effect a contract of insurance for the benefit of third persons. See *Severson* v. *Milwaukee Auto Insurance Co.*, 61 N. W. 2d, 872; 42 A. L. R. 2d. 976. Other courts hold that it is not contemplated by the contracting parties that there be a double recovery. In effect, they hold that the provisions for medical payments were intended to provide minimal protection whereas the full limits of the policy are involved where negligence is alleged. See *Taft* v. *Register,* 125 S. E. 2d 754. No Virginia cases have been cited to the court, nor has the court found any which deal directly with this point, however, this court is of the opinion that the latter view is sound. It is, therefore, the opinion of the court that judgment should be entered for the defendant.

Any order carrying out the foregoing and preserving the exceptions of the plaintiff may be presented at your convenience.

Yours very truly,

WALTER A. PAGE
Judge

WAP:meg

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ORDER

This matter came on for hearing upon a stipulation of fact and all matters were submitted to the Court for determination without a jury. Upon due consideration of the stipulated facts and argument of counsel, the Court is of the opinion that the policy of insurance issued by the defendant, Nationwide Mutual Insurance Company, did not afford medical payments coverage to the plaintiff herein under the facts and circumstances of this case.

It is accordingly ORDERED, ADJUDGED and DECREED that judgment be and the same hereby is awarded in favor of the defendant to which action of the Court the plaintiff has noted her exception.

Enter
March 8, 1965
WAP

SEEN:

FRED AUCAMP
Of Counsel for Defendant

SEEN AND OBJECTED TO:

HOWARD I. LEGUM
Of Counsel for Plaintiff

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STATEMENT OF TRIAL PROCEEDINGS

1. No testimony was taken before the Court at the trial on January 4, 1965.

2. The parties, by counsel, stipulated that if plaintiff was entitled to recover the amount would be Three Hundred Fifty-nine and 75/100 Dollars ($359.75).

3. There was introduced a certain liability insurance policy containing a medical payment endorsement, issued by defendant to its insured, Mozell J. Wynn, policy number 53-912-265, which policy was in full force and effect on July 9, 1963 when, in Chowan County, North Carolina, the plaintiff suffered personal injuries while riding as a passenger in an automobile operated by Margaret Louise Wynn, wife of the owner of the vehicle, who was the defendant's insured, Mozell J. Wynn.

4. The parties, by counsel, stipulated that the plaintiff filed a Motion for Judgment for personal injuries in this Court against Margaret Louise Wynn, who was the operator of the vehicle of the defendant's insured, and that said Margaret Louise Wynn would qualify as an insured under such policy. The defendant settled said claim by paying the sum of Twelve Hundred Fifty Dollars ($1,250.00) on behalf of
page 8] its insured, Margaret Louise Wynn. A release was given by this plaintiff to said Margaret Louise Wynn and the case was dismissed agreed. At the time the settlement was reached, neither the counsel for this plaintiff or counsel for Nationwide Mutual Insurance Company made mention or discussed recovery under the medical payment endorsement of the policy in question.

This statement was tendered to the Court on the 3rd day of May, 1965, and was signed by the Court on the 3rd day of May, 1965.

WALTER A. PAGE
Judge

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ASSIGNMENT OF ERROR

1. The Court erred in entering the final judgment Order.

2. The Court erred in holding that the medical payment endorsement on the liability insurance policy issued by de-

fendant to its insured did not afford coverage to the plaintiff for medical expenses incurred in the accident.

KATIE MOORMAN
By HOWARD I. LEGUM
Of Counsel

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A Copy—Teste:

H. G. TURNER, Clerk.

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