IN THE SUPERIOR COURT OF JOHNSON COUNTY

STATE OF GEORGIA

GOVERNMENT EMPLOYEES INSURANCE COMPANY and GEICO INDEMNITY COMPANY, Plaintiffs, v. DANIELLE GRADDY, Individually and as Parent of TANIJAH PULLEN, TERRON D. PULLEN, SR., Individually and as Parent of TANIJAH PULLEN, LINDA GREENE and WILLIE J. GREENE, Defendants.	CIVIL ACTION NO.: 2018-CV-0078

FILED IN OFFICE
Johnson County, GA
Date 9-30-2020
Patricia Glover, Clerk
Superior Court
Delora C Simmons

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

On October 28, 2019 Government Employees Insurance Company and GEICO Indemnity Company (hereinafter referred to as "Plaintiffs") filed their Motion for Summary Judgment in the above-styled case. On December 2, 2019, Mary Brooks, individually, and as the legal guardian of Marlayjah Brooks (hereinafter referred to as "Defendants") filed their Response to Plaintiffs' Motion for Summary Judgment. On September 16, 2020 this Court conducted a hearing on said motion by video conference. The Court allowed both sides ten (10) days to file supplemental briefs. Plaintiffs filed a Memorandum on September 24, 2020. Having carefully considered the pleadings and the arguments of the parties, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case involves an accident that occurred in Johnson County, Georgia on July 3, 2017. Allegedly, Tanijah Pullen, who is a minor, was operating a golf cart when she struck Marylayjah

Brooks, a minor, causing injuries. Mary Brooks, the mother of Marylayjah Brooks, filed suit in Johnson County, Georgia in Civil Action No. 2018-CV-0017 against Linda Greene and Danielle Graddy, alleging injuries caused to her daughter. Both Plaintiffs denied coverage for the accident. This Court stayed Civil Action No. 2018-CV-0017 and Plaintiffs brought the instant case seeking a declaratory judgment as to coverage.

Plaintiffs argued that coverage for accidents in their indemnity policies only provide coverage for "owned autos" or "non-owned autos." Plaintiffs allege that the golf cart being driven by the minor child at the time of the accident does not qualify as either an "owned auto" or "non-owned auto." In addition, Plaintiffs contend that the minor child driving the golf cart did not qualify as an insured under either policy at the time of the accident.

Defendants argue that the Plaintiffs should cover the golf cart accident in question. They contend the golf cart is a "non-owned auto." The relevant language in both policies defines the term "non-owned auto" as a *private passenger auto, utility auto, or trailer not owned by or furnished for the regular use of the policy holder or a relative.* To support coverage in this case, Defendants argue that the golf cart can be considered a "private passenger auto" because it can be driven on or off roads, has an accelerator, brake, emergency brake, and speedometer. In addition, Defendants argue that the golf cart can be considered a "utility auto" because it weighs less than 15,000 pounds and was not used for commercial purposes. However, both parties agree that the golf cart involved in the referenced incident was <u>not</u> a listed auto nor was it being operated by a named insured.

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, OCGA § 9-11-

56(c). The Court of Appeals has held that "[i]n Georgia, insurance is a matter of contract, and the parties to an insurance policy are bound by its plain and unambiguous terms," Hays v. Georgia Farm Bureau Mut, Ins. Co., 314 Ga. App. 110, 111 (1) (2012).

Both parties agreed that no Georgia court appears to have squarely addressed the issue as it relates to a golf cart. Plaintiffs point to persuasive, non-binding authority finding that an all terrain vehicle was not a private passenger auto for coverage purposes under a GEICO policy, see Starner v. Haemmerle, 2018 WL 5273995 (N.J. Super. Ct. App. Div.) (2018) (unpublished op.) (finding ATV specially designed and constructed vehicle, intended for off-road recreational purposes); Progressive Casualty Ins. Co. v. Skin, 211 P.3d 1093 (Alaska) (2009) (finding policy definition unambiguously excluded ATVs despite judicial notice that ATVs and snowmobiles regularly seen on public roads).

Defendants contend the policy language is ambiguous, citing Gary L. Shaw Builders v. State Auto Mut. Ins. Co., 182 Ga. App. 220 (1987) (noting that "a genuine ambiguity [arises] where the phrasing of an insurance policy is so confusing that an average policy holder cannot make out the boundaries of coverage"). Based on this case and Hollis v. St. Paul Fire & Marine Ins. Co., 203 Ga. App. 252 (1992) (finding a station wagon that had not run for two years was a "motor vehicle"), the Defendants argue that summary judgment is improper.

The Court finds that the pertinent policy language can be plainly and unambiguously read, including the term "non-owned auto." Based on the above, this Court holds that the golf cart at issue was not an "owned auto" or a "non-owned auto." In addition, when the minor child Tanijah Pullen was operating the golf cart, she was NOT an insured under either policy purchased from Plaintiffs because Ms. Graddy chose not to have insurance on the golf cart at the time of the accident. For

these reasons, this Court finds that no genuine issue of material fact remains and hereby GRANTS Plaintiffs' Motion for Summary Judgment.

SO ORDERED, this 30th day of September, 2020.

Judson L. Green, IV
Judge, Superior Courts
Dublin Judicial Circuit

Clerk to serve:
Attorneys of record