

**NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS**

ROBERT F. CALDERONE,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
	:	
Plaintiff,	:	
	:	
v.	:	ESSEX COUNTY DOCKET NO.:L-2146-17
	:	
	:	OPINION
MICHAEL J. DEFEO II, MICHAEL J. DEFEO, JOHN DOES 1 – 10, JANE DOES 1 – 10, ABC CORPS. 1 – 10	:	
	:	
Defendants.	:	

Decided: September 28, 2018

The following attorneys are counsel of record:

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By: The Honorable Thomas R. Vena, J.S.C.

Preliminary Statement

This matter is before the Court on Defendants Michael DeFeo II (“DeFeo II”) and Michael DeFeo’s (“DeFeo”) motion for summary judgment seeking that the Court declare that Plaintiff Robert Calderone (“Calderone”) is subject to the New Jersey lawsuit limitation. Plaintiff Calderone cross-moves for partial summary judgment and opposes.

Statement of Facts

This action arises out of a motor vehicle accident that occurred on April 4th, 2016 at the intersection of the Main Avenue Ramp and Route 3 West in Clifton, New Jersey. Plaintiff, Robert F. Calderone (“Calderone”), alleges that at approximately 10pm on April 4th, 2016, he was merging onto Route 3 West from the Main Avenue ramp located in Clifton, New Jersey, when the vehicle driven by Defendant Michael DeFeo II (“DeFeo II”) and owned by Michael DeFeo (“DeFeo”) struck the rear of Calderone’s car.

Plaintiff Calderone filed a complaint on April 4th, 2016 alleging that he suffered permanent injuries from the accident and further, that he was not bound by the lawsuit limitation set forth in N.J.S.A. 39:6A-8a. Plaintiff argues that he is not bound by the verbal threshold policy entered into by his domestic partner, Joseph Amorino (“Amorino”), despite being listed on the policy as a member of Amorino’s household and residing with him for the past 38 years. Plaintiff bases this argument on the fact that Calderone and Amorino never entered into a civil marriage, which means that Calderone is neither the “spouse” nor the “immediate family member residing with the insured” for the purposes of the insurance policy, thereby rendering him able to bring the current lawsuit, and not precluded by the verbal threshold limitation. Defendants argue that Plaintiff is subject to the verbal threshold limitation because the policy includes both domestic

partners and married spouses. For this reason, Defendant argues that Plaintiff Calderone is bound by the lawsuit limitation contained in the policy and is precluded from bringing this suit.

Legal Analysis

I. Summary Judgment Standard

This is a motion for summary judgment pursuant to R. 4:46-2(c). Under the rule, a court should grant summary judgment when “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 challenged and that the moving party is entitled to a judgment or order as a matter of law.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995).

A genuine issue of material fact is present when the evidence on the motion record, considered in light of the applicable burden of persuasion at trial and in a manner most favorable to the non-movant, would allow a fact-finder to resolve the dispute in favor of the non-movant. Id. at 540. In order to ensure that the evidence on motion is viewed in a manner most favorable to the non-movant, the Court is compelled to accept the non-movant’s version of the facts as true and grant the non-movant “[t]he benefit of all inferences that those facts support.” Baird v. Am. Med. Optics, 155 N.J. 54, 58 (1998).

At the same time, the non-moving party “cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Brill, supra, 142 N.J. 520 at 529. In other words, while “genuine” issues of material fact preclude the granting of summary judgment, facts which are “of an insubstantial nature” will not prevent courts from granting the same. Id. at 530. Thus, the relevant inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 533, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986).

II. Verbal Threshold Standard

Pursuant to N.J.S.A. 39:6A-8, there are two options for a New Jersey resident seeking car insurance. Relevant here, a resident can choose the “limitation on lawsuit” option, commonly known as the “verbal threshold,” which provides for lower premium payments in exchange for the insured foregoing any lawsuits for non-economic damages, unless the insured suffers a serious bodily injury that satisfies the statutory minimum. Roman v. Correa, 352 N.J. Super. 124, 127 (App. Div. 2002). Generally stated, an insurance policy covers the insured, the spouse of the insured, and the children of the insured, subject to variations within the policies themselves as well as the determination of residency of the individual in question.

Often, cases of this nature turn on whether the person at issue falls within the category of “resident relative” of the named insured such that they are bound by the terms of the policy. In Ibarra v. Vetrano, the Court would not include a parent residing with his child as a “resident relative.” 302 N.J. Super. 578, 580 (App. Div. 1997). Similarly, in Wood v. State Farm, the Court concluded that a fiancé who had lived with her significant other for three and a half years did not fall within the “resident relative” term of the insurance policy because the two were not married. 178 N.J. Super. 607 (App. Div.1981). Plaintiff points to these cases to support the notion that Plaintiff Calderone, who is in a domestic partnership, would not be considered a “resident relative” of Amorino and therefore, is not bound by the lawsuit limitation of Amorino’s insurance policy.

However, this argument overlooks the fact that the aforementioned cases were decided on the terms of the insurance policies at issue. The current Plymouth Rock Insurance Policy states that it includes an immediate family member residing with the insured, the spouse of the insured, and, notably, “the domestic partner who is registered as such under any states domestic partner

or civil union law.” While Plaintiff’s distinctions between married couples and unmarried cohabitants as they pertain to the “resident relative” terms of the prior policies may have been persuasive, they remain irrelevant in this case as the current policy, on its face, includes domestic partners in civil unions.

It is important to note that “the interpretation of an insurance contract is a question of law for the Court to determine.” Ferrer v. State Farm Ins. Co., 2014 N.J. Super. Unpub. Lexis 1005, 8 (App. Div. 2014) citing Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 473 (App. Div. 1996). Additionally, the determination as to whether the expectations of an insured individual are objectively reasonable is a question of law for the Court. Bromfield v. Harleysville Ins. Co., 298 N.J. Super. 62, 79 (App. Div. 1997). The Court in Ferrer stated in no uncertain terms that “it is the declaration page, the one page of the policy tailored to the particular insured and not merely boilerplate, which must be deemed to define coverage and the insured’s expectation of coverage.” Ferrer v. State Farm, supra, at 7, citing Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340, 346 (App. Div. 1994).

Plaintiff Calderone alleges that the verbal threshold option elected by his domestic partner, Amorino, does not apply to him because the two had not been legally married at the time of the accident, nor is a domestic partner considered to be an “immediate family member residing with the insured” under New Jersey case law. According to Plaintiff Calderone, he does not fall into either of the aforementioned categories and therefore the verbal threshold election of his domestic partner does not preclude him from bringing the present suit against Defendants DeFeo.

However, Plaintiff’s arguments overlook a substantial body of New Jersey case law in which the courts heavily emphasize that in order to determine the parties bound by the insured’s

verbal threshold election, it is the terms of the insurance policy at issue that control. Further, Plaintiff's allegations ignore the applicable language of the policy at issue. The Plymouth Rock Insurance Policy states, in relevant part, that "family member" is to mean "1. A person who is related to you by blood, marriage, or a lawfully recognized civil union under New Jersey law or adoption and resides in your household." Furthermore, the policy goes on to define "named insured" to include "1. The named insured listed in the Declarations" and "2. The named insured's (a) Spouse or (b) Domestic partner who is registered as such under any states domestic partner or civil union law." Under this policy, it is clear that as a matter of law, Plaintiff Calderone is the domestic partner of the insured, which brings him within the terms of the insurance policy of Amorino and he is therefore subject to the verbal threshold.

Further evidence that Calderone is bound by the verbal threshold election of his domestic partner can found on the Declarations page of the relevant policy. The Court in Ferrer also emphasized heavily that the Declarations page was the way by which a Court should determine the expectation of the insured as to who was and was not covered under an insurance policy. The Declarations page of the policy at issue clearly indicates that Plaintiff Robert Calderone is a "Licensed Operator Resident in Your Household" under Amorino's policy. It is clear that Plaintiff Calderone was added as a member of Amorino's household so he could derive coverage from that policy and since that policy was a "limitation on lawsuit" policy, the verbal threshold applies to Plaintiff Calderone. Additionally, it is important to note that Calderone is not covered by any other insurance policy, and it is objectively reasonable to infer that Amorino's addition of Calderone as a member of his household under the policy was because he intended it to cover Calderone as well.

III. The New Jersey Domestic Partnership Act – N.J.S.A 37:1-33

The New Jersey Domestic Partnership Act (“DPA”), enabled registered domestic partners to file joint tax returns, gain inheritance rights through one another, as well as obtain benefits under health insurance plans and state pensions. In United States v. Windsor, the Supreme Court of the United States held that marriage was a fundamental right applying to both heterosexual and homosexual couples and that states could not deny homosexual couples the right to civil marriage, for the purpose of federal benefits. 570 U.S. 744 (2013). In light of this decision, the Superior Court of New Jersey held in Garden State Equality v. Dow that in order for same-sex couples to obtain all the rights of opposite-sex married couples, as they are entitled to, they must be afforded civil marriages, as opposed to only civil unions, as is stated in the DPA. 434 N.J. Super. 163 (Law Div. 2013).

The Plaintiff argues that the decision in Garden State Equality, as applied to the facts of this case, support the contention that Plaintiff is not bound by the insurance policy of his domestic partner containing the lawsuit limitation simply because the partners were never legally married in the state of New Jersey. This argument cannot stand for two reasons. First, the decision in Garden State Equality was meant to afford same-sex couples the same rights as opposite-sex married couples with respect to various benefits. Plaintiff Calderone and Amorino are domestic partners and have lived together for 38 years. To exclude Plaintiff Calderone from Amorino’s insurance policy simply because the two never converted their civil union into a civil marriage would be totally inconsistent with the reasoning of both Windsor and Garden State Equality. Second, the determination as to whether Plaintiff Calderone needed to be married to Amorino in order to be covered under the policy need not be examined further because the insurance policy itself includes both a spouse, member of a civil union, or a domestic partner. This means that

regardless of what category Plaintiff Calderone may fall under, the Plymouth Rock Insurance Policy clearly includes him. That Plaintiff Calderone is covered under and bound by the policy is further supported by the fact that he is clearly listed on the Declarations page as an operator within the insured's household. For these reasons, it is of no consequence that the DPA, which allowed same-sex couples civil unions as opposed to civil marriages, was struck down by the Supreme Court's reasoning in Windsor. Regardless of whether Calderone married Amorino or remained his domestic partner in a civil union, it is exceptionally clear that the Plymouth Rock policy intended to include both categories of relationship as those who were "insured."

Conclusion

This Court finds that the reasoning proffered by Plaintiff Calderone in support of his contention that he is not covered under his domestic partner's car insurance policy, which contains a "limitation on lawsuit" provision, is unpersuasive. The Plymouth Rock Insurance Policy clearly states that the insured parties under a policy include both a "spouse" in a civil marriage and a domestic partner in a civil union. While Plaintiff argues that in order to derive insurance from an insured, one must be an immediate family member residing with the insured, case law suggests that it is the terms of each policy that dictate who is to be covered. The interpretation of an insurance contract is a determination to be made by the Court as a matter of law and the Declarations page of a given insurance policy is given significant weight throughout New Jersey case law. Further support that Plaintiff Calderone was intended to be included on the policy can be found on the Declarations Page, in which Plaintiff Calderone's name was added as part of Amorino's household. Additionally, the terms of the policy clearly include domestic partners as well as married spouses. Therefore as a matter of law, Plaintiff Calderone is included

in the insurance policy of his domestic partner, Joseph Amorino, and therefore, Plaintiff is bound by the lawsuit limitation contained therein.

Furthermore, same-sex couples that entered into civil unions in New Jersey were afforded the fundamental right to civil marriage for the purpose of obtaining benefits in Garden State Equality. Following the reasoning of Windsor, the Court in Garden State Equality emphasized that labels placed upon a same-sex couple by the state should not control the benefits to which they are entitled. It would be in direct contravention of the reasoning in both Windsor and Garden State Equality to hold that simply because Plaintiff Calderone did not convert his civil union to a civil marriage the moment Garden State Equality was decided, he was not covered as an immediate family member under Mr. Amorino's auto insurance policy. The nature of both Windsor and Garden State Equality were to expand the rights of same-sex couples in civil unions and domestic partnerships such that the label that was placed upon them by the state did not deprive them of benefits to which they were legally entitled. Plaintiff Calderone has lived with his domestic partner, Mr. Amorino, for 38 years and yet he somehow argues that the status of his relationship should be relegated so as to not be bound by the verbal threshold his partner selected. It is hard to imagine a more applicable scenario to which Windsor and Garden State Equality would apply. However, even if an argument of such a contrary nature were to succeed, it is of no consequence because the policy at issue was very clear on its inclusivity. The Plymouth Rock Policy clearly includes domestic partnerships and civil unions under the laws of any state. It can only be assumed that such a provision was in the policy to evidence the intention that all the variations same-sex marriage took prior to the decision in Windsor were to be included. For these reasons it is clear that the logic of Windsor and Garden State Equality dictate

that Plaintiff Calderone was covered under Mr. Amorino's Plymouth Rock Insurance Policy and therefore, is subject to the verbal threshold.

For all of the foregoing reasons and on the basis of the authority cited herein, Defendants Michael DeFeo II and Michael DeFeo's motion for partial summary judgment is **GRANTED** and Plaintiff Robert Calderone's motion for partial summary judgment is **DENIED**.