

preliminary objection in the nature of a demurrer is sustained. The plaintiff is granted twenty (20) days from this date to file an amended complaint.

FICKES v. SIPES, C.P. Franklin County Branch, A.D. 1979-281, Action for Declaratory Judgment; KAUFFMAN v. SIPES, C.P. Franklin County Branch, A.D. 1979-282, Action for Declaratory Judgment

Declaratory Judgment - Auto Insurance Coverage

1. A car owner's insurance carrier does not owe coverage to the driver of the car where there is no connection between the car owner and the driver from which permission to use the car could be implied.

George F. Douglas, Jr., Esq., Attorney for Defendants

David C. Cleaver, Esq., Attorney for Plaintiffs

OPINION AND ORDER

EPPINGER, P.J., December 17, 1980:

Paul F. Sipes owned an automobile insured with State Farm Mutual Automobile Insurance Company. The liability of anyone driving the auto with the owner's permission was covered by the policy.

Sipes lived with his wife and family at Route 1, Fayetteville. In a separate garage building there was a sort of second floor apartment and, with Sipes' wife's permission, Mary Ann Weitry and Sherry Nicholson lived there. Sipes' son Mark had been dating Mary Ann. Early on the evening of November 25, 1977, Mark got his mother's permission to use the automobile. His father had told him not to let anyone else drive it.

That night Mark drove to a parking lot. Mary Ann and Sherry were along with him. He decided that he wanted to go off with some friends and, giving the keys to Mary Ann, told her to be back at such and such a time. Paul had let her drive some other times but never when he wasn't in the car.

First Mary Ann and Barbara drove around Chambersburg, then to St. Thomas. On their way back to Chambersburg they picked up William C. Kauffman. Mary Ann then announced

she was going to pick up Leonard Painter. She was dating Leonard without Mark's knowing it; neither Mark nor his father knew Leonard.

When Mary Ann got to the Hitching Post Inn where Leonard lived, Leonard was drunk. The evidence in the depositions was slightly conflicting, but, according to Mary Ann, Leonard insisted on driving, took the keys from her and started driving away, with Mary Ann protesting all the while that because it was not her car she couldn't let him drive. Painter said he was driving and told Mary Ann that she shouldn't because she was too drunk. He contended Mary Ann gave him the keys.

Leonard Painter had only driven a few blocks when, on Grant Street in Chambersburg at a speed of 70 miles per hour, he ran into a utility pole, seriously injuring the two plaintiffs who were in the rear seat. State Farm Mutual denies coverage and in this Petition for Declaratory Judgment asks us to confirm its position. We do.

In *Insurance Company of North America v. State Farm Mutual Insurance Company*, Pa. Super. , 403 A.2d 611 (1979), Feehery owned a vehicle insured with State Farm. He permitted his daughter Virginia to take the car to college for short periods. Virginia's college roommate was Brenda Sexton. Now and then Virginia let Brenda drive the car. In the summer the two girls roomed together at a resort. On one of the two occasions Virginia had the car there, she let Brenda drive without Feehery's permission. There as an accident. The court held State Farm did not owe coverage to Brenda Sexton because there was no connection between Feehery and Brenda from which permission to use the automobile could be implied. Brenda was obliged to seek coverage from I.N.A.

To the same effect is *Belas v. Melanovich*, 247 Pa. Super. 313, 372 A.2d 478 (1977), where an aunt who was in the hospital gave her nephew permission to drive her car for a social event provided he return home by midnight, as he had a junior operator's license. He loaned the car to one of his friends, requiring that it be returned to him by midnight. The friend had an accident. The court held the aunt's insurance carrier did not owe coverage. In *Belas* there is a thorough review of the law on this subject.

ORDER OF COURT

December 17, 1980, the Court finds and declares that

SHERIFF'S SALES, cont.

and Deed to Richard Boyer, et ux, dated July 24, 1970, and recorded in Franklin County Deed Book Volume 652, page 620.

BEING the same real estate which was conveyed to R. Johnston Bittner by Deed of Roy G. Summers and Margaret H. Summers, his wife, dated April 1, 1953 and recorded in Franklin County Deed Book Volume 440, page 452.

TOGETHER with the right-of-way appurtenant to this real estate being a private lane 22 feet in width, more or less, extending southwardly from the southern boundary of said real estate to Pennsylvania State Highway Route No. 16, for ingress, egress and regress.

TRACT NO. 1-A: BEGINNING at a point at the western side of a lane at the northeast corner of lands conveyed by Earl O. Rinehart and wife to Daniel Barkdoll and wife by Deed dated April 17, 1940, recorded in Franklin County, Pa., Deed Book Volume 309, page 599, now owned by John N. Flaunt Estate; thence across said lane along other lands of R. Johnston Bittner, Tract No. 1 herein, formerly Roy G. Summers and wife, N 82° E 22 feet, more or less, to a point on the eastern side of said lane at corner of lands conveyed by Walter H. Wishard and wife by deed dated July 12, 1951, recorded in said Deed Book Volume 418, page 592, to Charles S. Gardner and now occupied by Red Run Drive-In Theatre; thence along the eastern side of said lane and the said lands conveyed to Charles S. Gardner, S 5° 38' W 77.4 feet, more or less, to a point on the eastern side of said lane at the southwestern corner of the lands conveyed to Charles S. Gardner as aforesaid; thence across said lane, S 82° W 22 feet, more or less, to a point on the western side of said lane at the southeastern corner of lands formerly of Daniel Barkdoll and wife, now John N. Flaunt Estate; thence along the western side of said lane and lands of John N. Flaunt Estate, N 4° 58' E 80 feet, more or less, to a point in said lane at Tract No. 1 herein, the place of beginning.

BEING the same real estate which Walter H. Wishard and Maude Inez Wishard, his wife, by Deed dated May 8, 1953, recorded in Franklin County, Pennsylvania, Deed Book Volume 440, page 455, conveyed to R. Johnston Bittner.

TRACT NO. 2: BEGINNING at a point in the center of State Road at line of lands now or formerly of W. F. Brown and running thence S 21° 5' W 386.6 feet to an iron pin at lands now or formerly of Mamie Kauffman; thence by said Kauffman lands, S 69° 13' E 139 feet 11 inches to a stone at lands now or formerly of George Smith; thence by said Smith lands and lands now or formerly of Charles Rogers, N 21° 5' E 386.6 feet to an iron pin in the center of said State Road; thence with the center of said State Road, N 69° 13' W 139 feet 11 inches to the place of beginning.

CONTAINING 1 acre and 86 perches as shown by draft of John H. Atherton, C. S., dated March 11, 1929, and recorded in Franklin County, Pennsylvania, Deed Book Volume 233, page 327.

BEING the same real estate which Edgar W. Hollinger and Doris H. H. Hollinger, his wife, by Deed dated April 1, 1946, and recorded in Franklin County, Pennsylvania, Deed Book Volume 349, page 536, conveyed to R. Johnston Bittner; said deed incorrectly stating that the real estate described contained 1 acre and 6 perches.

TRACT NO. 3: BEGINNING at a point on a street leading southwardly from State Highway Route 28068, a corner of lands now or formerly of Edgar Z. Mann; thence with the latter, S 68° 10' E 50 feet to a point, a corner of Tract No. 2 herein; thence with the same, S 20° 50' W 322 feet 3 inches, more or less, to a point a corner of lands now or formerly of Frank Stuller; thence with the same, N 69° 13' W 50 feet to a point on said street; thence with said street, N 20° 50' E 322 feet 3 inches, more or less, to the place of beginning.

BEING Lots Nos. 11, 12, 13, 14, 15 and 16 as per plan of lots laid out for W. F. Brown, March 11, 1929, by John H. Atherton, C. S.

BEING the same real estate which George F. Patterson and Maggie E. Patterson, his wife, by Deed dated

SHERIFF'S SALES, cont.

August 27, 1948, recorded in Franklin County, Pa., Deed Book Volume 385, page 22, conveyed to R. Johnston Bittner.

BEING sold as the properties of R. Johnston Bittner, Writ No. A. D. 1980-299.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, March 23, 1981 at 4:00 P.M., E.S.T. otherwise all money previously paid will be forfeited and the property will be resold at the hour at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff

Franklin County, Chambersburg, PA

State Farm Mutual Automobile Insurance Company has no duty to provide liability insurance coverage in the above-captioned proceedings for Paul F. Sipes, Mark Sipes, Mary Ann Weitry and Leonard Painter.

LOCKE v. McCARTNEY, C.P. Franklin County Branch, A.D. 1979 - 54, In Trespass

Trespass - Motion for Summary Judgment - Pa. No-Fault Act - Serious and Permanent Injury

1. A physician's affidavit attached to the plaintiff's brief which describes plaintiff's injury as "serious and permanent" and elaborates on his conclusion with specific findings is sufficient to overcome a motion for summary judgment.

2. A court may not "second guess" a medical expert's finding and hold as a matter of law the plaintiff has not suffered "serious and permanent" injury.

Samuel Cohen, Esq., Counsel for Plaintiffs

Thomas J. Williams, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., December 10, 1980:

This action in trespass was commenced by the filing of a praecipe for a summons on March 1, 1979, and service of the same upon the defendant on March 6, 1979. A complaint in trespass was filed on June 4, 1979, and served on the following day upon the defendant. The plaintiffs were deposed by the defendant on April 23, 1980. The defendant also submitted interrogatories to the plaintiffs on April 1, 1980, and the same were answered and filed of record on September 17, 1980. The defendant's motion for summary judgment was filed September 25, 1980. The plaintiff's answer to the motion was filed October 14, 1980. A motion for summary judgment was placed on the Argument List and argument heard on December 4, 1980. The matter is now ripe for disposition.

The defendant's motion for summary judgment is predicated upon his contention that the plaintiff's pleadings, depositions and answers to interrogatories establish that the