IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8203
Summary Calendar

ROSE MARIE M. CASTRO,

Plaintiff-Appellee,

versus

AAA LIFE INSURANCE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the Western District of Texas
(SA-91-CA-479)

(November 15, 1993)

Before REAVLEY, SMITH and DEMOSS, Circuit Judges.

REAVLEY, Circuit Judge:*

The decedent, fatally injured while riding a motorcycle, was insured under two policies issued by AAA Life Insurance Co. ("AAA"). AAA denied the claims on the ground that a motorcycle was not covered in either policy, and the beneficiary brought suit. The district court held that the term "automobile" was ambiguous as used in one of the insurance contracts ("the 365

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

policy") and granted summary judgment for the plaintiff. The court further granted AAA's motion for summary judgment on the Travel, Recreation and Pedestrian Accident Insurance Policy ("recreation policy"), because that policy unambiguously excluded motorcycles. We see no ambiguity in either policy and render judgment for AAA.

I. BACKGROUND

On August 3, 1987, Joe Castro, Sr. ("decedent") hit a curb and lost control of his Yamaha motorcycle. He sustained serious injuries in the accident and subsequently died. The decedent was insured under two policies issued by AAA at the time of the accident. One was a 365 Travel Accident Insurance Policy which provided $50,000 in benefits, while the second policy was a recreation policy which provided $1,000 in benefits. The plaintiff, Rose Castro ("Castro"), was the beneficiary under both policies.

The recreation policy specifically excluded injuries or death sustained while driving or riding a motorcycle. The 365 policy, however, did not contain a similar exclusion. The 365 policy defines injuries it covers as:

> [A]ccidental bodily injuries received while the Insured is insured under this policy which result in covered loss independently of sickness and all other causes, provided such injuries are sustained:
>
> * * *

3. AUTOMOBILE AND PEDESTRIAN. (a) While driving, riding in, boarding or alighting from any private passenger automobile or (b) by being struck while a pedestrian by any motor vehicle ordinarily operated on the public streets and highways. "Private passenger automobile" means an automobile not licensed to carry passengers for hire and which is of the pleasure type, including (1) self-propelled motorhomes and (2) trucks with a gross vehicle weight not in excess of 8,500 pounds.

The district court granted summary judgment for the plaintiff on the 365 policy because, unlike the recreation policy, there was no specific exclusion of motorcycles. The district court concluded that the ambiguity should be resolved in favor of the insured. Defendant AAA appeals.

II. ANALYSIS

The 365 Policy

As the district court recognized, this is a diversity case in which Texas law applies. Castro claims that Texas cases construing the term "private passenger automobile," as defined in insurance policies, support the district court's holding that coverage exists under the 365 policy issued by AAA. We disagree, because Texas courts have consistently defined the word "automobile" in insurance contracts to the contrary.

It is well settled in Texas courts that a motorcycle is not an automobile and thus is not included in the generally accepted

meaning of the word unless there is policy language to the contrary. See, e.g., Crocker v. Gulf Ins. Co., 524 S.W.2d 566, 567 (Tex. Civ. App.--Texarkana 1975, no writ); Futrell v. Indiana Lumbermens Mutual Ins. Co., 471 S.W.2d 926, 928 (Tex. Civ. App.--Houston [1st Dist.] 1971, no writ); Members Mutual Ins. Co. v. Randolph, 477 S.W.2d 315, 317-18 (Tex. Civ. App.--Houston [1st Dist.] 1972, writ ref'd n.r.e.). Furthermore, there is nothing ambiguous in the term "automobile," unless it is used in a "technical or different sense." Futrell, 471 S.W.2d at 928. In Equitable Gen. Ins. Co. v. Williams, 620 S.W.2d 608, 609 (Tex. Civ. App.--Dallas 1981, writ ref'd n.r.e.), the Texas Court of Civil Appeals stated "[i]f the language of an exclusionary clause in an insurance policy is clear and unambiguous, the well established rule of construction directing adoption of that construction most favorable to the insured, is not applicable."

Because there was no ambiguity in the 365 policy, the district court erred in adopting a rule of construction that favored the insured. The policy defined private passenger automobile as an "automobile. . . of the pleasure type, including (1) self-propelled motorhomes and (2) trucks with a gross vehicle weight not in excess of 8,500 pounds." The description of "automobile" as one of the "pleasure type" does not in any way expand or limit the ordinary meaning of the word automobile to include a motorcycle. Similarly, the inclusion of motorhomes and trucks under a certain weight does not in itself create an ambiguity in the definition of "automobile."

Castro argues that Crocker is an example of how the term "automobile" can include a motorcycle, but that case is readily distinguishable from the present case. In Crocker, the Texas Court of Civil Appeals found that the term automobile could be expanded because of convoluted and broadening language within the policy. Crocker, 524 S.W.2d at 567. The definition of "automobile" in the policy was expanded to include a "land motor vehicle." Id. The court reasoned that a "land motor vehicle" included a motorcycle. Id. This was in accordance with Texas decisions that have held the term "motor vehicle" has a broader meaning than the word automobile. See, e.g., Equitable Gen. Ins. Co., 620 S.W.2d at 610; Slaughter v. Abilene State Sch., 561 S.W.2d 789, 791-92 (Tex. 1977).

In the present case Castro presents no compelling arguments that "pleasure type" similarly broadens the meaning of the word "automobile." These words do not transform the nature of the term "automobile" into a larger group which encompasses motorcycles as the term "land motor vehicle" does. Although we agree with Castro that a motorcycle could be included within the term "automobile" if the policy's definition were sufficiently expansive, we find that the policy here does not indicate such a meaning.

The Recreation Policy

The recreation policy specifically excluded coverage of injuries sustained while driving a motorcycle. Recovery under this policy was thus properly denied by the district court.

Thus we reverse the district court's judgment on the 365 policy and affirm the judgment on the recreation policy. REVERSED IN PART and AFFIRMED IN PART; Judgment rendered for AAA Life Insurance Company.