

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ADDREA STEWART, AS REPRESENTATIVE OF THE WRONGFUL DEATH CLASS
WITH RESPECT TO BRENDAN JOHNSON**

APPELLANT,

v.

MARK ROYAL

DEFENDANT,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY

RESPONDENT.

**DOCKET NUMBER WD72604
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: July 12, 2011

Appeal From:

Jackson County Circuit Court
The Honorable James Dale Youngs, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, P.J., James M. Smart, Jr., J., and Gregory B. Gillis, Sp.J.

Attorneys:

Mark Eldon Meyer, Kansas City, MO, **for appellant.**
Leah Marie Mason, Kansas City, MO, **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**ADDREA STEWART, AS REPRESENTATIVE OF THE WRONGFUL DEATH CLASS
WITH RESPECT TO BRENDAN JOHNSON,**

APPELLANT,

v.

MARK ROYAL,

DEFENDANT,

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,

RESPONDENT.

No. WD72604

Jackson County

Before Division Four: Lisa White Hardwick, P.J., James M. Smart, Jr., J., and Gregory B. Gillis, Sp.J.

Brendan Johnson was killed when a vehicle driven by Mark Royal collided with his Chevrolet Cavalier, which he was driving. At the time of the accident, neither Johnson's nor Royal's vehicle was covered by an automobile insurance policy. Johnson was residing with Addrea Stewart, his mother, when the accident occurred. Stewart owned a Ford Explorer, which was insured by American Family Mutual Insurance Company and provided uninsured motorist coverage with policy limits of \$100,000 per person/\$300,000 per occurrence. Stewart sought Uninsured Motorist ("UM") coverage benefits for the death of her son, Johnson, under the UM provisions of the policy covering her Explorer. American Family filed a motion for summary judgment contending that Johnson was not an insured person under Stewart's policy, relying primarily on a "named driver exclusion" ("NDE") endorsement. The NDE was added to Stewart's policy after its original issuance due to the termination of coverage for Johnson and for his vehicle. The exclusion was in effect on the date of the accident and read as follows:

This policy does not apply under any of the coverages to any vehicle in the care, custody or control of, or while operated by Brendan Johnson. . . . All other terms, agreement, conditions and provisions remain unchanged.

Stewart opposed the granting of summary judgment, claiming that she was the injured "insured person" making a claim under her own policy. She claimed that she, as a named insured, was covered under the UM coverage of the policy for wrongful death damages with respect to the death of any person as to whom she is entitled to bring a wrongful death claim; in this case Johnson. The trial court relied on the NDE endorsement, finding the Stewart policy did not apply to any of the coverages if Johnson was driving, and granted summary judgment in favor of American Family. Stewart appealed.

AFFIRMED.

Division One holds: While courts will enforce an NDE when it clearly excludes coverage when any named excluded person is driving, the language of the NDE section here is not effective, by itself, to bar a claim as to *UM coverage*. Nevertheless, the trial court obtained the right result in the case because the record shows that Johnson owned his own vehicle and thus could not qualify under the policy as an insured person, and because the "bodily injury" was sustained by Johnson, who was not an "insured person." Because Stewart did not suffer the bodily injury herself, as required under the policy, and Johnson was not an "insured person," Stewart could not recover under UM coverage for Johnson's death. The judgment is affirmed.

Opinion by James M. Smart, Jr., Judge

July 12, 2011

This summary is UNOFFICIAL and should not be quoted or cited.