

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

ADAM DUTTON

APPELLANT,

**v.
AMERICAN FAMILY MUTUAL
INSURANCE COMPANY**

RESPONDENT.

DOCKET NUMBER WD74940
DATE: January 21, 2014

Appeal From:

Jackson County Circuit Court
The Honorable Marco A. Roldan, Judge

Appellate Judges:

James E. Welsh, Chief Judge, Presiding, and Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, Lisa White Hardwick, Alok Ahuja, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, Gary D. Witt and Anthony Rex Gabbert, Judges

Attorneys:

Randall W. Brown, Kansas City, MO, for Appellant.

Christopher J. Carpenter, Overland Park, KS and Daniel R. Defoe, Kansas City, MO, for Respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI EX REL.,
ADAM DUTTON,**

APPELLANT,

v.

**AMERICAN FAMILY MUTUAL
INSURANCE COMPANY,**

RESPONDENT.

No. WD74940

Jackson County

Before: James E. Welsh, Chief Judge, Presiding, and Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, Lisa White Hardwick, Alok Ahuja, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, Gary D. Witt and Anthony Rex Gabbert, Judges

Adam Dutton appeals the trial court's ruling in this declaratory judgment action that American Family Mutual Insurance Company is not liable under the terms of its policy with Barbara Hiles. Dutton suffered serious, permanent injuries and significant medical expenses after an automobile accident as a result of Hiles negligence. Hiles held two policies with American Family for two different vehicles, but pursuant to its terms the insuring agreement on the policy for the vehicle not involved in the accident also covered the automobile she was driving at the time of her accident. American Family sought summary judgment, arguing that it was not liable under the second policy because of an exclusion in the policy. The trial court agreed and entered summary judgment in favor of American Family.

Majority Opinion holds:

REVERSED

(1) Both of the policies Hiles carried with American Family provided liability coverage for the automobile involved in the accident.

(2) The Motor Vehicle Financial Responsibility Law requires minimum coverage in every applicable policy.

(3) The policy exclusion that American Family asserted conflicted with the minimum coverage required by the Motor Vehicle Financial Responsibility Law.

(4) Dutton is entitled to recover \$25,000 from the second policy pursuant to the Motor Vehicle Financial Responsibility Law.

Judge Ahuja's Dissenting Opinion would hold:

The majority opinion relies on the conclusion that the vehicle Hiles was operating at the time of the accident was a “designated” vehicle under the F-250 policy. Dutton has not made that argument, however, and the argument is inconsistent with the policy provisions defining “your insured car,” and excluding coverage for other owned vehicles. Dutton’s reliance on *Karscig v. McConville*, 303 S.W.3d 499 (Mo. banc 2010) is unavailing, because *Karscig* involved an “operator’s policy” subject to § 303.190.3, RSMo, rather than an owner’s policy like the one at issue here; in addition, *Karscig* held only that the insurer was required to provide coverage for *non-owned* automobiles, while in this case Hiles was driving another vehicle she owned at the time of the accident.

Judge Martin's Dissenting Opinion would hold:

1. The majority opinion holds that if an owner's policy affords coverage to an insured (a matter of contract law), than the policy designates the vehicle the insured was driving for purposes of determining the application of section 303.190.2 of the MVFRL. As a result, the majority opinion will be improvidently read to require routine stacking of MVFRL coverage from multiple owner's policies based solely on whether the policies afford coverage to an insured but for the application of an exclusion.

2. It is not appropriate to determine whether a vehicle is "expressly described" or "appropriately referenced" in an owner's policy for purposes of section 303.190.2(1) by referring to a policy's insuring agreement--a clause which contractually describes coverage of the insured. Instead, the precise determination of the specific vehicle (or vehicles) intended to be covered by an owner's policy for purposes of the MVFRL should be made by looking at a policy's declaration page and its definition of "insured vehicle."

3. The insuring agreement in an owner's policy will routinely afford coverage to an insured for operation of vehicles other than those described on the policy's declaration page or within the policy's definition of "insured vehicle." But the fact that an insured's operation of a vehicle may be covered under the policy does not mean that vehicle is a designated vehicle for purposes of the MVFRL.

Majority Opinion by Gary D. Witt, Judge, Joseph M. Ellis, Victor C. Howard, Thomas H. Newton, Mark D. Pfeiffer, and Anthony Rex Gabbert, Judges, concur in the majority
Dissenting Opinion by Alok Ahuja, Judge, joined by James E. Welsh, Chief Judge, Presiding, Lisa White Hardwick, and Karen King Mitchell, Judges
Dissenting Opinion by Cynthia L. Martin, Judge joined by James E. Welsh, Chief Judge, Presiding, and Lisa White Hardwick, Alok Ahuja, and Karen King Mitchell, Judges

January 21, 2014

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