

FBT CV 21-6108030-S

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SUPERIOR COURT

: SUPERIOR COURT

AMIRE NEWSOME

2024 APR 23 P 3:40

: JUDICIAL DISTRICT OF  
: BRIDGEPORT

JUDICIAL DISTRICT  
OF BRIDGEPORT

V.

: AT BRIDGEPORT

AAA INSURANCE COMPANY A/K/A  
CSAA AFFINITY INSURANCE

: APRIL 23, 2024

**MEMORANDUM OF DECISION RE:  
DEFENDANTS MOTION TO DISMISS (No. 103.00)**

**I. INTRODUCTION**

This is an insurance coverage dispute concerning whether the plaintiff, Amire Newsome, is entitled to underinsured motorist ("UIM") benefits under an insurance policy maintained by an individual, Lesean Mellers, who had a prior relationship with the mother of the plaintiff. Specifically, does that Policy which was issued by CSAA AFFINITY INSURANCE CO. (hereinafter "CSAA") to Mr. Mellers recognize plaintiff as an "insured" for the purposes of UIM benefits. CSAA and Amire Newsome are the only parties to the instant action.

The focused question presented to this Court in this Motion to Dismiss by the defendant, is whether the plaintiff has standing to pursue this litigation against CSAA. The defendant specifically asserts that plaintiff lacks standing to pursue this claim as against CSAA as the plaintiff is neither a named insured nor an intended third-party beneficiary under the policy that Mr. Mellers purchased from CSAA.

Notice sent to all  
Counsel & RJD.

4/23/24 Blue Asst. Clerk

The plaintiff objects to this motion and claims that the plaintiff is covered under the policy in question based on the residence of the plaintiff with Mr. Mellers and the relationship with Mr. Mellers, which the plaintiff frames as “father and son” through a “domestic partnership” between Mr. Mellers and the mother of the plaintiff.

The underlying action was brought by Amire Newsome PPA Latoya Reid via Complaint dated July 31, 2020, in the Superior Court of Connecticut, Judicial District of Bridgeport against tortfeasors Hans Valentin and Antrese Seabury. The complaint alleges that at approximately 8:30 PM on July 20, 2018, Amire Newsome was operating a Kawasaki dirt bike and was involved in an accident with Mr. Valentin. Plaintiff alleges that Mr. Valentin disregarded a stop sign while traveling on a public roadway and crossed over the yellow line attempting to make a left-hand turn, directly into the pathway of the Plaintiff. Plaintiff alleges that this caused a violent collision which caused him to sustain several serious injuries, including bilateral femur fractures.

The tortfeasors, Hans Valentin and Antrese Seabury, were insured by Progressive Insurance Company under an automobile liability policy that provided for \$25,000 per person and \$50,000 per person in liability coverage, which has been exhausted and was inadequate to fully compensate the Plaintiff, Amire Newsome, for his injuries and losses. Plaintiff alleges that the injuries he sustained are now the legal responsibility of the defendant, pursuant to the terms of its contract with the named insured, Mr. Mellers, pursuant to Conn. Gen. Stat. § 38a-336.

On January 8, 2024, the court heard oral argument from counsel on the motion to dismiss and the objection thereto. The court has reviewed the motion (#103.00), the objection (#110.00), the reply to objection (#111.00). In addition, consistent with Order No. 138.00, the court reviewed the defendant’s supplemental memorandum (#139.00) and the plaintiff’s reply

thereto (#140.00) which included additional context through affidavits and testimonial evidence relevant to the motion to dismiss and has considered the arguments of counsel and relevant law. Based on that review, the court finds that the plaintiff is, neither a covered person, nor a third-party beneficiary under the policy and the motion to dismiss is GRANTED.

## II. DISCUSSION

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court . . . A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction." *Beecher v. Mohegan Tribe of Indians of Connecticut*, 282 Conn. 130, 134, 918 A.2d 880 (2007) (Internal quotation marks omitted.) "The issue of standing implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss." *Saint George v. Gordon*, 264 Conn. 538, 544, 825 A.2d 90 (2003). "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." *Fort Trumbull Conservancy, LLC v. New London*, 282 Conn. 791, 802, 925 A.2d 292 (2007) (Internal quotation marks omitted.) Likewise, "[m]ootness implicates [the] court's subject matter jurisdiction and is thus a threshold matter for [the court] to resolve." *Lichtman v. Beni*, 280 Conn. 25, 30, 905 A.2d 647 (2006) (Internal quotation marks omitted.)

"A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn.App. 730, 740-41, 84 A.3d 895 (2014). "When a . . . court decides a

jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) *Cogswell v. American Transit Ins. Co.*, 282 Conn. 505, 516, 923 A.2d 638 (2007). When determining whether the court has jurisdiction over any controversy, "every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Keller v. Beckenstein*, 305 Conn. 523, 531, 46 A.3d 102 (2012). Still, "the plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.). *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n. 12, 829 A.2d 801 (2003).

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) [\*4] *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn.App. 730, 740-41, 84 A.3d 895 (2014). "The grounds which may be asserted in [a motion to dismiss include] lack of jurisdiction over the subject matter . . ." *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985). "[T]he plaintiff bears the burden of proving subject matter jurisdiction,

whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). It is well established that "in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, *supra*, 310 Conn. 626.

The principles of subject matter jurisdiction are well established. "Jurisdiction of the subject-matter is the power [of the court] to hear and determine cases of the general class to which the proceedings in question belong . . . A court has subject matter jurisdiction if it has the authority to adjudicate a particular type of legal controversy." (Internal quotation marks omitted.) *Federal Deposit Ins. Corp. v. Crystal*, 251 Conn. 748, 763, 741 A.2d 956 (1999).

"It is a basic principle of law that a plaintiff must have standing for the court to have jurisdiction. Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, [\*5] title or interest in the subject matter of the controversy." (Internal quotation marks omitted.) *Ganim v. Smith & Wesson Corp.*, 258 Conn. 313, 347, 780 A.2d 98 (2001). "[W]hen standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the [party] has a legally protected interest [that may be remedied]." (Internal quotation marks omitted.) *In re Jonathan M.*, 255 Conn. 208, 219, 764 A.2d 739 (2001). *Shaw v. GEICO Gen. Ins. Co.*, 2016 Conn. Super. LEXIS 1943, \*3-5

"It is the function of the court to construe the provisions of a contract of insurance . . . The [i]nterpretation of an insurance policy . . . involves a determination of the intent of the parties as

expressed by the language of the policy . . . [including] what coverage the . . . [insured] expected to receive and what the [insurer] was to provide, as disclosed by the provisions of the policy . . . [A] contract of insurance must be viewed in its entirety, and the intent of the parties for entering it derived from the four corners of the policy . . . [giving the] words . . . [of the policy] their natural and ordinary meaning . . . [and constructing] [\*10] any ambiguity of the terms . . . in favor of the insured." (Internal quotation marks omitted.) *Connecticut Ins. Guaranty Assn. v. Fontaine*, 278 Conn. 779, 784-85, 900 A.2d 18 (2006), citing *Hartford Casualty Ins. Co. v. Litchfield Mutual Fire Ins. Co.*, 274 Conn. 457, 462-63, 876 A.2d 1139 (2005).

"Our jurisprudence makes, clear, however, that although ambiguities are to be construed against the insurer, when the language is plain, no such construction is to be applied." (Internal quotation marks omitted.) *Heyman Assocs. No. 1 v. Ins. Co. of Pa.*, 231 Conn. 756, 770, 653 A.2d 122 (1995). "Indeed, courts cannot indulge in a forced construction ignoring provisions or so distorting them as to accord a meaning other than that evidently intended by the parties." (Internal quotation marks omitted.) *Id.*, 771. *Slokus v. Utica First Ins. Co.*, 2011 Conn. Super. LEXIS 1759, \*9-10

"On the other hand, if the complaint alleges a liability which the policy does not cover, the insurer is not required to defend." (Internal quotation marks omitted.) *Springdale Donuts, Inc. v. Aetna Casualty & Surety Co. of Illinois*, 247 Conn. 801, 807, 724 A.2d 1117 (1999). "The defendant's duty to defend . . . is not invoked unless the party named in the complaint falls within the definition of 'insured' as included in the policy." *Hartford Casualty Ins. Co. v. Litchfield Mutual Fire Ins. Co.*, 274 Conn. 457, 466, 876 A.2d 1139 (2005). *Slokus v. Utica First Ins. Co.*, 2011 Conn. Super. LEXIS 1759, \*11

CSAA issued the subject Policy (Policy Number CTSS-206685186) to Lesean Mellers. (See Defendant's Memorandum in Support of Motion #103.00, Lindsey Affidavit, ¶ 3.) The subject Policy was effective from July 7, 2018, through July 7, 2019, and was amended effective February 22, 2019. (Id.) The address listed for Mr. Mellers on the subject Policy was 305 Quenby Pl., Stratford, CT and three (3) vehicles were listed on the Declarations page of the subject Policy. (Id., ¶ 4, Exhibit 1.) The Kawasaki motorbike operated by Plaintiff is not included among the listed vehicles. (Id.) The uninsured/underinsured motorist bodily injury limits listed on the Declarations page of the Policy are \$100,000/person and \$300,000/accident. (Id.) Mr. Mellers is the only listed driver on the Declarations page and Amire Newsome is not referenced in any capacity on the Declarations page. (Id.)

As it concerns the Policy's underinsured motorist coverage, the Insuring Agreement of Part III the Policy provides as follows:

- A. We will pay for compensatory damages an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" because of "bodily injury": 1. Sustained by an "insured"; 2. Caused by an accident; and 3. Arising out of the ownership, maintenance or use of an "uninsured motor vehicle" or "underinsured motor vehicle".

(Id., PART III – UNINSURED/UNDERINSURED MOTORIST COVERAGE, INSURING AGREEMENT, A.) The Policy further provides that CSAA "will pay under this coverage only after the limits of liability under any bodily injury liability bonds or policies applicable to the 'underinsured motor vehicle' have been exhausted by payment of judgment or settlements." (Id.,

PART III – UNINSURED/UNDERINSURED MOTORIST COVERAGE, INSURING AGREEMENT, B.) 5 The Policy defines "you" and "your" to mean the named insured shown in the Declarations and the spouse, "domestic partner" or partner in a "civil union", if a "resident" of the same household. (Id., DEFINITIONS, A., 1. and 2.) Part III of the Policy defines "insured" as follows:

- C. As used in this Part only, "insured" means:
1. You or any "family member";
  2. Any other person "occupying" "your covered auto"; and

**3. Any person for damages that person is entitled to recover because of “bodily injury” to which this coverage applies sustained by a person described in C.1.or C.2.above.**

(Id., PART III – UNINSURED/UNDERINSURED MOTORIST COVERAGE, INSURING AGREEMENT, C.) Further, the Policy also defines the following relevant terms, in pertinent part:

D. “Auto” means a self-propelled land motor vehicle, designed for use mainly on public roads, that is:

1. A four-wheel private passenger automobile; or
2. A four-wheel or six-wheel pickup truck or van; with a Gross Vehicle Weight Rating of 10,000 lbs. or less. . . .

I. “**Domestic partner**” and “domestic partnership” refer to persons who have chosen to share one another’s lives in a committed relationship of mutual caring and financial support, provided the relationship:

1. **Is registered and is a valid domestic partnership under the laws of the jurisdiction where it was formed; and**
2. **Is not prohibited by law in the state where this policy is issued**

J. “**Family member**” means a person who is a “resident” of your household and who is:

1. **Related to you by blood, marriage, “domestic partnership”, “civil union” or adoption; or**
2. Under the age of 25 and who is:
  - a. Under your guardianship or who was under your guardianship at the time of reaching the age of majority. This includes a ward or foster child.
  - b. Under the guardianship of a “resident” identified in J.1. above or who was under the guardianship of a “resident” identified in J.1. above at the time of reaching the age of majority. This includes a ward or foster child. .

R. “Resident” means a person who lives with and inhabits the same dwelling as you. An unmarried “family member” while away from home to:

1. Attend school:
  - a. Full-time, as defined by the school; and
  - b. Who is under the age of 25; or
2. Serve in the armed forces;  
is considered a “resident” if he or she intends to continue to live with you.

U. “Your covered auto” means:

1. Any motor vehicle shown in the Declarations;
2. A “newly acquired auto”;
3. Any “trailer” you own;



4. Any “auto” or “trailer” you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

- a. Breakdown.
- b. Repair.
- c. Servicing.
- d. Loss.
- e. Destruction

(Id., DEFINITIONS, D., I., J., R. and U.) (emphasis added)

Based on the facts presented by the parties it is clear that the issue in this motion is quite finite. In fact, many of the factual issues presented resolve the coverage issue in favor of the defendant. For example, the Kawasaki driven by the plaintiff at the time of the accident was not listed on the declaration sheet of the policy and thus is not a covered vehicle under the policy. The plaintiff is not a named insured on the policy and thus is not covered specifically, by name, under the policy. Further, there is no factual or evidence to support the claim that the plaintiff is a “family” member of Mr. Mellers by blood (Mr. Mellers is not the biological father of the plaintiff), marriage (Mr. Mellers has never married the mother of the plaintiff), civil union (there is no evidence presented of a civil union between Mr. Mellers and the mother of the plaintiff), or adoption (there is no evidence that Mr. Mellers has adopted the plaintiff or taken any formal steps to become the “guardian” of the plaintiff).

While the parties spend considerable time debating whether the plaintiff was a “resident” of Mr. Messer’s home, whether the plaintiff is a “resident” of the home is not dispositive of the coverage issue. Even assuming the plaintiff is a resident, for purposes of this motion, in order to be covered under the policy the plaintiff must also be qualify as a “family member” which requires, per the policy, that the plaintiff be a “resident” **and** “related to [the policy holder] by blood, marriage, “domestic partnership”, “civil union” or adoption...” See J, III B and C, and Definitions, J

Once again, there is no evidence or argument to support a blood or marriage relationship or civil union or adoption. Thus, the limited and focused issue before the court is whether, under the policy in question, Mr. Mellers was/is at all relevant times the “domestic partner” of the mother of the plaintiff such that the status as a “domestic partner” created coverage under the policy applicable to the plaintiff as the son of the alleged “domestic partner” of the insured. While the plaintiff in its brief chose to focus on a portion of the “domestic partner” and “domestic partnership” definition, the full definition in the policy, as cited above, conditions the designation as being “registered and is a valid domestic partnership under the laws of the jurisdiction where it was formed and is not prohibited by law in the state where this policy is issued.” See, I.

There is no evidence of a “registered” or “valid” domestic partnership. Rather, the evidence only supports a prior relationship between the mother of the plaintiff and Mr. Mellers. The affidavits and testimonial evidence presented does not support that the relationship between the plaintiff’s mother and Mr. Meller was ongoing at the time of the accident, in fact, by all accounts presented those individuals were merely friends at the time of the accident. Because there is no evidence that there was or is a “domestic partnership” then there can be no policy coverage through such non-existence status. Because the policy can only be connected to the plaintiff through a “domestic partnership” there is no connection and thus no coverage. The declaration of the plaintiff and/or Mr. Mellers is insufficient as it falls short of the clear and unambiguous policy language which requires that such relationship be “registered” and “valid.”

A further and more problematic issue for the plaintiff is contained in the second qualifying element of the definition of “domestic partnership” in I. 2. which requires that the relationship not be prohibited by law in the state where the policy is issue. Domestic partnerships are, in fact, not recognized in Connecticut as a stand-alone status. While Connecticut, and the policy at issue may

require recognition of a valid domestic partnership from another state or jurisdiction (See, P.A. 09-13), as there is no evidence on one the second section of the definition must be considered. As no status of domestic partnership is possible under Connecticut law, (i.e. it is prohibited because the law does not recognize domestic partnerships or “common law” marriage in Connecticut) that section applies in this case to the extent that the plaintiff is attempting to argue for such status. Quite simply, neither the plaintiff, nor Mr. Mellers, can create a right or status under Connecticut law because they believe one should exist. It either exists under the law or it does not. As there has been no law presented to the court of such a law, the court determines that such status is prohibited by law due to the absence of a law allowing it. As a consequence when the court applies the clear and unambiguous terms of the policy to this case, the plaintiff cannot assert policy coverage through a domestic partnership as Connecticut law prohibits such a designation.

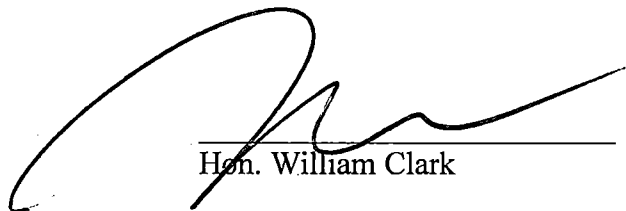
“With respect to the effect of cohabitation by those who hold themselves out as husband and wife, the law of this jurisdiction is clear. "Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not. . . . It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor [\*\*\*18] imposes upon them marital status." (Citations omitted.) *McAnerney v. McAnerney*, 165 Conn. 277, 285, 334 A.2d 437 (1973); see also *Hames v. Hames*, supra, 163 Conn. 592-93, 597; *State ex rel. Felson v. Allen*, 129 Conn. 427, 432, 29 A.2d 306 (1942). "The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship." [\*629] *Boland v. Catalano*, 202 Conn. 333, 339, 521 A.2d 142 (1987).” *Loughlin v. Loughlin*, 93 Conn. App. 618, 628-629, 889 A.2d 902, 909, 2006 Conn. App.

LEXIS 58, \*17-18

### III. CONCLUSION

The defendant has presented facts and that demonstrate the lack of coverage under the clear and unambiguous contract language of the policy and the plaintiff has failed to present facts that demonstrate he is covered person or a third-party beneficiary under the policy. Based on the foregoing the plaintiff is not a covered person under the policy and thus the court has no jurisdiction over the defendant. Motion to Dismiss is GRANTED.

BY THE COURT,



Hon. William Clark