IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

APPELLATE DIVISION (CIVIL)
CASE NO: 502009AP000026XXXXMB
L.T. Case No. 502007CC015280XXXXMB
DIVISION: 'AY'

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Appellant,

v.

THE SIGN STORE, INC. and NEW ROAD EQUIPMENT, INC.,

Appellees.
_____/

Opinion filed: APR 07 2010

Appeal from the County Court in and for Palm Beach County, Judge Debra Moses Stephens.

For Appellant: Carlos Cabrera, Esq. & Hinda Klein, Esq., 3440 Hollywood Blvd, 2nd Floor, Hollywood, Fl 33021

For Appellee: Phillip T. Crenshaw, Esq., 1109 South Congress Ave., Suite D, West Palm Beach, FL 33406

William Ingraham, Jr., Esq., & Charles Musgove, Esq., P.O. Box 370098, Miami, FL 33137

PER CURIAM

REVERSED and REMANDED.

Nationwide Fire Insurance Company ("Nationwide") appeals a final judgment entered in favor of The Sign Store, Inc. and New Road Equipment, Inc. The sole issue on appeal is whether enforcement of an insurance policy's excluded driver endorsement requires evidence that the insured consented to the vehicle's use by the excluded driver. We hold that consent is not required to enforce an excluded driver endorsement under either the insurance policy or Florida law.

The insurance policy at issue provided that Nationwide would pay for loss due to theft for a covered automobile. The policy also contained an excluded driver endorsement that provides, in pertinent part, as follows:

> The provisions of this policy do not apply and no coverages are provided while an "auto" or "mobile equipment" is being driven or operated by the driver(s) or operator(s) named in the SCHEDULE OF EXCLUDED DRIVERS OR OPERATORS.

Jason Milstead was the only driver listed in the Schedule of Excluded Drivers or Operators. It is undisputed that Jason Milstead stole the insured vehicle and caused damage. Thereafter, Nationwide denied the insurance claim based upon the excluded driver endorsement. The Sign Store and New Road Equipment argued in their motion for summary judgment that the excluded driver endorsement was inapplicable because Jason Milstead stole the vehicle. The trial court agreed, and ruled that although driver exclusion clauses are enforceable in Florida, enforcement requires "consensual allowance of the excluded driver."

Florida law provides that insurance contracts are construed in accordance with the plain language of the policies as bargained for by the parties. *Auto-Owners Ins. Co. v. Anderson*, 756 So. 2d 29, 34 (Fla. 2000). Under the express terms of the exclusion, no insurance coverage is provided when the vehicle is operated by Jason Milstead. Although ambiguous policy provisions are interpreted liberally and construed in favor of the insured and strictly against the drafter, the policy in this case is not ambiguous. *See id.* Reading the policy in the way that The Sign Store and New Road Equipment suggest requires the Court to insert a provision into the policy. The policy is not ambiguous, and therefore it was error for the trial court to add a consent requirement to the policy. Where policy language is unambiguous, the court's task is to apply the plain meaning of the words and phrases to the facts of the case, and it is not free to rewrite the policy or add meaning to it that is not really there. *Flaxman v. Government Employees Ins. Co.*, 993 So. 2d 597 (Fla. 4th DCA 2008).

Although this specific issue has not been addressed by a Florida appellate court, it has been addressed by multiple appellate courts in various other states that have held that the exclusion unambiguously precludes coverage and that consent is immaterial. *See Smith v. Western Preferred Casualty Co.*, 424 So. 2d 375 (La. App. 2d Cir. 1983) (holding that excluded driver endorsement of insured's son was enforceable where son stole the vehicle; court rejected argument that endorsement was conditioned upon whether the drivers were operating the vehicle with the consent of the insured); *Deutsch v. State Farm Mut. Auto Ins. Co.*, 457 S.W.2d 823 (Mo. App. 1970) (holding that excluded driver endorsement of insured's son was enforceable where son drove vehicle without permission because consent was immaterial and irrelevant since it was not made part of the endorsement); *Taylor v. State Farm Insurance Company*, 775 S.W. 2d 370 (Tenn. App. 1989) (holding that a driver exclusion endorsement applied to preclude coverage while the insured's son was driving the vehicle after he stole it where policy provided for loss of automobile by theft); *Seales v. State Farm Mut. Auto. Ins. Co.*, 671 So. 2d 681 (Ala. Civ. App. 1995) (holding that driver exclusion endorsement was unambiguous and applied even if insured did not give permission for child to use vehicle; thus, consent was immaterial); *McMillan v. Auto Club Ins. Ass'n*, 450 N.W.2d 920, 923 (Mich. 1995) (holding that driver exclusion precluded coverage for theft when named excluded driver took vehicle without permission).

In accordance with Florida law and these out-of-state decisions, the insurance policy at issue unambiguously excluded Jason Milstead from coverage regardless of whether he had the insured's consent to operate the vehicle. Accordingly, the final judgment is hereby REVERSED and the matter is REMANDED for entry of final summary judgment in favor of Nationwide. The Appellees' Motion to Tax Appellate Attorney's Fees is DENIED.

MCCARTHY, COX, FINE, JJ., concur.