

# GREAT EXPECTATIONS

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Despite the widespread perception that the practice of law is dry and mundane (and it sometimes is), part of the challenge of lawyering is, when necessary and appropriate, coming up with and making *creative* arguments. These often involve attempting to extend the analysis used by a court in one situation to a different (but arguably comparable) situation. While such efforts are not always successful, they are one of the ways by which the law develops and evolves. A recent example of a case involving an old car and an attempt to expand the law was *Nabil v. State Farm Mutual Automobile Insurance Company*, decided May 24, 1994 by the Court of Appeals of Missouri.

According to the court, Sophia Trapp Nabil was injured while a passenger in a 1965 Dodge Coronet owned and driven by Kevin Tschirhart. Tschirhart acquired the Coronet a few days before the accident. At the time of the accident, Tschirhart resided with his mother Mary and Mary's husband Ralph Copeland. The Copelands, who had no interest in the Dodge, had an automobile liability insurance policy with State Farm covering a Ford Mustang they owned. The policy covered bodily injury up to \$50,000 per person and medical payments up to \$5,000.

Tschirhart was insured under the State Farm policy while operating the Mustang with the consent of the Copelands. Although the Copelands' policy included coverage for newly acquired cars owned by them, it specifically excluded coverage for cars not owned by them. (The court's opinion made no mention of any insurance Tschirhart had obtained on his own.)

Nabil sued Tschirhart for the personal injuries she sustained in the accident, and won a judgment of \$75,000 against him. She then sued State Farm, seeking to reach the insurance money and apply it to satisfy her judgment against Tschirhart.

Based on the State Farm policy's exclusion of coverage for cars not owned by the Copelands, the trial court ruled that State Farm was not liable for coverage on the Coronet owned by Tschirhart.

Nabil appealed, claiming that the trial court erred by failing to find coverage under the State Farm policy. She conceded that the policy contained a limitations of coverage clause excluding coverage for the Dodge as a newly acquired car not owned by the Copelands. However, she argued that enforcement of that clause was against the "reasonable expectations" of a policy holder. Nabil was thus attempting to invoke the principle of "reasonable expectations" which had been set forth and followed in some prior Missouri insurance cases.

Unfortunately for Nabil, the Court of Appeals was not willing to extend that concept to her case. It therefore affirmed the lower court ruling in favor of State Farm.

The court began its analysis by explaining the principle of reasonable expectations. According to the court, that doctrine provides that "objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations." This principle had been applied in cases where there was no ambiguity in the terms of an insurance contract. In such cases, it had allowed courts to find uninsured motorist coverage and to stack uninsured motorist coverage for the direct benefit of policy holders and their minor children.

The court emphasized that those cases, which applied the "reasonable expectations" principle, were based upon the public policy of Missouri favoring and requiring uninsured motorist protection. Moreover, they dealt specifically with uninsured motorist coverage for the

direct benefit of insureds or their minor children. It therefore distinguished Nabil's case because the coverage sought by her was for the benefit of a third party who was a passenger in a newly acquired automobile owned by someone other than the policy holder. Furthermore, the vehicle involved in her case had been specifically excluded from coverage.

The court concluded that the public policy requirements regarding uninsured motorists were not applicable to Nabil's case. "There is no public policy in Missouri to provide coverage for bodily injury to a third party who was a passenger in a newly acquired automobile owned by a person living in the home of the policy holders where such coverage is specifically excluded under the terms of the insurance policy. The public policy of Missouri does not require that several cars be allowed coverage, in a given household, under a single policy of insurance under circumstances such as those presented hereon."

The court advised that if a policy is unambiguous it will be enforced as written unless there is a statute or public policy requiring coverage. Without such a statutory or public policy basis, the principle of "reasonable expectations" could not be used to alter the terms of an otherwise unambiguous insurance policy.

Since there was no ambiguity, statute or public policy requiring coverage under the circumstances of Nabil's case, the Court of Appeals affirmed the judgment of the trial court for State Farm.

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