

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

Case No. A25A0962

QUEEN DOLLAR,

Appellant,

v.

GEORGIA FARM BUREAU MUTUAL INSURANCE COMPANY,

Appellee.

RESPONSE BRIEF OF APPELLEE

DUKE R. GROOVER
Georgia Bar No. 313225
CHRISTOPHER GORDON
Georgia Bar No. 922377
BRUCE D. DUBBERLY, IV
Georgia Bar No. 809675
SPENCER D. WOODY
Georgia Bar No. 256598
JAMES, BATES, BRANNAN, GROOVER-LLP
231 Riverside Drive, Suite 100
Macon, Georgia 31208-4283
(478) 749-9942
dgroover@jamesbatesllp.com
cgordon@jamesbatesllp.com
bdubberly@jamesbatesllp.com
swoody@jamesbatesllp.com
Counsel for Appellee

INTRODUCTION AND KEY ARGUMENTS ON APPEAL

This case involves Appellant Queen Dollar's (hereinafter "Appellant Dollar") appeal of the Dodge County Superior Court's grant of summary judgment in a declaratory judgment action to Appellee Georgia Farm Bureau Mutual Insurance Company (hereinafter "GFB"). On November 21, 2020, Lorenzo Dollar was a passenger in a vehicle that was stolen by Sammy Walker. Sammy Walker was intoxicated when he picked up Lorenzo Dollar and Summer Sheffield in the stolen vehicle to joyride around Eastman, Georgia. Because Sammy Walker was drunk and unfamiliar with how to drive the stolen vehicle, he caused a single-car accident when he drove the vehicle into a ditch. This accident resulted in the death of Lorenzo Dollar.

After this accident, Appellant Dollar, as Lorenzo Dollar's mother and only surviving parent, filed suit against Sammy Walker for wrongful death. Sammy Walker then made a claim for coverage under the GFB insurance policy issued to the owner of the vehicle, David Scott Holder ("Holder"). Because Sammy Walker was not a permissive driver of the vehicle he stole, GFB filed a declaratory judgment against Sammy Walker and Queen Dollar to determine its obligations to Sammy Walker under the insurance policy issued to Holder. Subsequently, GFB moved for summary judgment on the coverage issues in the declaratory judgment action because the undisputed facts in the record showed that Sammy Walker had neither

(1) a subjective belief or (2) an objectively reasonable belief that he was allowed to operate the vehicle.

Appellant Dollar opposed GFB's motion for summary judgment before the trial court and argued that (1) factual disputes existed as to whether Sammy Walker was a permissive driver and (2) vague notions of public policy required non-enforcement of the contractually binding non-permissive driver exclusion in the insurance policy. The trial court properly rejected these arguments and granted summary judgment to GFB in the declaratory judgment action.

On appeal, Appellant Dollar simply regurgitates the losing arguments from her brief to the trial court. This Court should affirm the trial court's grant of summary judgment to GFB in this declaratory judgment action because despite Appellant Dollar's arguments (1) the undisputed evidence in the record shows that the non-permissive driver exclusion precludes coverage to Sammy Walker and (2) neither Georgia's law or the evidence before this Court supports Plaintiff's argument that enforcing the policy exclusion in this case would violate Georgia's public policy.

Statement of Case and Citation to the Record

Because Appellant Queen does not provide a complete and clear statement of the facts in this matter, GFB provides the following statement of facts in this case:

A. Background.

This case arises from a single-car accident that occurred on November 21, 2020, at or near State Road 46 in Dodge County. (V2-62-65). This single-car accident involved a 1997 Mazda B2300 (hereinafter “Vehicle”) that was owned by Holder. Holder purchased insurance for the vehicle through GFB. (V2-4-11; V2-62-65). Although Holder owned the Automobile, on the night of the accident, Walker stole the Vehicle, drove it without permission, and caused an accident that resulted in the death of Lorenzo Dollar. (V2-62-65).

B. Ownership and Permission to Use the Vehicle.

Prior to the November 21, 2020, accident, Holder entrusted the Vehicle to Laterran Green, (“Green”), who was a handyman that worked on some of Holder’s business properties. (V2-156-57,160). Holder entrusted the Vehicle to Green so that he could drive around and perform repairs. (V2-62-65; V2-162). Holder testified that he gave permission to Green to drive the vehicle and that only Green was allowed to drive the Vehicle. (V2-155-57,160). Green also testified that Holder permitted him to drive the Vehicle and that he was not allowed to give anybody else permission to drive the Vehicle. (V2-162, 164). Green testified that he did not give anybody permission - including Sammy Walker - to drive the Vehicle at any time. (V2-162, 164). Holder and Green testified they would not even give Walker permission to use lawn mowers or other motorized equipment. (V2-159, 165). This was largely

because of Sammy Walker's drinking problem. (V2-159, 165). Holder even testified that he would not permit Walker to ride a bicycle if he had one. (V2-159-60). The record is undisputed that the only permissive driver of the Vehicle was Green, and Walker was never given express or implied permission to drive the Vehicle. (V2-155-157, 160, 162-164).

C. Theft of the Vehicle and Subsequent Accident.

Occasionally, Walker would help Green perform odd jobs on Holder's business properties. (V2-158). Green testified that during these times, Green never allowed Walker to drive the Vehicle, Green never told Walker that he was permitted to use the Vehicle, and Green never gave Walker any indication that Walker could use the Vehicle. (V2-162). Rather, Green testified it was his "responsibility [from Holder] to not let nobody [sic] else drive," which included Walker. (V2-164).

On November 21, 2020, Walker assisted Green with some odd jobs at a local trailer park off North Railroad Street in Eastman, Georgia. (V2-162). After working together for about three hours in the afternoon, Walker left. (V2-165). After Walker left the trailer park, Green decided to leave the Vehicle at the trailer park and return for it in the morning. (V2-165). Thus, Green turned the Vehicle off, left the keys in the Vehicle, and left for the day. (V2-161).

After Green left the Vehicle at the trailer park, Walker returned that night and took the Vehicle despite not having permission from Holder or Green. (V2-161).

Walker drove the Vehicle around Eastman, Georgia, and picked up passengers Sommer Sheffield (“Sheffield”) and Lorenzo Dollar (“Dollar”). (V2-166). Sheffield had never seen Walker drive the Vehicle before that night, which was evident by the fact that he kept stalling out when trying to drive the Vehicle. (V2-167-171). Sheffield testified that it was her understanding that Walker had the Vehicle without permission. (V2-170). Finally, Sommer testified that Walker was intoxicated while driving the Vehicle that night and smelled like alcohol while driving. (V2-167).

Despite having stolen the Vehicle, being generally unfamiliar with how to operate the Vehicle, and being intoxicated, Walker drove the Vehicle down State Route 46 around 11:30 PM on November 21, 2020. (V2-151-154). As expected, Walker drove recklessly. (V2-151-154). He failed to maintain his lane and attempted to overcorrect his steering, which caused the Vehicle to careen into a ditch. (V2-151-154). As a result of this accident, passenger Sheffield was injured, and passenger Dollar was ejected from the Vehicle. (V2-151-154). Unfortunately, Dollar was pronounced dead at the scene of the accident. (V2-151-154). Walker was arrested and criminally charged for stealing the Vehicle and driving under the influence of alcohol, among other charges. (V2-161;172-178). The day after the accident, Holder filed a police report substantiating the fact that Walker had stolen the Vehicle. (V2-161).

D. Underlying Case and Relevant Insurance Policy Provisions.

Based on these facts and the unfortunate death of Dollar, his mother and only surviving parent, Queen Dollar, filed a lawsuit against Walker in the Superior Court of Dodge County, captioned *Queen Dollar v. Sammy James Walker and David Scott Holder*, Civil Action No. 21V-9289 (hereinafter “Underlying Complaint” or “Underlying Case”). (V2-151-154). Specifically, Queen Dollar alleged that Walker was negligent in his operation of the Vehicle, which lead to Lorenzo Dollar’s death. (V2-151-154).

Based on the allegations in the Underlying Complaint, Walker made a claim for coverage under the GFB Personal Auto Policy, PPA 3568441, that was issued to Holder (hereinafter “Policy”). (V2-4-18). In other words, Walker sought to claim the benefit of insurance that GFB provided to Holder. (V2-4-18). Because questions existed as to whether Walker was an “insured” under the terms of the Policy or whether he was excluded from coverage as a non-permissive driver, GFB filed a declaratory judgment action to determine whether the Policy provided coverage to Walker for the negligence allegations against him in the Underlying Case. (V2-4-18).

Under the Policy, GFB only provides liability coverage for bodily injury “for which any “insured” becomes legally responsible because of an automobile accident.” (V2-194). The Policy defines an “insured” as 1) the named insured, 2)

any of the insured's family members, or 3) any person using the covered automobile. (V2-194). However, in addition to this coverage provision, the Policy also contains a section entitled **EXCLUSIONS**, which sets out exclusions from coverage. (V2-195). Importantly, this exclusion section provides that "[GFB] do[es] not provide coverage for any insured . . . using a vehicle without a *reasonable belief that [they] are entitled to do so.*" (V2-195).

This exclusion was the subject of whether coverage under the Policy extends to Walker for the accident he allegedly caused while being a non-permissive driver of the Vehicle. Because the undisputed evidence in the record before the trial court showed that Walker had no subjective or objective reasonable belief that he was ever entitled to drive the Vehicle, and because Walker was never given express or implied permission from anybody with actual or apparent ownership of the Vehicle to drive the Vehicle, the non-permissive driver applied in this case. (V2-140-150). Thus, the trial court properly granted summary judgment to GFB in the declaratory judgment action and this Court should affirm that ruling. (V2-251-255).

ARGUMENT AND CITATION TO AUTHORITY

I. Standard of Review

On appeal of a grant of summary judgment, this Court must review the evidence de novo to determine whether the trial court erred in concluding that no genuine issue of material fact remains and that the party was entitled to judgment as

a matter of law. *Lau's Corp. v. Haskins*, 261 Ga. 491, 491 (1991); *Rubin v. Cello Corp.*, 235 Ga. App. 250 (1998). Importantly, this Court will not consider arguments made by Appellant that are not enumerated as error in the appeal and “will not presume error from a silent record.” *Adams v. State*, 293 Ga. App. 377, 382 (2008); *Bonner v. Smith*, 226 Ga. App. 3, 4 (1997).

II. The Trial Court's Grant of Summary Judgment to GFB Should be Affirmed Because there is No Genuine Issue of Material Fact About Whether the Non-Permissive Drive Exclusion Applies in this Case to Bar Coverage to Sammy Walker.

This Court should affirm the trial court's grant of summary judgment because the evidence in the record shows that Sammy Walker did not have a subjective belief or an objectively reasonable belief that he was permitted to drive the Vehicle on November 21, 2020. Under the plain language of the Policy, coverage does not extend to a person who drives the vehicle “without a reasonable belief that [they] are entitled to do so.” (V2-195). Georgia Courts have interpreted this policy language to require both that (1) the driver has a subjective belief that he was allowed to use the vehicle and (2) that the driver's subjective belief was objectively reasonable under the facts and circumstances. *Hurst v. Grange Mutual Casualty Co.*, 266 Ga. 712 (1996). When there is no evidence in the record to show either the driver's subjective belief or that the driver's belief was objectively reasonable, then the exclusion applies as a matter of law, and the insurer is entitled to summary judgment in declaratory judgment actions. *Id.* Overall, the plain and unambiguous non-

permissive driver exclusion in the Policy applies to the undisputed facts in this case and precludes insurance coverage to Sammy Walker. Thus, this Court should affirm that trial court's grant of summary judgment to GFB.

A. GFB is entitled to Summary Judgment in this Declaratory Judgment Action Because Sammy Walker Did Not Have an Objectively Reasonable Belief that He Allowed to Use the Vehicle.

The non-permissive driver exclusion in the Policy applied in this case because Walker did not have an objectively reasonable belief that he was allowed to use the Vehicle. This rule was set out in *Samples v. Southern Guaranty Insurance Company of Georgia*, when this Court considered a declaratory judgment action that included an identical non-permissive driver exclusion as the one here. 197 Ga. App. 258, 258 (1990). The issue before this Court in *Samples* was whether a driver had an objectively reasonable belief that he was allowed to drive a vehicle that he used to later cause an accident. *Id.* This Court held that because the driver was never given express or implied permission to drive the vehicle by the owner, the driver lacked an objectively reasonable belief that he was allowed to drive the vehicle. *Id.* at 259. Thus, the *Samples* Court affirmed the trial court's grant of summary judgment based upon the non-permissive driver exclusion. *Id.*; *See also, Clayton v. Southern General Insurance Company*, 306 Ga. App. 394 (2011) (driver did not have reasonable belief that he was driving with permission when he took the keys to a motor vehicle without the insured's knowledge or permission to go to a nightclub); *Willis v. Allen*, 188 Ga.

App. 390, 391 (1988) (affirming summary judgment to an insurer under the same exclusion and noting that “the leaving of the keys in the car was [] insufficient to raise an inference of implied consent in and of itself.”); *McCraney v. Fire & Casualty Insurance Company of Connecticut*, 182 Ga. App. 895 (1987) (affirmed a trial court's determination of no coverage because the driver could not have an objectively reasonable belief he was permitted to drive the car, when the tortfeasor/driver had stolen the car he was driving.); *Omni Ins. Co. v. Harps*, 196 Ga. App. 340 (1990) (automobile liability coverage was not available to the husband of the car owner if the husband was permitted to drive the insured automobile only with the express permission of his wife, and he knew that permission would have been denied if sought at the time of the accident).

Thus, Georgia law interpreting this non-permissive driver exclusion is clear. When a driver does not have express or implied permission to use a vehicle, the driver cannot have an objectively reasonable belief that he was entitled to drive the vehicle. As shown by this Court's holdings in *Samples*, *Clayton*, *Willis*, and *McCraney*, when there is no evidence that the driver had an objectively reasonable belief that he was entitled to drive the vehicle, this non-permissive driver exclusion applies to bar coverage and the insurer is entitled to summary judgment.

Here, there is no evidence in the record that Walker was given any express or implied permission to use the Vehicle on November 21, 2020, or at any time before

or after that date. Rather, the evidence in the record unequivocally shows that Walker was never given express or implied permission to drive the Vehicle by either Holder or Green. (V2-155-160; 162-164). Holder testified that Walker “absolutely knew he didn’t have any . . . permission to” drive the Vehicle. (V2-155). Holder even testified that he would not allow Walker to operate motorized equipment or even a bicycle. (V2-159). Furthermore, Green testified that Walker had never asked to use the Vehicle, that Green never told Walker that he could use the Vehicle, and that Green never did anything that would make Walker think he had permission to use the Vehicle. (V2-162, 164). Sheffield testified that she had never seen Walker drive the Vehicle before he stole it, and that Walker was generally unfamiliar with how to drive the Vehicle because he continued to stall out several times while driving on November 21, 2020. (V2-167-171).

Moreover, it is not possible for Walker to have an objectively reasonable belief that he was entitled to drive the Vehicle when he had been drinking. (V2-167). Therefore, even if Appellant Dollar could somehow show that Walker was given general permission to drive the Vehicle, Walker could not reasonably believe he was entitled to drive the Vehicle while intoxicated. *See, Clayton v. Southern General Insurance Company*, 306 Ga. App. 394 (2011) (excluding coverage under the same policy exclusion language when a driver used the vehicle in a way that was outside the scope of the permission granted to him by the owner).

For these same reasons, Appellant's reliance on *Thompson v. Ledbetter*, 254 Ga. App. 179 (2002) is misplaced and does not apply in this case. Appellant contends that *Ledbetter* stands for the proposition that "evidence of employment with the car owner can raise an inference in an action for negligent entrustment that permission was given to use the vehicle." (Appellant's Brief, Page 8). However, this argument fails for two reasons. First, Appellant Dollar misstates the holding in *Ledbetter*, which when read in its entirety states, "[e]vidence of employment with the car owner and prior use of a car can raise an inference that permission was given to use the vehicle." *Ledbetter*, 254 Ga. App. at 180 (emphasis added). Appellant conveniently leaves out the key portion of the holding from *Ledbetter*. That is because the evidence in this case shows that Sammy Walker had never driven the Vehicle before and was unfamiliar with how to operate it. (V2-162-63; 167;169). Second, this argument fails because the issues in this declaratory judgment action are not concerning a negligent entrustment claim, but rather only address the claim of direct liability against Walker and whether there is coverage under the Policy for such direct claim. (V2-144, Fn. 31). Thus, Plaintiff's reliance on *Ledbetter* is misplaced and the grant of summary judgment to GFB in this matter was proper.

B. GFB is entitled to Summary Judgment in this Declaratory Judgment Action Because Sammy Walker Did Not Have a Subjective Belief that He Was Allowed to Use the Vehicle.

Likewise, the trial court properly applied the non-permissive driver exclusion and granted summary judgment to GFB because there is no evidence in the record that Walker had a subjective belief that he was entitled to drive the Vehicle on November 21, 2020. Walker failed to respond to this declaratory judgment complaint and this Court entered default judgment against him on April 17, 2024. (V2-126-27). Therefore, since there is no evidence that Walker had a subjective belief that he was allowed to use the Vehicle, the exclusion applies to bar coverage. *Hurst v. Grange Mutual Casualty Co.*, 266 Ga. 712 (1996).

III. The Trial Court's Grant of Summary Judgment to GFB Should be Affirmed Because Appellant Dollar's Arguments Regarding Public Policy are Incorrect and Misplaced.

Despite Appellant Dollar's vague arguments regarding public policy, this Court should affirm the trial court's grant of summary judgment to GFB because the enforcement of this exclusion does not violate public policy. Appellant Queen attempts to avoid the binding effect of the non-permissive driver exclusion by arguing that the application of that exclusion in this case would violate public policy. (Appellant's Brief, Page 9-10). However, Appellant Dollar has failed to show how such enforcement of the non-permissive driver exclusion would violate public policy *in this case*. Contracts are only void for violation of public policy when the *specific*

application of a contract provision would violate public policy in a *specific* case. *See, e.g., Jones v. Federated Mutual Insurance Company*, 346 Ga. App. 237 (2018) (noting that “[t]he power of the courts to declare a contract [provision] void for being in contravention of a sound public policy is a very delicate and undefined power, and ... should be exercised only in cases free from doubt.”). Appellant Dollar has failed to demonstrate how such enforcement of the exclusion provisions in this case would violate public policy. Specifically, Appellant Dollar has failed to point to any evidence in the record that Appellant would be without access to other insurance funds due to an enforcement of the non-permissive driver exclusion. *See, Kavacs v. Cornerstone National Insurance Company*, 318 Ga. App. 99, 104 (2012) (noting that Appellant’s public policy argument failed because, among other reasons, “there was no evidence in the record showing that [Appellant] lacked access to other insurance funds.”); *see also, Early v. MiMedx Group, Inc.*, 330 Ga. App. 652, 655-65 (2015) (noting illegality or a violation of public policy is an affirmative defense that must be raised and proven by the party asserting the defense.). Overall, Plaintiff has failed to carry her burden of showing that enforcement of the non-permissive driver exclusion would violate public policy *in this case*.

Moreover, this Court has consistently rejected similar public policy arguments against the enforcement of non-permissive driver exclusions in the past. For example, in *Kovacs v. Cornerstone National Insurance Company*, 318 Ga. App. 99,

103 (2012), this Court considered an identical public policy argument – which like Appellant Dollar, relied on *Woody v. Georgia Farm Bureau Mutual Insurance Company*, 250 Ga. App. 454 (2001) – and held that “automobile insurance policy exclusions are not per se void as against public policy” and that “[c]ompetent parties are free to choose, insert, and agree to whatever provisions they desire in a contract, including insurance contracts, unless prohibited by statute or public policy.” *Id.* at 103-04. Further, this Court in *Kovacs* recognized that insurance coverage based solely on public policy arguments can only extend so far. To that end, this Court noted that:

“Public policy may justify enlarging an insurer's risk where acts of the undisputed insured driver are concerned, *but not necessarily so where an unauthorized driver who is not an insured under the policy is involved*. This [C]ourt has previously affirmed declaratory judgment for the insurer where such an unauthorized and thus uncovered use of the vehicle occurred.”

Id. at 104.

In other words, this Court has recognized that when the exclusion applies to bar coverage to an unauthorized or non-permissive driver, public policy does not override the application of the exclusion. *Id.* This Court used this reasoning in *Kovacs* to conclude that a “unlisted driver exclusion” in the insurance policy did not violate Georgia’s public policy because it only effected a non-permissive driver. *See also, Rogers v. Travelers Indemnity Company of America*, 202 Ga. App. 77, 79 (1991) (enforcing a non-permissive driver exclusion despite public policy arguments

for coverage); *Ison v. State Farm Fire & Cas. Co.*, 230 Ga. App. 554, 555 (1998) (holding that driver exclusions, which are clear, unambiguous and supported by consideration, are enforceable and do not violate public policy or compulsory insurance laws); *Johnson v. Blue Ridge Insurance Company*, 189 Ga. App. 616, 616 (1988) (holding that Georgia's compulsory motor vehicle liability insurance does not affect the enforceability of an identical non-permissive driver exclusion where the vehicle was driven by one unauthorized to use the vehicle.).

Here, like in *Kovacs*, *Rogers*, *Ison*, and *Johnson*, the policy exclusion does not violate public policy because it is being used to exclude coverage to a non-permissive or unauthorized driver – Sammy Walker. Therefore, Plaintiff's public policy arguments are misplaced and should be rejected by this Court.

CONCLUSION

This Court should affirm the trial court's grant of summary judgment to GFB in this declaratory judgment action because there is no genuine issue of material fact about whether the non-permissive driver exclusion applies in this case and because Georgia's public policy is not violated by the enforcement of this exclusion in this case.

RULE 24(F) CERTIFICATION

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted, this 11th day of March, 2025.

/s/ Duke R. Groover

DUKE R. GROOVER

Georgia Bar No. 313225

/s/ Christopher Gordon

CHRISTOPHER GORDON

Georgia Bar No. 922377

/s/ Bruce D. Dubberly, IV

BRUCE D. DUBBERLY, IV

Georgia Bar No. 313225

/s/ Spencer D. Woody

SPENCER D. WOODY

Georgia Bar No. 256598

*Attorneys for Georgia Farm Bureau
Mutual Insurance Company*

JAMES-BATES-BRANNAN-GROOVER-LLP

P.O. Box 4283

Macon, GA 31208

(478) 742-4280 (telephone)

(478) 742-8720 (facsimile)

dgroover@jamesbatesllp.com

cgordon@jamesbatesllp.com

bdubberly@jamesbatesllp.com

swoody@jamesbatesllp.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing *Brief of Appellee* upon all parties by placing copies of same in the United States Mail, in envelopes with sufficient postage affixed thereto to ensure delivery, addressed as follows:

SAMUEL F. HART, JR.
DOZIER LAW FIRM
487 Cherry Street
P.O. Box 13
Macon, GA 31202
Attorney for Appellant

Respectfully submitted, this 11th day of March, 2025.

[Signatures to follow on next page]

/s/ Duke R. Groover
DUKE R. GROOVER
Georgia Bar No. 313225

/s/ Christopher Gordon
CHRISTOPHER GORDON
Georgia Bar No. 922377

/s/ Bruce D. Dubberly, IV
BRUCE D. DUBBERLY, IV
Georgia Bar No. 313225

/s/ Spencer D. Woody
SPENCER D. WOODY
Georgia Bar No. 256598
*Attorneys for Georgia Farm Bureau
Mutual Insurance Company*

JAMES-BATES-BRANNAN-GROOVER-LLP
P.O. Box 4283
Macon, GA 31208
(478) 742-4280 (telephone)
(478) 742-8720 (facsimile)
dgroover@jamesbatesllp.com
cgordon@jamesbatesllp.com
bdubberly@jamesbatesllp.com
swoody@jamesbatesllp.com