

Barbara PRUITT and Sheila Ray, Plaintiffs-Appellants,
v.
Billy F. SWANGER and Tennessee Farmer's Mutual Insurance
Company, Defendants-Appellee.

Court of Appeals of Tennessee.
Aug. 25, 1989.

1989 WL 98062

Jefferson Law CA No. 65, William R. Holt, Judge.

Ralph Brown, of Maryville, for appellants.

John T. Johnson, Jr., with Kramer, Rayson, McVeigh, Leake & Rodgers, of Knoxville, for appellee.

OPINION

PER CURIAM.

**1. In June, 1987, Plaintiffs-Appellants Barbara Pruitt and Sheila Ray were severely injured when the automobile in which they were riding was involved in a one-car accident. The owner-operator of the vehicle was Defendant Billy F. Swanger. The accident occurred when the vehicle went out of control and crashed into a guardrail. At the time of the collision Defendant Swanger had in effect an automobile liability policy with limited coverage.

The Plaintiffs filed suit against the Defendant for injuries suffered in the accident. Because the Plaintiffs' damages were in excess of the Defendant's coverage, process was also served on the Defendant-Appellee, Tennessee Farmer's Mutual Insurance Company (TFMIC). TFMIC was the insurer of a 1986 Chevrolet Cavalier purchased by Mildred Smith who did business as "Nutri-Metics." Ms. Pruitt, however, claimed she was entitled to benefits pursuant to the uninsured or underinsured motorist provisions of the TFMIC policy on the Cavalier. Ms. Ray also claimed entitlement to such benefits as a blood relative and household member of Ms. Pruitt.

In its answer to the complaint, TFMIC denied Plaintiffs' entitlement to benefits because Ms. Pruitt was not the named insured in the policy. The policy in question was issued to "Nutri-Metics International c/o Mildred Smith."

The case proceeded to trial where it was agreed the question of uninsured motorist coverage would be decided before determining the question of liability. Evidence at trial showed that in 1985 Ms. Pruitt became acquainted with Mildred Smith, an elderly woman who sold cosmetics and primarily did business as "The House of Beauty" and "Nutri-Metics." Ms. Pruitt began working out of Ms. Smith's establishment selling cosmetics and running personal errands for Ms. Smith. Ms. Pruitt testified that when the automobile she owned became inoperable Ms. Smith agreed to assist her in obtaining a new car. Since Ms. Pruitt was not financially able to purchase a new car, Ms. Smith purchased the car and obtained financing

on it. Ms. Smith also purchased the insurance policy here in question and had it issued to "Nutri-Metics International c/o Mildred Smith." Her business address was indicated as that of the named insured. Ms. Pruitt was named in the policy as a driver of the vehicle. Ms. Smith was some 80 years of age and was listed as a non-driver on the application for insurance.

At the end of the Plaintiffs' proof TFMIC moved for dismissal on grounds the evidence failed to show Plaintiffs were insureds under the policy. The trial court sustained the motion and Plaintiffs have appealed, saying the court was in error.

We cannot agree, and affirm in accordance with Court of Appeals Rule 10 (FN1). The cost of this appeal is taxed to the Appellants.

FN1. "AFFIRMANCE WITHOUT OPINION.--The Court, with the concurrence of all judges participating in the case, may affirm the action of the trial court by order without rendering a formal opinion when an opinion would have no precedential value and one or more of the following circumstances exist and are dispositive of the appeal:

"(1) the Court concurs in the facts as found or as found by necessary implication by the trial court.

"(2) there is material evidence to support the verdict of the jury.

"(3) no reversible error of law appears.

"Such cases may be affirmed as follows: 'Affirmed in accordance with Court of Appeals Rule 10.' "