

SUPREME COURT OF LOUISIANA

01-C-1697

MICHAEL E. ROBINSON

versus

CAROLYN S. HEARD, ET AL.

Johnson, J., Dissenting

I disagree with the majority's conclusion that the vehicle driven by Mr. Robinson did not qualify as a 'temporary substitute' vehicle under the Interstate insurance policy.

Although there is no legal distinction between a sole proprietor and his sole proprietorship, there is an apparent distinction between the two for insurance purposes. Our law recognizes classifications in the insurance industry other than those based on an insured's status as a natural or juridical person. The court of appeal correctly found that insurance risks may be grouped by classifications for establishment of rates and minimum premiums, and rates may be established on the basis of any classification. La. R.S. 22:1404(2)(b). Classifications based on the insured's status as an individual or as a commercial enterprise indeed exist in the statutory scheme governing the insurance industry. Under the majority's rationale, if Mike Robinson Enterprises was incorporated as Mike Robinson Enterprises Corp., it, and not Mr. Robinson himself, would be the policy holder of the commercial policy because it would be a 'legal entity'. However, there are no provisions in the insurance statutes which require incorporation or other juridical person status in order to be insured under a commercial insurance policy. It is apparent that insurance companies do issue commercial policies and accept the commercial premium rates from individuals for the purpose of insuring their commercial establishment, even though not incorporated. This is exactly what

happened in the case before us.

Interstate issued a policy to Mr. Robinson, as an individual and named insured, for the Toyota truck and accepted premiums from him based on his classification as an individual. Interstate also issued a separate commercial policy to Mike Robinson Enterprises, as the named insured, covering the Ford truck and accepted premiums from Mr. Robinson on this policy based on the commercial classification. Interstate cannot now claim that the policy issued to Mike Robinson Enterprises is in fact a personal policy issued to Mr. Robinson after accepting premiums based on the commercial status.

I agree with the court of appeal's conclusion that the policy holder and named insured on the commercial policy covering the Ford truck was Mike Robinson Enterprises, and not Mr. Robinson. Mike Robinson Enterprises did not own the Toyota truck for purposes of the "temporary substitute" vehicle provision, and, it therefore qualified as a substitute auto under the terms of the policy.

Accordingly, I would affirm the decision of the court of appeal.