time that conception may have occurred. . ." It is difficult for us to accept her statement that she had intercourse only with Dickinson, since she recited other relationships, first with Estevez and then with Jeff Brugaber.

Her suit was filed against Estevez, she said, because he agreed to care for the child, but apparently no longer. So we have a situation where she had named three different persons as the father of the child. While the mathematics and the blood test confirm the possibility she argues that it was Dickinson and that we should disregard those other relationships. She said she suspected pregnancy at the beginning of January.

When Karen testified, she said the last sexual relationship with Estevez was at a time which we have computed as being 299 days before the child was born. Her admission was that she had relations with Brugaber sometime in March. If it was not for the laboratory test, we would have to dismiss the case in which Karen contends that Donald is the father of Michael. The question is whether these scientific tests require us to ignore the long-standing rule of *Young* and decide the case according to the results of the test. We have had no appellate instructions on this point.

In *Young* the court accepted medical data supported by authorities that the normal gestation period is 275-282 days from the end of the last menses or 270 days from single coition the pregnancy may be protected to 334 days after coitus or 344 days after menses. The court also noted that in America the liberal view is taken, and the legitimacy of a birth at the completion of 313 and 317 days has been recognized. Citing a 1943 publication the court noted that pregnancy has been found to vary from 220 to 330 days, the average being 270 days. As noted earlier, Estevez had intercourse with Karen 299 days prior to the child's birth and it is somewhat difficult to determine when she had relations with Brugaber and whether she gave us all the facts about that.

We conclude that under the *Young* doctrine, Donald Dickinson cannot be found to be the father of Michael Estevez.

There are no such impediments, however, as to the birth of Stacie. The paternity plausibility in that case, according to the testing laboratory, was 99.83%, and Karen claimed he was the father and the defendant did not deny it.

ORDER OF COURT

August 12, 1982, the court enters a verdict for the defendant in the action in which Karen Klose claims that Donald Dickinson is the father of Michael Estevez and enters a verdict for the plaintiff in the action in which she claims he is the father of Stacie Marie Klose.

It is ordered that an office conference shall be scheduled by the Domestic Relations Hearing Officer to make recommendations to determine the amount of support for Stacie Marie.

Costs of the case on behalf of Michael Estevez shall be paid by the county and those incurred in the case on behalf of Stacie Marie shall be paid by the defendant.

MONTI v. ROCKWOOD INSURANCE COMPANY, C.P. Franklin County Branch, A.D. 1980 - 135

Declaratory Judgment - Interpretation of Insurance Policy

1. A Pennsylvania resident, injured in an accident in Ohio while driving in interstate commerce, a tractor-trailer rig registered in Illinois and leased to a Delaware corporation does not come under provisions of the Pennsylvania No-Fault Act.

2. Where public policy as stated in the No-Fault Act is inapplicable to a case, the provisions of the insurance policy are controlling.

John N. Keller, Esquire, Attorney for Respondent

Thomas J. Finucane, Esquire, Attorney for Respondent

OPINION AND ORDER

EPPINGER, P.J., December 1, 1980:

John Monti, a Pennsylvania resident, had an accident on the Ohio Turnpike on January 21, 1980. At the time he was driving his tractor-trailer rig, registered in Illinois, hauling mater-

ial for Cardinal Transport, Inc. Thus the rig was being used in the business of the carrier.

Before these events occurred, Rockwood Insurance Company issued a business auto insurance policy to the defendant, charging $21.00 a year for personal injury protection and $137.00 a year for liability coverage. This insurance was in effect on the day of the accident.

Monti was injured in the accident and reasonable health care charges totaling $10,499.58 were submitted by Monti to the company. The total consisted of expenses for ambulance service, X-rays, medical consultations, neurological consultation, and hospital. When the demand was made on the company to pay this sum, the company took the position that Monti's policy did not cover personal injuries under the circumstances. It is the company's position that while Monti was carrying property for Cardinal, or while the rig was being used in Cardinal's business, the rig was not covered because of endorsement in the policy.

This petition for Declaratory Judgment asks the court to interpret the policy. Under the policy, personal injury protection was provided for *specifically described* autos, a 1972 International Tractor and a 1977 Fruehauf Trailer, as opposed to autos subject to No-fault. Certain paragraphs of the Basic Personal Injury Protection Endorsement are relevant:

EXCLUSIONS

This Coverage does not apply to bodily injury to

(a) the named insured or any relative resulting from the maintenance or use of the named insured's motor vehicle which is NOT an insured motor vehicle.

DEFINITIONS

"insured motor vehicle" means a motor vehicle

(a) to which the bodily injury liability insurance of the policy applies and for which a specific premium is charged . . .

The other endorsement to which we have been referred is the TRUCKERS - INSURANCE FOR NON-TRUCKING USE, intended to describe a covered auto.

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LIABILITY INSURANCE for a covered auto described in this endorsement is changed as follows:

A. The following exclusions are added:

1. A covered *auto* while used to carry property in any business.

2. A covered *auto* while used in the business of anyone to whom the *auto* is rented.

It is the company's position that there was no liability insurance in effect on the rig (LIABILITY INSURANCE A. 1. and 2.) and since there was no liability insurance, the rig was not an insured motor vehicle (DEFINITIONS (a)) and since the rig was not an insured motor vehicle, there was no bodily injury coverage for Monti (EXCLUSIONS (a)).

Monti disputes what he calls this strained and circuitous interpretation, saying that a reasonable and natural construction of the insurance policy requires no-fault coverage, that at the very most the policy provisions are ambiguous and must be interpreted in favor of Monti pursuant to Pennsylvania law and the intent of the Pennsylvania No-Fault Motor Vehicle Insurance Act, Act of 1974, July 19, P.L. 489, No. 176, 40 P.S. 1009.101 et seq., hereinafter the No-Fault Act.

That act, in Sec. 102(a) (3), 40 P.S. Sec. 1009.102(a) (3), speaks of the urgency to compensate for injuries sustained in motor vehicle accidents on Pennsylvania highways and in *intrastate* commerce. (Emphasis added)[1] Section 104, 40 P.S. Sec. 1009.104 requires every owner of a motor vehicle registered or operated in Pennsylvania to continuously provide security covering the vehicle while it is either present or registered in the Commonwealth. We note these provisions of the act because it is argued strongly by the plaintiff that if the provisions of the policy are ambiguous they must be interpreted in favor of Monti pursuant to Pennsylvania law and the intent of the No-Fault Act. In *Heffner v. Allstate Insurance Co.*, Pa. Super , 401 A.2d 1160 (1979), it was pointed out that in close and doubtful cases courts have historically found coverage for the insured. This tendency followed the spirit expressed in the present Act's mandate to restore all persons injured in *Pennsylvania highway* accidents. (Emphasis added.)

Called into question first is whether the Pennsylvania No-Fault act governs the interpretation of this policy. We noted

[1] Sec. 102(a) (4) of the Act further emphasizes its *intrastate* aspects, declaring that to avoid any undue burden on commerce during intrastate transportation of individuals, such legislation was required.

earlier that Monti, though a Pennsylvania resident, was injured in an accident in Ohio while driving in interstate commerce a tractor-trailer rig registered in Illinois and leased to and transporting cargo for Cardinal Transport, Inc., a Delaware Corporation with principal offices in Illinois. There is nothing about these circumstances to bring them under the No-Fault Act. Therefore, whatever the public policy stated in the act as being controlling on situations in Pennsylvania, it is inapplicable here.

So we look at the policy. Exhibit "A" of the policy in Item TWO schedules the coverages and covered autos. In doing so it says,

> "This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those *autos* shown as covered *autos*. *Autos* are shown as covered *autos* for a particular coverage by the entry of one or more of the symbols from *Item THREE* next to the name of the coverage."

Monti paid a premium for $100,000/300,000 BI $50,000 PD under the heading of Liability Insurance and the premium charged was $137.00. Personal Injury Protection (P.I.P.) (or equivalent No-fault coverage) bore a premium of $21.00. Uninsured Motorists Insurance (U.M.) for $15,000/30,000 BI was assessed a premium of $4.00. We think it is clear from the policy and common experience that the autos, a 1972 International Tractor and a 1977 Freuhauf Trailer were only being covered for use when not leased in hauling cargo for some other person. The evidence showed that had plaintiff's policy not included the non-trucking use endorsement (CA 2309), his annual P.I.P. Premium would have been $152.00 and his annual liability insurance premium would have been $1,564.00.

We conclude that the petitioner obtained insurance to cover himself and his rig when it was not leased and that, unfortunately for him, the accident happened in Ohio rather than Pennsylvania and since Ohio does not have a No-Fault statute,[2] his personal loss due to his injury was not covered there. We do not think the policy, if carefully read, is ambiguous. Therefore, we are not free to extend the coverage, despite the injuries the petitioner received and the evident losses he sustained.

[2] As authorized by the Act of July 9, 1976, P. L. 586, No. 142, Sec. 2, 42 Pa. C.S.A. Sec. 5327(b), we take judicial notice that Ohio does not have a No-Fault statute.

We will deny the prayer of the Petition for a Declaratory Judgment.

ORDER OF COURT

December 1, 1980, the Petitioner's Petition for a Declaratory Judgment is denied. The costs shall be paid by the Petitioner.

COMMONWEALTH v. KNABLE, C.P. Cr. D. Fulton County Branch, No. 76 of 1981

Criminal Law - Delivery of a Controlled Substance - "Substantive Error" in Complaint - Misnomer and incorrect statement of Birthdate of Defendant not substantive errors - Permitted Reopening of Case by Commonwealth to Offer Exhibits — Requisite Impartiality of Trial Judge - Demurrer to Evidence - Waiver by Proceeding to Present Defense

1. An error in the name of the defendant used in the complaint, whereby the suffix "Jr." is omitted and an error in his stated birthdate, by the use of "18" rather than "8," are not substantive errors and are therefore amendable.

2. When it is obvious from testimony about the same that it was the intention of the Commonwealth to offer certain exhibits in evidence, and when there is no doubt the exhibits are admissible but through apparent forgetfulness the Commonwealth has rested before offering the same, it is not error nor a showing of lack of impartiality for the trial judge to remind counsel of the oversight nor to permit reopening of the evidence to offer the exhibits.

3. The correctness of the Trial Court's ruling on a demurrer to the evidence is no longer an available question when the defendant fails to rest following the overruling of the demurrer and instead elects to put on a defense.

Merrill W. Kerlin, District Attorney, Attorney for the Commonwealth

Dennis A. Zeger, Esquire, Attorney for Defendant

OPINION AND ORDER

KELLER, J., September 17, 1982:

FIRST NATIONAL
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