

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
October 12, 2004 Session

**MID-CENTURY INSURANCE COMPANY v. VIRGINIA WILLIAMS, ET  
AL.**

**A Direct Appeal from the Circuit Court for Hardeman County  
No. 9551 The Honorable Jon K. Blackwood, Judge**

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**No. W2004-00484-COA-R3-CV - Filed January 11, 2005**

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**PARTIAL DISSENT**

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I write separately to dissent in part from the majority opinion. I agree with the majority's analysis of the policy at issue, but disagree with the majority's conclusion that the evidence preponderates against the trial court's finding that the childcare arrangement was not conducted for profit.

I certainly agree that the discrepancies in Ms. Williams' testimony in her two depositions and her trial testimony "suggest . . . deliberate obfuscation" and, if I were the trial judge, I would feel constrained to hold as the majority does, that Ms. Williams' later testimony was an effort to avoid the consequences of the exclusions from coverage. I am not, however, the trial judge. Here, the trial court's credibility determination is not based solely on the deposition testimony, ascertained from the transcript. It is also based on Ms. Williams' testimony at trial, derived from the trial judge's observation of her demeanor and manner in the courtroom. Given our standard of review for such a credibility determination, I feel compelled, albeit reluctantly, to affirm the trial court's finding of fact that the childcare arrangement was not conducted for profit.

On this basis, I dissent in part from the majority opinion. In all other respects, I fully concur.

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HOLLY M. KIRBY, JUDGE