STATE OF MICHIGAN

COURT OF APPEALS

RIVERSIDE PONTIAC-BUICK-GMC TRUCK, INC.,

Plaintiff-Appellee/
Cross-Appellant,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Intervening Plaintiff-Appellee/
Cross-Appellant,

v

LINDA WALAT, Conservator for the Estate of SETH WALAT,

Defendant,

and

AUTOMOBILE CLUB INSURANCE ASSOCIATION OF MICHIGAN,

Defendant-Appellant,

and

GUARANTY NATIONAL INSURANCE COMPANY,

Defendant-Appellee,

UNPUBLISHED
May 27, 1997

No. 182631
Saginaw Circuit Court
LC No. 91-044354-CK

and

HASTINGS MUTUAL INSURANCE
COMPANY,

Defendant-Appellee/
Cross-Appellee.

Before: Michael J. Kelly, P.J., and Wahls and Gage, JJ.

PER CURIAM.

Automobile Club Insurance Association of Michigan ("Auto Club") appeals by leave granted from an order denying its motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). State Farm Mutual Automobile Insurance Company ("State Farm") cross-appeals, challenging an order denying its motion for summary disposition, which was based on MCR 2.116(C)(10) and brought with respect to Hastings Mutual Insurance Company ("Hastings"). We affirm.

I. Appeal

On April 19, 1984, Riverside Pontiac-Buick-GMC Truck, Inc. ("Riverside"), leased a 1984 Buick Riviera to Mark McCormic. Mark insured the vehicle through Auto Club in a policy that listed him as the principal named insured, Riverside as the leinholder and other named insured, and Rebecca McCormic as an additional named insured. The policy provided that Auto Club would defend and indemnify the insured parties if they were sued for personal injuries resulting from an accident involving the Buick Riviera.

When the McCormics later renewed this policy, they received a declaration certificate that listed the policy term as March 5, 1987 to September 5, 1987. In August 1987, the McCormics received a renewal billing notice, which indicated that the policy would not be renewed unless the renewal premium was paid by September 4, 1987. When the McCormics failed to pay the renewal premium, they received a confirmation of non-renewal, dated September 8, 1987, indicating that the policy had not been renewed and that if the premium was paid by September 25, 1987, then the policy would be renewed with no loss of coverage. The McCormics still did not pay the premium.

On December 1, 1987, while driving the Buick Riviera, Rebecca McCormic collided with and injured a pedestrian, Seth Walat. Seth Walat, through his conservator, Linda Walat, sued the McCormics and Riverside, seeking compensation for his injuries. Auto Club refused to defend or provide indemnity to the McCormics or Riverside, claiming that the policy had expired and that therefore these parties were no longer insured by Auto Club when the accident occurred. The McCormics and Riverside subsequently brought separate actions for declaratory judgments in an effort to force Auto Club to defend and indemnify them. The McCormics' suit was resolved in Auto Club's favor by this Court in *McCormic v Auto Club*, 202 Mich App 233; 507 NW2d 471 (1993), on the ground that the policy had expired of its own terms with respect to the McCormics.

Auto Club argues that the trial court erred in denying its motion for summary disposition brought under MCR 2.116(C)(8) and (10). Relying on this Court's decision in *McCormic, supra*, Auto Club asserts that the policy expired of its own terms. In *McCormic*, this Court noted that the declaration certificate provided to the McCormics listed the policy term as beginning on March 5, 1987 and expiring on September 5, 1987, that the McCormics did not receive the notice of policy coverage that stated that the policy would run from "March 5, 1987 until terminated," that the McCormics were notified that the policy would be renewed if they paid the renewal premium, and that when the McCormics did not pay the renewal premium, they were notified that their policy had not been renewed. *Id*. at 234-235. This Court determined that the McCormic's policy expired by its own terms and that no notice of cancellation was required. *Id*. at 240. The facts of this case are quite different from *McCormic* and do not lead to the same result.

In this case, Riverside pleaded that it had received a notice of policy coverage indicating that the policy term was "March 5, 1987 until terminated," that it had not received a notice of cancellation or non-renewal, and that Auto Club had refused to defend or indemnify Riverside as provided in the policy. Unless a policy is for a specific term, it may only be terminated through a notice of cancellation. *Grable v Farmers Ins Exchange*, 129 Mich App 370, 372; 341 NW2d 147 (1983). Thus, assuming that Riverside's allegations were true, the policy would have remained in effect with respect to Riverside until Riverside received a notice of cancellation. *Id*. Accordingly, the trial court did not err in finding that Riverside's complaint stated a cause of action.

Moreover, the trial court did not err in concluding that a genuine issue of material fact existed. The evidence conflicted on what policy information Riverside received. Riverside presented evidence to establish that, instead of receiving notification that the policy was of a specific term, Riverside was informed that the policy would run from "March 1987 until terminated." Further, Riverside presented evidence to show that Auto Club did not inform Riverside that the policy would expire if the renewal premium were not paid by September 4, 1987, and that Auto Club did not inform Riverside that the policy had not been renewed. Yet, Susan Anderson, who was Riverside's office manager, testified that Riverside received a copy of the certificate of insurance that listed the policy term as March 5, 1987 to September 5, 1987. Thus, there is a question of material fact regarding whether Riverside received notice that the policy was of a specific term. Therefore, the trial court did not err in denying Auto Club's motion for summary disposition pursuant to MCR 2.116(C)(10).

II. Cross-appeal

When Seth Walat applied for no-fault benefits from Auto Club, Auto Club notified Walat that the policy it had provided to the McCormics and Riverside was not in effect on the day of the accident. Because the Walats did not have automobile insurance, Seth Walat applied for no-fault insurance coverage from the Michigan No-Fault Assigned Claims Facility, and his claim was assigned to State Farm. State Farm subsequently intervened in this action, contending that if the court decided that the Auto Club policy was in effect at the time of the accident, then State Farm was not the proper insurance company to pay benefits to Seth Walat.

Per State Farm's request, Guarantee National Insurance Company ("Guarantee") and Hastings were added as party defendants. State Farm had discovered that Guarantee had provided contingent lease liability insurance and contingent lease no-fault insurance to Riverside and that Hastings had provided personal injury protection insurance to Riverside. State Farm averred that in accordance with these policies, Guarantee and Hastings were obligated to pay the reasonably necessary expenses for Seth Walat's care, recovery and rehabilitation.

The Hastings policy contained a Personal Injury Protection endorsement, which provided that Hastings "will pay personal injury protection benefits to or for an insured who sustains bodily injury caused by an accident and resulting from the ownership, maintainance or use of an auto as an auto." It stated that personal injury protection benefits include the "[r]easonable and necessary medical expenses for an insured's care, recovery, or rehabilitation." The endorsement indicated that an insured is

> 1. [Riverside] or any family member.
>
> 2. Anyone else who sustains bodily injury:
>
> a. While occupying a covered auto, or
>
> b. As the result of an accident involving any other auto operated by [Riverside] or a family member if that auto is a covered auto under the policy's LIABILITY INSURANCE, or
>
> c. While not occupying any auto as a result of an accident involving a covered auto.

Although leased vehicles were excluded from the policy's liability coverage, the PIP endorsement did not exclude them from coverage.

State Farm asserts that the trial court erred in denying its motion for summary disposition, which was brought with respect to Hastings only under MCR 2.116(C)(10). "An insurance policy is much the same as another contract; it is an agreement between the parties. When presented with a dispute, a court must determine what the parties' agreement is and enforce it." *Fragner v American Community Mutual Ins Co*, 199 Mich App 537, 542-543; 502 NW2d 350 (1993). In making a determination regarding the parties' agreement and intent, the court must examine the contract as a whole, *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992), giving each term its ordinary and plain meaning and avoiding technical and strained constructions, *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). When the terms of an endorsement conflict with the provisions of the insurance policy, the terms of the endorsement prevail. *Hawkeye-Security Ins Co v Vector Construction Co*, 185 Mich App 369, 380; 460 NW2d 329 (1990). A plain reading of the personal injury protection endorsement suggests that this policy does not exclude leased vehicles from coverage. However, according to Robert Meiers, the insurance agent who arranged for Hastings to provide insurance to Riverside, the policy was a garage policy that was not intended to provide coverage for leased vehicles. Thus, an ambiguity exists with respect to the exclusion of leased vehicles.

The resolution of this ambiguity would require a determination of Meiers' credibility. Such a determination is not a proper subject of a motion for summary disposition. *SSC Associates Limited Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360, 365; 480 NW2d 275 (1991). Thus, the trial court properly denied State Farm's motion.

Affirmed. Riverside and Hastings being the prevailing parties, they may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ Hilda R. Gage