

STATE OF MICHIGAN
COURT OF APPEALS

CINDY JENSEN,

Plaintiff-Appellee,

v

FARM BUREAU MUTUAL
INSURANCE COMPANY OF MICHIGAN,

Defendant/Third-Party Plaintiff-Appellant,

and

DALE O'REAR,

Third-Party Defendant-Appellee.

UNPUBLISHED

June 26, 1998

No. 200185

Muskegon Circuit Court

LC No. 96-334037 NO

Before: MacKenzie, P.J., and Whitbeck and G.S. Allen, Jr.*, JJ.

PER CURIAM.

In this declaratory judgment action, decided on stipulated facts, defendant Farm Bureau Mutual Insurance Company appeals as of right from the trial court's determination that defendant must indemnify third-party defendant O'Rear under the terms of a homeowner's policy defendant issued to O'Rear. We reverse.

O'Rear was driving a Kubota diesel tractor model L2850, equipped with a drag to rake plaintiff's ten-acre hay field. When the tractor became stuck, plaintiff went to assist O'Rear. She was injured in the process of dislodging the tractor and eventually obtained a \$295,000 judgment against O'Rear. Plaintiff then filed this declaratory judgment action, seeking a declaration that defendant was required to indemnify O'Rear under its homeowner's policy.

The policy sold to O'Rear contains an exclusion for injuries arising out of "the ownership, maintenance, use or loading or unloading of motor vehicles, or all other motorized land conveyances . . .

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

operated by . . . an insured.” However, the policy also provided that this “exclusion does not apply to . . . [a] motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and . . . not owned by an insured.” The narrow question is whether the Kubota model L-2850 farm tractor is a “motorized land conveyance designed for recreational use off public roads” so as to avoid application of a motor vehicle exclusion in O’Rear’s homeowner’s policy. The trial court concluded that the tractor was designed for recreational use, essentially because it was used for hobby farming rather than large-scale agribusiness and the pursuit of a hobby is a form of recreation. We disagree with that analysis.

An insurance policy is much the same as another contract; it is an agreement between the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992); *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997). 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). The contractual language is to be given its ordinary and plain meaning, and technical and constrained constructions should be avoided. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71, n 1; 467 NW2d 17 (1991); *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996).

In deciding that a motorcycle was an off-road vehicle for purposes of exemption from the no-fault act, our Supreme Court examined the design characteristics of the machine and its constituent parts to decide whether it was “designed” for off-road use. *Nelson v Transamerica Ins Services*, 441 Mich 508, 519-520; 495 NW2d 370 (1992). The same approach should be taken in this case. Generally, when the term “designed” is used in conjunction with property, it refers to the purpose for which the manufacturer constructed the item; the controlling factor is the purpose contemplated and intended by the manufacturer rather than the buyer or user. See *Terrace Park, Inc v Hartford Fire Ins Co*, 84 SD 259; 170 NW2d 467, 469 (1969); *Jacobs v Danciger*, 328 Mo 458; 41 SW2d 389, 391 (1931).

The documentary evidence supplied by the parties establishes that the Kubota tractor was designed to perform various farming, construction, and yard maintenance tasks. It has a lifting capacity of almost one ton and has power outlets to attach a front-end loader, mower, back hoe, tiller, brush-hog, or snow plow. It can also be used for pulling items such as a hay rake or a fallen tree. In short, whether or not the consumer farms for profit, the tractor is nevertheless a farm implement designed for small farm use. The trial court clearly erred in characterizing the tractor as a “recreational” vehicle. Accordingly, we reverse.

Reversed.

/s/ Barbara B. MacKenzie
/s/ William C. Whitbeck
/s/ Glenn S. Allen, Jr.