STATE OF MICHIGAN

COURT OF APPEALS

VICTORIA BOLTON, DAN ROBERT BOLTON, JR., ROBERTS CONSTRUCTION, INC., and WILLIAM T. ROBERTS,

Plaintiffs,

and

PATRICIA REISS and THOMAS REISS,

Plaintiffs-Appellants,

v

LAKE STATES INSURANCE CO.,

Defendant-Appellee.

UNPUBLISHED
January 5, 1999

No. 203549
Oakland Circuit Court
LC No. 96-523117 CK

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Plaintiffs Patricia and Thomas Reiss[1] appeal as of right from the trial court's order granting defendant Lake States Insurance Company's motion for summary disposition pursuant to MCR 2.116(C)(10) in this declaratory judgment action. We affirm, albeit for different reasons than the trial court.

The underlying facts of this case involved a head-on collision between a minivan driven by Patricia Reiss and an automobile driven by Stana Valeanu. Dan Bolton, an employee with Roberts Construction who was acting within the course of his employment, was driving a Ford pickup truck. Victoria Bolton, Dan Bolton's mother, was the sole titled owner of the pickup truck. The evidence, however, indicated that the pickup truck was a "company vehicle" used by employees of Roberts Construction.[2] While Dan Bolton was driving the pickup truck, plastic sheets fell from the bed of the truck onto the road. Although an attempt was made to recover the sheets, debris remained on the road. This caused Valeanu to cross over the double yellow line of the center lane to avoid the debris, and

Valeanu struck the minivan driven by Reiss head on. Valeanu was killed in the accident and Reiss suffered serious injuries.

Roberts Construction had a commercial general liability policy with Lake States Insurance Company. Plaintiffs filed suit against Dan Bolton, Victoria Bolton, William Roberts, and Roberts Construction in the underlying action. Dan Bolton, Victoria Bolton, William Roberts, and Roberts Construction then filed a first amended complaint seeking a declaration that the insurance policy provided coverage, and plaintiffs later intervened pursuant to a stipulation. Defendant Lake States then filed a motion for summary disposition based on the following automobile exclusion:

> **2. Exclusions**
>
> This insurance does not apply to:
>
> * * *
>
> g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes "loading or unloading."

Plaintiffs argued that the automobile exclusion contradicted a products-completed operations hazard provision in the definition section of the insurance policy and that the policy should be construed to provide coverage. The trial court ruled that plaintiffs' claim did not fall within the products-completed operations hazard definition and granted summary disposition in favor of Lake States.

Although the trial court did not reach the issue,[3] Lake States was entitled to summary disposition pursuant to MCR 2.116(C)(10) because there is no genuine issue of material fact concerning the applicability of the automobile exclusion in the commercial general liability policy issued by Lake States. The exclusion is clear and unambiguous and must be applied as written. *Allstate Ins Co v Keillor (After Remand)*, 450 Mich 412, 417; 537 NW2d 589 (1995). Here, it is undisputed that the injury arose out of the use (which by definition includes the loading or unloading of the automobile) of an automobile by Dan Bolton while acting in the scope of his employment with Roberts Construction. Thus, we conclude that the automobile exclusion precludes coverage under Lake States' insurance policy.

We reject plaintiffs' argument that the policy is ambiguous because the automobile exclusion conflicts with the definition of "products-completed operations hazard." The term "products-completed operations hazard" is used in the policy to determine which policy limit applies to a claim within Coverage A. The term and its definition neither provide nor exclude coverage. We are not persuaded by the court's reasoning in *Russo v Northland Ins Co*, 929 SW2d 930 (Mo App, 1996), and find it contrary to the approach used in *Hawkeye-Security Ins Co v Vector Construction Co*, 185 Mich App 369, 385; 460 NW2d 329 (1990). See also *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992). Furthermore, the "reasonable expectations of the insured" do not require that Lake States provide coverage. When viewed objectively, a person reading the

unambiguous auto exclusion "would reasonably expect that it means what it says," that is, that coverage does not exist for the claim. *Keillor, supra,* p 417.

Affirmed.

/s/ Gary R. McDonald
/s/ Kathleen Jansen
/s/ Michael J. Talbot

[1] In this opinion, "plaintiffs" will refer solely to Patricia and Thomas Reiss because they are the only plaintiffs involved in this appeal.

[2] We note that William Roberts had an automobile insurance policy with Farmers Insurance Company that covered the pickup truck. There is some indication in the briefs that Farmers Insurance has offered to settle the Reiss' claim in the underlying action for the policy limits.

[3] Lake States contended primarily that it was entitled to summary disposition because the automobile exclusion precluded coverage. Although appellate courts ordinarily will not decide issues not decided by the trial court, this issue was raised and briefed below. Further, this issue is raised on appeal and the facts have been set forth for resolution of the issue. Thus, this issue has been properly preserved for appellate review and this Court will affirm where the trial court reached the right result albeit for the incorrect reason. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994); *Phinney v Perlmutter,* 222 Mich App 513, 532; 564 NW2d 532 (1997).