

STATE OF MICHIGAN
COURT OF APPEALS

RONALD WARD,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

March 23, 1999

No. 203593

Wayne Circuit Court

LC No. 96-622043 CK

Before: White, P.J., and Markman and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying defendant's motion for summary disposition and granting summary disposition in favor of plaintiff. We remand for further proceedings.

On October 11, 1995, plaintiff, a City of Detroit employee, was operating a John Deere Gator vehicle on the Belle Isle Complex in Detroit, when a truck struck the rear left side of plaintiff's vehicle. Plaintiff's vehicle ran into a three-foot high chain, resulting in serious injuries to plaintiff. Plaintiff filed an uninsured motorists benefits claim with defendant, plaintiff's no-fault insurer, which claim was subsequently rejected. Following this rejection, plaintiff filed a "Complaint for Declaratory [sic] Judgment" asking the trial court to "grant declaratory [sic] judgment against the Defendant" and "order the immediate scheduling of an Arbitration on the issue of the uninsured motorist claim pursuant to the language of the Defendant's contract."

Defendant filed a motion for summary disposition arguing that plaintiff's injuries were excluded from coverage because he was driving an all-terrain vehicle ("ATV") at the time of the accident. The trial court denied defendant's motion for summary disposition on the ground that "the policy provides for [uninsured motorist] coverage," and instead granted plaintiff's "cross-motion"¹ for summary disposition and ordered defendant "to proceed immediately with the Arbitration of the uninsured motorist claim as prayed for by the Plaintiff in his petition for Declaratory Judgment."

On appeal, defendant argues that the trial court erred in granting summary disposition to plaintiff because the injuries plaintiff suffered are specifically excluded from coverage. As fully explained below, we conclude that it is necessary to remand this matter for further proceedings.

Plaintiff's insurance policy provides for arbitration of disputed claims when a written request is made:

If the insured person or ~~we~~ do not agree on that person's *right to receive any damages or the amount*, then at the *written request* of the insured person *the disagreement will be settled by arbitration*. [Emphasis added.]

The problem in this case is that there is no record evidence that plaintiff ever made a written request for arbitration as required by the terms of the policy. Moreover, to the extent that plaintiff's complaint could be construed as such a request, it is ambiguous in that it appears to request a *judicial* determination of plaintiff's right to receive uninsured motorist benefits (i.e., the coverage issue), but arbitration of the amount of benefits to which plaintiff believes he is entitled. Indeed, it appears to us that this is precisely the relief that the trial court granted. However, such relief would be contrary to the plain and unambiguous terms of the policy's arbitration provision, which provide that, *if* arbitration is properly invoked, the entirety of the parties' dispute is within the jurisdiction of the arbitrator.²

Under these circumstances, we believe that the appropriate course of action is to remand this matter for further proceedings. On remand, the trial court should determine whether arbitration was properly invoked. If the trial court determines that arbitration was properly invoked, then the court should send the entire case to arbitration consistent with the parties' agreement. On the other hand, if the court determines that arbitration was not properly invoked, then the court should reconsider defendant's motion for summary disposition on the merits, specifically addressing defendant's arguments grounded in the policy language.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Stephen J. Markman

/s/ Robert P. Young, Jr.

¹ Plaintiff's "cross-motion" for summary disposition was nothing more than a request, made in his response to defendant's motion for summary disposition, that summary disposition be granted to plaintiff instead.

² When deciding whether the parties agreed to arbitrate a certain matter, courts apply basic principles governing the formation of contracts. *Amtower v William C Roney & Co (On Remand)*, ___ Mich App ___; ___ NW2d ___ (Docket No. 211717, issued 10/16/98), slip op at 4. "Where the language of a contract is clear and unambiguous, the intent of the parties will be ascertained according to its plain sense and meaning." *Id.* (citation omitted).