STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA and FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN, Plaintiffs-Appellants,	UNPUBLISHED August 4, 2000
v	No. 213036 Oakland Circuit Court
NORTH POINTE INSURANCE COMPANY, Defendant-Appellee.	LC No. 97-001506-CK

Before: Owens, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order denying their motion for summary disposition, pursuant to MCR 2.116(C)(10), of their action for declaratory judgment under MCR 2.605, and instead entering a declaratory judgment in favor of defendant. We affirm.

Plaintiffs sought a declaratory judgment that Ruth Snell, Sheldon Snell, Kenny Major, Jerry Major, Ruthann Lipka, and Jim Lipka, who held homeowners' policies issued by plaintiffs,[1] were primary insureds under a commercial general liability policy issued by defendant to the Michigan United Field Trial Association ("MUFTA"), a club of greyhound dog owners formed for the purpose of conducting competitive field trials with the dogs. The Snells, Majors and Lipkas, who were members of MUFTA, had been named as individual defendants in a lawsuit filed against MUFTA by John Lawson and Colleen Traylor; their complaint alleged that some greyhounds being run at a MUFTA event had entered a residential area, attacked Lawson and killed his cat. Defendant provided MUFTA's defense in the Lawson/Traylor litigation, but declined to represent the individual defendants. The trial court in plaintiffs' action for declaratory judgment held that MUFTA's liability policy unambiguously excluded

[1] The Snells and Majors were insured by plaintiff Citizens, while the Lipkas were insured by plaintiff Farm Bureau.

from coverage individual MUFTA members, and that defendant was not required to provide their defense in the Lawson/Traylor proceedings.

Plaintiffs contend on appeal that the trial court erred in denying their motion for summary disposition of their declaratory judgment action. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition based on MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, depositions, admissions and other documents in a light most favorable to the nonmoving party and determine whether any genuine issue of material fact exists which would preclude judgment for the moving party as a matter of law. *Spiek*, *supra* at 337; *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). Additionally, this Court reviews de novo the trial court's rulings with respect to questions of law in a declaratory judgment action. *Id.* at 689; *Macomb Co Prosecutor v Murphy*, 233 Mich App 372, 379; 592 NW2d 745 (1999). The trial court's factual findings will not be reversed unless they are clearly erroneous. *Id.*

"The principles of construction governing other contracts apply to insurance policies." *Farm Bureau Mutual Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). An insurance policy will be enforced according to its written terms. *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197, 207; 476 NW2d 392 (1991). This Court will not hold an insurance company liable for a risk it did not assume. *Nikkel*, *supra* at 568; *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992); *Century Surety Co v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998).

"Whether contract language is ambiguous is a question of law, which this Court reviews de novo." *Nikkel*, *supra* at 563-564; *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996). "An insurance contract is ambiguous when its provisions are capable of conflicting interpretations." *Nikkel*, *supra* at 566; *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991). A court may not read ambiguity into an insurance policy where none exists, *Nikkel*, *supra* at 568; *Churchman*, *supra* at 567, and where no ambiguity exists, the contract is to be enforced as written, *Nikkel*, *supra* at 566; *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

The trial court did not err in determining that the insurance policy unambiguously limited coverage to MUFTA itself, and that individual club members were not insureds under the policy. Defendant's policy declarations provide that the "Named Insured" is "Michigan United Field Trial Assoc." and that the named insured is a "Club." The declarations additionally describe the business as an "Organization (Other than Partnership or Joint Venture)." On the first page of the coverage section of the policy appears the following provision: "Throughout this policy the words 'you' and 'your' refer to the Named Insured shown in the Declarations." The policy then specifically describes "insured" as follows:

SECTION II—WHO IS AN INSURED

1. If you are designated in the Declarations as:

* * *

c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

Plaintiffs contend that the use of the word "you" in the above "who is an insured" section of the policy creates an ambiguity. However, the policy clearly provides that the word "you" "refer[s] to the Named Insured," which is MUFTA. There is absolutely no indication anywhere in the contractual language that individual club members are insured under the policy; to the contrary, the policy specifically limits coverage to the named insured (i.e., MUFTA), and to its officers, directors and stockholders, but only with respect to their duties and liabilities as such. Because the contract language may not reasonably be understood in different ways, but fairly admits of but one interpretation, it is not ambiguous. *Nikkel, supra* at 566, quoting *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982). Although some of the individual defendants in the Lawson/Traylor lawsuit testified at their depositions that they *thought* that they, as individual members of MUFTA, were covered under defendant's policy, "'[t]his court has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms.' " *Nikkel*, *supra* at 567, quoting *Komraus Plumbing & Heating, Inc v Cadillac Sands Motel, Inc*, 387 Mich 285, 290; 195 NW2d 865 (1972).

Plaintiffs additionally contend that the trial court erred in holding that individual MUFTA members had no reasonable expectation of coverage under the policy issued by defendant. However, the Michigan Supreme Court has recently held that the "reasonable expectations" doctrine may not be used to defeat unambiguous policy language:

> [T]he rule of reasonable expectations has no applicability here because no ambiguity exists in the [relevant insurance policy] clause and the insured could have discovered the clause on examination of the contract.
>
> In *Raska, supra*, this Court rejected an insured's attempt to rely on the rule of reasonable expectations . . . . This Court[] remark[ed] . . . :
>
> > *[T]he expectation that a contract will be enforceable other than according to its terms surely may not be said to be reasonable*. If a person signs a contract without reading all of it or without understanding it, under some circumstances that person can avoid its obligations on the theory that there was no contract at all for there was no meeting of the minds.

> But to allow such a person to bind another to an obligation not covered by the contract as written because the first person thought the other was bound to such an obligation is neither reasonable nor just. [*Raska, supra* at 362-363.]

As we observed in *Raska*, application of the reasonable expectations rule under these circumstances is contrary to the fundamental principle that the insurer and insured may generally contract regarding the scope of coverage. See *Heniser* [*v Frankenmuth Mut Ins Co*, 449 Mich 155, 161; 534 NW2d 502 (1995).] Accordingly, we decline to utilize the rule of reasonable expectations to circumvent the clear policy language at issue in this case.

* * *

Because no ambiguity exists in the policy language, we enforce the contract as written. Accordingly, the trial court and the Court of Appeals erred in declining to enforce the clause in this case. [*Nikkel*, *supra* at 569-570; emphasis supplied and citation omitted.]

Because the subject policy contains no ambiguity concerning who it insures, plaintiffs may not rely on the reasonable expectations rule to circumvent the contractual limitation of coverage. Accordingly, the trial court properly entered a declaratory judgment in defendant's favor.

Finally, plaintiffs argue that James Lipka and Ruthann Lipka, as officers of MUFTA, are insureds under defendant's policy, and that the trial court erred in failing to enter a declaratory judgment that defendant was responsible for their defense in the Lawson/Traylor litigation. We disagree. Although the policy does provide that "executive officers and directors are insureds," this coverage is only applicable "with respect to their duties as your officers or directors." Plaintiffs have provided no evidence to support their contention that the Lipkas were performing their duties as officers of MUFTA when the incident leading to the underlying Lawson/Traylor litigation occurred. Rather, the only evidence submitted concerning this issue supports a finding that the Lipkas were *not* acting in their capacity as officers of the club when they allegedly allowed their dog to roam off-leash during field trial activities. Accordingly, there is no genuine issue of material fact regarding whether the Lipkas were acting in their official capacity as MUFTA officers on the day in question.

Affirmed.

/s/ Donald S. Owens
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald