# STATE OF MICHIGAN

# COURT OF APPEALS

---

RICHARD O'NEILL and THELMA SCHULTZ, as Co-Personal Representatives of the Estate of THOMAS O'NEILL, Deceased,

Plaintiffs-Appellants,

v

AUTO-OWNERS INSURANCE CO,

Defendant-Appellee.

UNPUBLISHED
February 20, 2001

No. 219481
Ingham Circuit Court
LC No. 98-089133-NI

---

Before: Holbrook, Jr., P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the trial court granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm.

The facts underlying this lawsuit are not in dispute. On August 6, 1996, decedent was struck by a hit and run driver while he was riding on his motorcycle. Decedent died as a result of the injuries sustained in the accident. The motorcycle was insured in decedent's name through a policy issued by State Farm Insurance Company. The State Farm policy included uninsured motorist coverage of $50,000 per person and $100,000 per accident.

At the time of the accident, decedent was living with his mother, plaintiff Schultz, at her home. Decedent was listed as the principal driver of a 1985 Toyota Corolla Sport, a vehicle that was insured under a policy issued by defendant to Schultz (hereinafter the Schultz policy). The Schultz policy included uninsured motorist coverage of $300,000 per person and $300,000 per accident. After the fatal accident, plaintiffs applied for but were denied uninsured motorist benefits under the Schultz policy. Defendant also rejected plaintiffs' request for arbitration. Thereafter, plaintiffs filed their lawsuit in the circuit court seeking benefits they alleged were due under the Schultz policy.

In its motion for summary disposition, defendant argued that the clear language of the Schultz policy precluded the relief sought. After a hearing, the trial court granted summary disposition to defendant, reasoning as follows:

> The Court is of the opinion, based upon the uncontested facts, that this motorcycle was owned by Mr. O'Neill who was driving the vehicle at the time of the collision. He was hit by an uninsured motorist. He had coverage through a different carrier. He did not have coverage with this company. This was not an insured vehicle. He was the aggrieved party who would have a right to if he had been driving his own vehicle. If his mother had been driving the motorcycle, she would have had coverage. But he, as the owner of the vehicle, does not have coverage because he chose not to insure it under this policy. The motion is granted under C10.

Plaintiffs argue that the trial court erred in granting defendant's motion because reasonable people could read the ambiguous Schultz policy and attached endorsements as excluding motorcycles from the uninsured motorist exclusion. We disagree. This appeal turns on how the insurance contract is interpreted. The primary purpose of interpreting an insurance contract is to ascertain and effectuate the intention of the parties. *Auto Club Ins Ass'n v Lozanis*, 215 Mich App 415, 419; 546 NW2d 648 (1996). "[I]f the terms of the policy are plain and unambiguous, their plain meaning should be given effect." *Parker v Nationwide Mutual Ins Co*, 188 Mich App 354, 356; 470 NW2d 416 (1991). 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).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

The first section of the Schultz policy sets forth a number of definitions that apply, unless otherwise indicated, throughout "this policy and endorsements attached to this policy." "Automobile" is defined to mean "a **private passenger automobile**, a truck, truck tractor, **trailer**, **farm implement** or other land motor vehicle." (Emphasis in original.) Plaintiffs argue that when the policy and the endorsements are read together, a reasonable person could conclude that motorcycles are not included in the subset "other land motor vehicle[s]." Not only is this position contrary to that taken below by plaintiffs, but it is also based on a mischaracterization of the interplay between the policy and the various endorsements.

For example, plaintiffs point to the definition of "automobile" contained in the endorsement entitled "PROPERTY DAMAGE LIABILITY LIMITATION," which specifically excludes motorcycles. Plaintiffs assert that the exclusion of motorcycles from this definition of "automobile" could lead a reasonable person to conclude that motorcycles are similarly excluded from the definition of "automobile" (specifically the "other land motor vehicles" subset) found in the first section of the policy. However, plaintiffs' argument fails to recognize that the application of the definition of "automobile" found in this endorsement is specifically limited to

the endorsement. The definition begins with the clear explanation that the definition applies only "[a]s used in this endorsement." Thus, the endorsement definition in no way constricts the definition of "automobile" found in the first section of the policy.

The same problem exists with plaintiffs' examination of how the term "motor vehicle" is defined in the "NO-FAULT INSURANCE ENDORSEMENT" and the "SPECIAL TORT LIABILITY EXCLUSION." Each of these endorsements specifically excludes motorcycles from their respective definitions of "motor vehicle." However, the "NO-FAULT INSURANCE ENDORSEMENT" clearly indicates that it contains its own special set of definitions, limited in application to the endorsement. The endorsement also specifically states that the definitions found in the first section of the policy "do not apply to the coverage provided by this endorsement." Similarly, the "SPECIAL TORT LIABILITY EXCLUSION" plainly indicates that the definition of "motor vehicle" therein provided "applies in addition to those contained in" the first section of the policy.

The uninsured motorist endorsement found in the Schultz policy specially denies coverage "to any person injured while occupying or getting out of any **automobile** owned by **you** or a **relative** if the **automobile** is not insured for Uninsured Motorist Coverage by the policy." (Emphasis in original.) The endorsement also plainly states that the definitions found in the first section of the policy apply. The term "land motor vehicle" is not defined by the policy. However, as the Michigan Supreme Court has observed, "A motorcycle is a motor vehicle in both the common sense and the dictionary sense . . . ." *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71; 467 NW2d 17 (1991). We believe that the policy's use of the modifying term "land" in no way adjusts the dimensions of the "motor vehicle" category to exclude the commonly[1] and judicially recognized "motorcycle" subset.[2] Indeed, we believe that the specific exclusion of motorcycles from the definition of both "automobile" and "motor vehicle" in the three endorsements discussed above strongly signals that, as set forth in the first section of the policy, the term "automobile" and its subset "land motor vehicle" includes motorcycles. If not, then there would be no need for the endorsements to draw these distinctions. Accordingly, as the trial court correctly observed, because the decedent's motorcycle was not insured under the Schultz policy, coverage was not extended to decedent under plain terms of the uninsured motorist endorsement.[3]

---

[1] *The American Heritage Dictionary of the English Language* (1996) defines "motorcycle" to be, "A two-wheeled *motor vehicle* resembling a heavy bicycle . . . ." (Emphasis added.)

[2] In *Wert v Citizens Ins Co of America*, 241 Mich App 313, 321; 615 NW2d 779 (2000), rev'd 463 Mich 926; 620 NW2d 309 (2000), the dissenting judge wrote that similar language in the insurance policy at issue in that case, "unambiguously exclude[d] coverage," thus barring the recovery of uninsured motorist benefits. While the present case and *Wert* are not identical, the plaintiff in *Wert* was also injured while riding a motorcycle that was insured under a policy issued by an insurer other than the defendant insurance company. As in the present case, the plaintiff in *Wert* was seeking uninsured motorist benefits under a policy issued on a vehicle not involved in the accident. *Id.* at 314. In lieu of granting leave to appeal, our Supreme Court reversed the *Wert* majority "for the reasons stated by the dissenting judge." 463 Mich 926.

[3] Additionally, the uninsured motorist endorsement plainly states that compensatory damages are

(continued…)

Affirmed. As prevailing party, defendant is entitled to costs under MCR 7.219.

/s/ Donald E. Holbrook, Jr.
/s/ David H. Sawyer
/s/ Brian K. Zahra

(…continued)

to be paid by a person legally entitled to recover for bodily injury sustained while occupying or getting into or out of an automobile covered by the liability section of the policy. Decedent's motorcycle was not covered by the liability section.