STATE OF MICHIGAN

COURT OF APPEALS

NICHOLE SHELDON,

Plaintiff-Appellee,

v

ASHLEY ZIMMERMAN, JACKIE ZIMMERMAN and DALE ZIMMERMAN

Defendants,

and

STATE FARM FIRE AND CASUALTY CO,

Garnishee Defendant-Appellant.

UNPUBLISHED
July 22, 2004

No. 246053
Calhoun Circuit Court
LC No. 01-0018737-NO

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Garnishee/defendant State Farm Fire and Casualty Company (State Farm) appeals as of right from the order granting plaintiff's motion for summary disposition. We reverse.

Plaintiff suffered an injury while riding in a golf cart driven by defendant Ashley Zimmerman and owned by Ashley's parents, defendants Jackie and Dale Zimmerman. The accident occurred on a public roadway a short distance from the Zimmermans' property. Plaintiff obtained a judgment against the Zimmermans pursuant to acceptance of a case evaluation award. Plaintiff added State Farm as a garnishee defendant and sought payment from State Farm under the Zimmermans' homeowner's insurance policy. State Farm moved for summary disposition on the ground that plaintiff's injuries were not covered under the policy. The trial court disagreed and granted summary disposition in favor of plaintiff, finding that the public roadway on which the accident occurred was constituted a "premises" as that term is defined in the policy.

We review de novo a trial court's decision to grant or deny summary disposition. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). Similarly, the proper interpretation of a contract constitutes a question of law subject to de novo review. *Id.*

Insurance companies may define or limit the scope of their coverage under an insurance contract as long as its terms lead "to only one reasonable interpretation" and it does not contravene public policy. *Farmers Ins Exchange v Kurzman*, 257 Mich App 412, 418; 668 NW2d 199 (2003). Courts construe the terms of insurance policies in accord with the well-settled principles of contract construction. *Id.* at 417. An ambiguous provision in an insurance contract must be construed against the drafting insurer and in favor of the insured. However, if the provision is clear and unambiguous, the terms are to be taken and understood in their plain, ordinary, and popular sense. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994).

Section II of the homeowner's policy provides coverage when an insured incurs personal liability for bodily injury or property damage. However, the portion of section II entitled "exclusions" states that the coverage for personal liability and medical expenses does not extend to bodily injury arising out of the use a motor vehicle owned or operated by any insured. The definitions section of the policy states that, for purposes of section II, a motor vehicle includes "a motorized golf cart" when it is "off an insured location." The policy's definition of "insured location" as relevant to this appeal includes the following:

> (a) the resident premises;
>
> (b) the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
>
> (c) any premises used by you in connection with the premises in [(a) or (b)].

In granting plaintiff's motion for summary disposition, the trial court found that the road where plaintiff's accident occurred constituted premises used by the Zimmermans in connection with their resident premises and that the exclusion from liability for incidents arising from the operation of a motor vehicle did not apply. On appeal, State Farm contends that the trial court erred in determining that the public road constituted a "premises." We agree.

The policy defines "residence premises" as follows:

> (a) the one, two, three or four-family dwelling, other structures and grounds; or
>
> (b) that part of any other building;
>
> where you reside and which is shown in the Declarations.

"Residence premises" refers to a type of physical structure. The policy clearly provides coverage for the residence premises and premises that are used in connection with it. The term "premises" is not defined in the policy. When a policy fails to define a particular term, word and phrases must be read in context to determine the meaning they convey to the ordinary reader. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Additionally, courts may "refer to dictionary definitions when appropriate when ascertaining the precise meaning of a particular term." *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

The meaning of "premises" derived from the context of its use within the insurance contract comports with the term's plain and ordinary meaning as derived from its common dictionary definition. The *American Heritage Dictionary* (2nd College ed, 1985), defines premises as "(a) Land and the buildings upon it. (b) A building or part of a building." Similarly, *Random House Webster's College Dictionary* (2nd ed, 1997), defines it as "(a) a tract of land including its buildings. (b) a building or part of a building together with its grounds and other appurtenances." Under the common meaning of the term "premises," a public road does not fall within the definition of "premises" and is not an "insured location" under the homeowner's policy. Here, it is undisputed that the golf cart was being operated on a public road when the accident occurred. The clear language of the exclusionary clause disavows coverage where an accident occurred away from the homeowner's premises and resulted from the use or operation of a motorized golf cart.

Reversed and remanded for entry of an order granting summary disposition in favor of State Farm. Jurisdiction is not retained.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra