# STATE OF MICHIGAN

# COURT OF APPEALS

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RACHEL WILKERSON, Personal Representative of the Estate of DAVID WILKERSON, Deceased,

Plaintiff-Appellee,

v

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant.

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UNPUBLISHED
August 17, 2004

No. 247834
Genesee Circuit Court
LC No. 01-072061-NI

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10) in an action for declaratory judgment and damages under an uninsured motorist policy. We affirm.

On appeal, defendant claims that the trial court improperly granted plaintiff summary disposition because the insurance policy unambiguously prohibited the insured from combining the per person limit of defendant's policy with the limit of another similar policy. We disagree.

We review de novo a trial court's decision to grant or deny a motion for summary disposition pursuant to MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Id*.; *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). Upon reviewing the evidence in the light most favorable to the non-moving party, summary disposition is appropriate if the affidavits, pleadings, depositions, admissions and other documentary evidence show that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Universal Underwriters Group*, *supra*, 246 Mich App 720. Moreover, we review de novo the interpretation of a contract and the existence of an ambiguity in an insurance contract. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Farm Bureau Mutual Ins Co v Buckallew*, 246 Mich App 607, 611-612; 633 NW2d 473 (2001). We examine the language of the contract according to its plain and obvious meaning, unless its provisions are capable of different interpretations. *Wilkie*, *supra*, 469 Mich 47; *Steinmann v Auto Club Ins Assoc*, 258 Mich App 149, 154; 670 NW2d 249 (2003).

On December 8, 1998, David Wilkerson, then fourteen years old, was killed as a result of an automobile accident in Flint, Michigan. David was a passenger in a vehicle owned and operated by David's biological father, Claude High III. An uninsured motorist struck the vehicle. David was entitled to benefits from Titan Insurance Company as an occupant of a vehicle insured by Titan. David was also entitled to benefits from defendant through a policy Rachel Wilkerson, his mother, held that included uninsured motorist coverage. Rachel, on behalf of David's estate, collected $10,000 in benefits pursuant to Titan's uninsured motorist provision and an additional $10,000 in benefits under the uninsured motorist provision of her policy with defendant. Defendant's policy contained a per person limit of $20,000. Rachel filed suit claiming that defendant owed an additional $10,000 in benefits to David's estate according to the per person limit. Defendant argued that its policy contained a clear endorsement clause that prohibited the insured from combining per person limits of defendant's policy with the limits of another similar policy. Defendant claimed that because Titan disbursed $10,000 to David's estate, defendant's payment of an additional $10,000 to David's estate satisfied defendant's pro-rata share of coverage under the policy. On appeal, defendant contends that the trial court erred in granting summary disposition for plaintiff because defendant's policy prohibited "stacking" the per person limits of its policy with the limits of another similar policy.

Because uninsured motorist benefits are not required under Michigan's no-fault act, the language of the individual insurance policy dictates the terms and conditions under which uninsured motorist benefits will be provided. *Twichel v MIC General Ins Corp*, 469 Mich 524, 533; 676 NW2d 616 (2004); *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996). "Any clause in an insurance policy is valid as long as it is clear, unambiguous and not in contravention of public policy." *Raska v Farm Bureau Mutual Ins Co*, 412 Mich 355, 361-362; 314 NW2d 440 (1982). A contract is ambiguous when its language may be reasonably interpreted in conflicting ways. *Id*. at 362; *Steinmann, supra*, 258 Mich App 154. If the contract contains ambiguous terms, this Court must construe the contract against the insurer and in favor of the insured. If, however, the terms of an insurance contract are unambiguous, this Court must enforce the contract as drafted. *Steinmann*, *supra*, 258 Mich App 154; *Royce*, *supra*, 219 Mich App 542-543. This Court "will not create ambiguity where the terms of the contract are clear." *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1999).

As applied to uninsured motorist coverage, defendant's policy defines "named insured" as "the individual named in the declarations and also includes his spouse, if a resident of the same household." The policy defines "insured" as "a person or organization described under 'Persons Insured'." "Relative" is defined as "a person related to the named insured by blood, marriage or adoption who is a resident of the same household, provided neither such relative nor his spouse owns a private passenger automobile; and shall include a minor child while away from home attending any school or college, but shall not include any member of the armed forces." Under "Persons Insured" the policy states that "[t]he following are insureds under Part I: (a) with respect to the owned automobile, (1) the named insured and any resident of the same household." Accordingly, the trial court held that Rachel was a "named insured" and David was an "insured" under the terms of the policy.

At issue in this case were the meaning and application of the endorsement clause and "other insurance" provision in defendant's policy. The Automobile Composite Endorsement

provision, referred to as Part IV – Family Protection Coverage or the "anti-stacking" provision, of defendant's policy provides:

> It is agreed that the Exclusions section of Part I – Liability and Part IV – Family Protection Coverage is amended by the addition of the following:
>
> The applicable limits of liability from this policy shall not be applied in combination with the limits of liability applicable to other vehicles on this policy or, in combination with the limits of liability from any other policies, except in accordance with the apportionment which might apply under 'Other Insurance.'

Defendant's "other insurance" provision provides:

> With respect to bodily injury to an insured while occupying or through being struck by an uninsured automobile, if such insured is a named insured under other similar insurance available to him, then the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company shall not be liable under this coverage for a greater proportion of the applicable limit of liability of this coverage than such limit bears to the sum of the applicable limits of liability of this insurance and such other insurance.
>
> Subject to the foregoing paragraph, if the insured has other similar insurance available to him against a loss covered by this coverage, the company shall not be liable under this coverage for a greater proportion of such loss than the applicable limit of liability hereunder bears to the total applicable limits of liability of all valid and collectible insurance against such loss.

The trial court held that the second paragraph of the "other insurance" provision was interrelated with the first paragraph of the provision. Thus, it found that the "insured" in the second paragraph refers to a "named insured" according to the first paragraph. The trial court held that because David was an "insured" pursuant to the policy's definition, the "other insurance" provision did not apply to him. Therefore, the endorsement that refers back to the "other insurance" provision was inapplicable as well. Although the trial court referred to possible ambiguity in the endorsement, its decision was based on the plain language of the policy when read as a whole.

We conclude that the clear language of defendant's "other insurance" provision demonstrates that the prohibition against combining limits applies if an "insured" is a "named insured under other similar insurance available to him." Titan's policy does not define "named insured" but lists Claude High as the "named insured" under the policy. Defendant's policy defines "named insured" as "the individual named in the declarations and also includes his spouse, if a resident of the same household." Because contract terms must be read in accord, the "named insured" under paragraph one of defendant's "other insurance" provision refers to defendant's definition of that term. According to defendant's definition, High, as the individual named in the declaration, is the "named insured" of Titan's policy. Thus, David was not a "named insured" under either policy.

Moreover, the second paragraph of defendant's "other insurance" provision contains the phrase "[s]ubject to the foregoing paragraph." Because the two paragraphs are interrelated, we find that the second paragraph applies only to an "insured" who is a "named insured" as stated in the first paragraph. Therefore, we hold that the trial court properly concluded that defendant's "other insurance" provision was inapplicable to David because he was not a "named insured" of another similar policy; consequently, David was not subject to the policy's prohibition against combining the limits of defendant's policy with the limits of another similar policy. The trial court properly granted summary disposition for plaintiff pursuant to MCR 2.116(I)(2).

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell