STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

ARCHANGEL ZITO,

Defendant,

and

LAWRENCE WAGNER, Guardian and Conservator for the Estate of RICHARD WAGNER, a Legally Incapacitated Person,

Defendant-Appellant.

UNPUBLISHED
October 12, 2004

No. 248027
Macomb Circuit Court
LC No. 2001-004698-NZ

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Defendant Lawrence Wagner, Guardian and Conservator of the Estate of Richard Wagner, a legally incapacitated person, appeals as of right the trial court's order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Richard Wagner sustained disabling injuries when he was struck by a snowmobile owned and operated by defendant Archangel Zito. Zito was insured under a homeowner's policy issued by Allstate. The policy excluded coverage for bodily injury arising out of the ownership or use of a motor vehicle, but provided that the exclusion did not apply to a motor vehicle designed for off-road recreational use, unless the vehicle was owned by the insured and was being used away from the insured's premises. The policy did not expressly define the term "motor vehicle."

Allstate filed a complaint for declaratory judgment and moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was not liable for payment of benefits to Wagner

because a snowmobile qualified as a "motor vehicle" and because the accident occurred on premises that Zito did not own. The trial court granted the motion.[1]

Defendant argues that the policy covers any accident that does not involve a "motor vehicle," and a snowmobile is not a motor vehicle. We disagree. We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). An insurance contract should be read as a whole and meaning should be given to all its terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Allstate's policy provides that the motor vehicle exclusion does not apply to a motor vehicle designed for off-road recreational purposes, unless the vehicle "is owned by an insured person and is being used away from an insured premises." Therefore, the policy recognizes that some "motor vehicles" are "designed for off-road recreational purposes." This contradicts defendant's argument that snowmobiles are not "motor vehicles" for the sole reason that they are primarily used off the public roadway. Plaintiff's approach would render nugatory the policy language that covers accidents involving off-road vehicles on the insured's land, because the policy would necessarily cover any accident involving an off-road vehicle no matter where it happened. Zito owned the snowmobile on which he was riding when the accident occurred, and the accident occurred on property that he did not own. Under the clear and unambiguous terms of the policy, Allstate is not liable for the payment of benefits to Richard Wagner, and summary disposition was proper.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell

[1] The trial court relied on *Connors v Cook*, unpublished opinion per curiam of the Court of Appeals, issued October 19, 2001 (Docket No. 222224), in which another panel of this Court held that a "racing snowmobile" was a "motor vehicle" for purposes of an exclusion in a homeowner's insurance policy.