

STATE OF MICHIGAN
COURT OF APPEALS

FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellant,

v

ROBERT BAILER and DEBRA BAILER,

Defendants-Appellees,

and

KENNETH LEGOWSKY,

Defendant.

UNPUBLISHED

October 26, 2004

No. 248179

Ingham Circuit Court

LC No. 01-094541-CK

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff Farmers Insurance Exchange appeals as of right from an order of the trial court holding that it was bound to provide coverage under an umbrella liability insurance policy it had issued to defendant Debra Bailer in connection with injuries suffered by her son, defendant Robert Bailer, in an automobile accident. We affirm. We decide this case without oral argument under MCR 7.214(E).

I. Basic Facts And Procedural History

Robert Bailer was seriously injured in an automobile accident on July 26, 1998 while he was a passenger in an car owned by his mother, defendant Debra Bailer, and being driven by defendant Kenneth Legowsky. It is undisputed that Robert Bailer was a resident of Debra Bailer's household at the time of the accident. Debra Bailer was covered by an automobile insurance policy issued by Farmers Insurance in connection with that accident, and Farmers Insurance paid out \$100,000, the per-person limit on personal injury liability coverage under that policy, to Robert Bailer for his injuries in the accident. Farmers Insurance also issued an umbrella liability insurance policy to Debra Bailer that was in force at the time of the accident. In response to a claim for additional payment under the umbrella policy, Farmers Insurance brought this declaratory judgment action seeking a declaration that it was not bound to provide insurance coverage for any defendant under the umbrella policy.

In the written opinion and order being appealed, the trial court held that the language of the umbrella policy "does not lead to only one reasonable interpretation" and, construing the

policy in favor of the policyholder, concluded that coverage existed for Debra Bailer and Robert Bailer.

II. Interpreting The Contract

A. Standard Of Review

We review de novo issues involving the proper interpretation of insurance contracts.¹

B. The “Household” Exclusion

Farmers Insurance argues that the trial court erred by declaring ambiguous and unenforceable the “household” exclusion in the relevant umbrella policy. An insurance policy is enforced as written when no ambiguity is present.² A policy is ambiguous if its words may reasonably be understood in different ways.³ A policy containing ambiguous terms is construed in favor of the insured and against the insurer.⁴

An endorsement to the relevant umbrella policy included the following household exclusion:

We do not cover personal injury to you or any of the following residents of your household:

a) any relative of the *insured* or

b) any person under age 21 in the care of the insured. [Emphasis added.]

At first glance, this exclusion appears to apply in the present case because it is undisputed that Robert Bailer, Debra Bailer’s son, resided in her household at the time of the accident and, as the policyholder, she would obviously be an “insured” under the policy as that term is commonly used.

However, another endorsement to the umbrella policy at issue included the following definition of “insured”:

Insured – means you and the following residents of your household:

(1) your relatives (persons living with and related to you by blood, marriage or adoption),

¹ *Cohen v Auto Club Ins Ass’n*, 463 Mich 525, 528; 620 NW2d 840 (2001).

² *Hellebuyck v Farm Bureau General Ins Co of Michigan*, 262 Mich App 250, 254; 685 NW2d 684 (2004).

³ *Id.*

⁴ *Id.*

(2) a person under age 21 in the care of a person named above.

(3) As respects **autos** and **watercrafts**, **insured** includes *only* the persons as stated below:

a. a person using a **watercraft** (with reasonable belief that the person is so entitled) owned by, loaned to or hired for use by you or on your behalf;

b. you and any person in (1) and (2) above, using **autos** (with reasonable belief that the **insured** is so entitled) not owned by or furnished for your regular use. [Boldface emphasis in original; italicized emphasis added.]

If an insurance policy sets forth definitions, its language must be interpreted according to those definitions.⁵ On its face, the policy definition of “insured” may reasonably be read as establishing a special definition of “insured” with regard to injuries involving automobiles and watercrafts. Under that definition, a person is expressly considered an insured “only” in two specified circumstances, neither of which existed here. The first circumstance did not exist because a watercraft was not involved in the incident. The second circumstance did not exist because the relevant automobile was owned by Debra Bailer (as opposed to being an automobile that was “not owned by or furnished for [her] regular use”). Thus, despite the fact that Debra Bailer as the policyholder was obviously an “insured” under the policy pursuant to the ordinary meaning of that term, the definition of “insured” in the umbrella policy may reasonably be read as meaning that she was not an “insured” under that definition with regard to an automobile accident. Because the policy language may reasonably be read as meaning that Debra Bailer was not an “insured” with regard to an automobile accident, it follows that it may reasonably be concluded that the household exception is inapplicable. Thus, contrary to Farmers Insurance’s position, there is ambiguity in the application of the household exception in this case. To the extent that there is any ambiguity, the policy should be construed in Debra Bailer’s favor so that the household exclusion should be considered inapplicable.⁶ Thus, Farmers Insurance has not established that the trial court erred by holding that it was bound to provide coverage under the umbrella policy in connection with Robert’s injuries.

In light of our ruling, there is no need to reach Robert Bailer’s public policy or estoppel arguments.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra

⁵ *Heath v State Farm Mutual Automobile Ins Co*, 255 Mich App 217, 218; 659 NW2d 698 (2002).

⁶ *Hellebuyck*, *supra* at 254.