S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

LONNIE J. WILBER,

Plaintiff-Appellant,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 28, 2004

No. 248448
Saginaw Circuit Court
LC No. 01-042055-CK

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

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, while driving his motorcycle, was involved in a collision with another motorist. Plaintiff settled his claim against the other driver, who was underinsured, with defendant's written permission. Plaintiff claimed underinsured motorist benefits from defendant, as a resident relative at the home of his father. Defendant denied benefits on the grounds that the applicable policy did not cover plaintiff's motorcycle, and that it expressly excluded coverage of any person injured while occupying an automobile owned by the insured or a relative that was not insured for underinsured motorist coverage under the policy. The sole issue in this appeal is whether the trial court correctly agreed that the latter exclusion extended to plaintiff's motorcycle.

The construction and interpretation of an insurance contract is a question of law that is reviewed de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). The various parts of a contract should be read together. See, e.g., *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 170; 600 NW2d 617 (1999). However, exclusions limiting insurance coverage should be read independently, and an exception contained within an exclusion does not itself create coverage. *Hawkeye-Security Ins Co v Vector Constr Co*, 185 Mich App 369, 385; 460 NW2d 329 (1990). Ambiguities in contracts should be construed against the drafter. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 470; 663 NW2d 447 (2003). However, that rule is applicable only where all conventional means of contract interpretation fail to resolve the ambiguity. *Id.* at 471.

The declarations listed as the only insured vehicle plaintiff's father's van. The definitions that begin the contract define "automobile" as "a private passenger automobile, a truck, truck tractor, trailer, farm implement or other land motor vehicle." "Your automobile" is defined as "the automobile described in the Declarations."

The provision for underinsured motorist coverage states that defendant "will pay compensatory damages any person is legally entitled to recover" from "the owner or operator of an underinsured automobile," or "for bodily injury sustained while occupying . . . an automobile that is covered by . . . the policy."

A list of exclusions follows, which states that underinsured motorist coverage does not apply to "any person injured while occupying or getting in or out of any automobile owned by you or a relative if the automobile is not insured for Underinsured Motorist Coverage by the policy." The crux of this appeal is whether plaintiff's motorcycle comes under the latter exclusion.

There is no dispute that plaintiff was residing with his parents at the time in question, and that his father was the named insured under the policy between defendant and himself. Also not in dispute is that the policy did not insure the motorcycle owned and operated by plaintiff at the time of the accident. The question is whether plaintiff's motorcycle was an automobile for purposes of the exclusion, and thus excluded from underinsured motorist coverage as an automobile owned by a relative of the insured.

The trial court concluded that "since motorcycles are included in the Defendant's policy's definition of automobile and since Plaintiff's motorcycle was not insured under his father's policy, the Defendant is entitled to summary disposition . . . ." The trial court's reasoning is sound.

"Automobile" is defined in general terms at the beginning of the agreement to include any "other land motor vehicle." A motorcycle obviously fits that general definition. As our Supreme Court observed, "[a] motorcycle is a motor vehicle in both the common sense and the dictionary sense of the term, [and] it is operated on land . . . ." *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71; 467 NW2d 17 (1991).

Plaintiff points out that the no-fault insurance endorsement, which is also part of the contract in question, sets forth its own definitions, of which that for "motor vehicle" expressly "does not include a motorcycle." Plaintiff argues that an ambiguity exists because the policy's section on underinsured motorist coverage fails to indicate whether the general definition of "automobile" applies, rather than that of "motor vehicle" from the endorsement. We disagree.

The exclusion in question uses the term "automobile," not "motor vehicle." Further, the endorsement states that its definitions "apply to this endorsement," with the admonishment that "definitions contained in the policy do not apply to coverage provided by this endorsement." That the endorsement does not in fact define "automobile" only underscores the weakness of

plaintiff's reliance on the endorsement as a way to avoid the general definition of "automobile" provided. The trial court properly looked to the general agreement's definition of "automobile" to ascertain what that term meant when used in the exclusions, rather than to the endorsement's definition of "motor vehicle."

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra