STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Plaintiff/Counter Defendant,

v

RICHARD L. LATTING, JR.,

Defendant/Counter Plaintiff/Cross Plaintiff/Third-Party Plaintiff-Appellee,

and

DAVID CLAY,

Defendant/Cross-Defendant-Appellee,

and

SECURA INSURANCE COMPANIES,

Third-Party Defendant-Appellant,

and

DAVID PENNELL and SHELLY PENNELL, d/b/a HICKORY VIEW BOARDING STABLE, d/b/a HBE EQUESTRIAN CENTER, INC. and RELIANCE NATIONAL INDEMNITY,

Third-Party Defendants.

UNPUBLISHED
December 22, 2005

No. 255964
Genesee Circuit Court
LC No. 02-073419-CK

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Secura appeals the trial court's denial of its motion for reconsideration of an order that granted summary disposition in favor of defendants. We reverse.[1]

I. Facts and Procedural History

David Clay accidentally ran over Richard Latting with a tractor while the two men were gathering hay to feed horses at defendant, David Pennell's Hickory View Boarding Stable. Pennell held a Farmowners Protector Insurance Policy that was issued by third-party defendant Secura and he also held a commercial general liability insurance policy in the name of his business, Hickory View Boarding Stable, that was issued by Reliance National Indemnity Company. Latting filed a tort action against Clay and Farm Bureau General Insurance Company defended Clay because he held a Farm Bureau homeowner's insurance policy. Thereafter, Farm Bureau filed a declaratory judgment action and asked the trial court to decide whether the homeowner's policy covered Clay's liability for the tractor accident. Thereafter, and presumably to assure that some insurance coverage would be available, Latting filed a second declaratory judgment action against Secura and Reliance and asked the trial court to decide whether the companies also had a duty to defend and indemnify Clay.

In the declaratory judgment action initiated by Farm Bureau, the trial court granted summary disposition to Farm Bureau because the accident fell within the motor vehicle exclusion of the policy. Secura filed a motion for summary disposition in the second declaratory judgment action and argued that Clay is not an "insured" under Pennell's Farmowners Protector Insurance Policy and that the accident fell within the motor vehicle exception of the policy. The trial court denied the motion and entered an order that granted summary disposition to Clay and Latting. Secura moved for rehearing and argued that Clay is not covered under the Farmowners Protector Insurance Policy, because the accident occurred while Clay and Latting were transporting feed to the horses boarding at Hickory View Boarding Stable and that the accident, therefore, falls under the business pursuits exclusion of the Secura policy. The trial court denied Secura's motion and ruled that Clay and Latting were engaged in farming activities when the accident occurred and, therefore, coverage is available under the farm owners policy.

II. Analysis

We review a trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). "Further, the construction and interpretation of an insurance contract is a question of law for a court to determine that this Court likewise reviews de novo." *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). "Like other contracts, an insurance policy is an agreement between the parties." *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 471; 688 NW2d 523 (2004). As this Court further explained in *English*:

> "When presented with a dispute, a court must determine what the parties' agreement is and enforce it." *Fragner v American Community Mut Ins Co*, 199

[1] This appeal is being decided without oral argument pursuant to MCR 7.214(E).

> Mich App 537, 542-543; 502 N.W.2d 350 (1993). "Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). We give contractual language its plain and ordinary meaning, avoiding technical and constrained constructions. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991); *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). "Exclusions limit the scope of coverage provided and are to be read with the insuring agreement and independently of every other exclusion." *State Farm Mut Automobile Ins Co v Roe (On Rehearing)*, 226 Mich App 258, 263; 573 NW2d 628 (1997), citing *Hawkeye-Security Ins Co v Vector Constr Co*, 185 Mich App 369, 384; 460 NW2d 329 (1990). This Court must enforce clear and specific exclusions and will construe them strictly in favor of the insured. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

Section II, Coverage G of the Secura policy provides liability protection to "an *insured* for damages because of *bodily injury* or *property damage* caused by an *occurrence* to which this coverage applies . . . ." Coverage G does not apply to bodily injury "arising out of *business* pursuits of an *insured* . . . ." The word "business" is defined in the policy as "any full or part-time trade, profession, occupation or service done for monetary or other compensation. '*Business*' does not mean '*farming*.'"

We agree with Secura that when the accident occurred, Latting and Clay were not farming for purposes of the Secura Farmowners Protector Insurance Policy, but were using the tractor for the operations of Pennell's business, Hickory View Boarding Stable. The standard, "business pursuit" exclusion "is generally defined as an activity that is profit motivated and that contains some degree of continuity." *Van Hollenbeck v Insurance Co of North America*, 157 Mich App 470, 478; 403 NW2d 166 (1987). Here, Pennell owned and operated the Hickory View Boarding Stable since 1991. He boarded horses and charged customers a monthly fee of approximately $180 at the time this case was pending in the trial court. It is undisputed that, at the time of the accident, Latting and Clay were collecting hay to feed the horses at the Hickory View stable. "[A]ll that is required to trigger the [business pursuit] exclusion is that the acts be performed as part of the business or service normally performed by the insured for profit . . . ." *State Mut Ins Co v Russell*, 185 Mich App 521, 529; 462 NW2d 785 (1990). Clearly, under the facts of this case, the trial court erred when it ruled that the business pursuit exclusion does not apply to the accident.

Reversed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood