STATE OF MICHIGAN

COURT OF APPEALS

CHRISTAL J. SEGER,

Plaintiff-Appellee,

v

HARTFORD INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellant.

UNPUBLISHED
February 26, 2008

No. 274572
Saginaw Circuit Court
LC No. 06-058909-NI

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

In this dispute over uninsured motorist insurance coverage, defendant appeals by leave granted from the trial court's order denying its motion for summary disposition. We reverse and remand.

Plaintiff filed the underlying lawsuit against her no fault automobile insurer for injuries and damages suffered when she drove her car off a road and struck a tree after allegedly swerving to avoid an unidentified oncoming vehicle.

This case turns on an analysis of the language regarding uninsured motorist coverage in plaintiff's insurance policy. The policy defines an uninsured motor vehicle as including a "hit-and-run vehicle whose owner or operator cannot be identified and which hits or causes an object to hit" an insured or a covered auto. The policy goes on to provide: "If there is no direct physical contact with the hit-and-run vehicle the facts of the accident must be proved. We will only accept competent evidence other than the testimony of a person making a claim under this or any similar coverage." Taken together, these provisions set forth two possible situations for coverage: (1) where there is vehicle-to-vehicle contact (direct physical contact); or (2) where a vehicle causes an object to hit the insured vehicle (no direct physical contact between the vehicles). It is undisputed that plaintiff's vehicle did not have direct physical contact with the other vehicle.

At the hearing on defendant's motion for summary disposition, defendant maintained that, in cases lacking direct physical contact, the policy language provided coverage only where the unidentified vehicle caused an object to hit the insured party, which had not happened in this instance. The trial court, however, agreed with plaintiff that the policy provided coverage for damages sustained when swerving to avoid another vehicle, as long as there was competent

evidence other than the claimant's testimony to prove causation, and noted that plaintiff produced a third-party witness to the accident. Without further consideration of the policy language, the court concluded that plaintiff was entitled to have a jury decide if the unidentified vehicle caused the accident.

The primary goal in the interpretation of a contract is to honor the intent of the parties. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003). The language in an insurance contract is to be given its ordinary and plain meaning. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). "Doubtful or ambiguous terms must be construed in favor of the insured and against the insurer, the drafter of the contract." *Rohlman v Hawkeye-Security Ins Co*, 207 Mich App 344, 350; 526 NW2d 183 (1994). However, the convention of construing insurance policies against the drafter does not require "forced or strained construction," *Nesbitt v American Comm Mut Ins Co*, 236 Mich App 215, 222; 600 NW2d 427 (1999) (internal quotation marks and citation omitted), and such constructions are to be avoided, *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). Moreover, where the contractual language is not ambiguous, its construction is a question of law for the court. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63-64; 620 NW2d 663 (2000).

The language of the policy is clear that, where there is no direct physical contact with the so-called hit-and-run vehicle, coverage is dependent on whether the vehicle caused an object to hit the insured party. That condition was not met in this case. In construing policy language, word order of a sentence establishes a clear distinction between the direct object and the indirect object. Accordingly, the provision at issue provides coverage where the subject, the "hit-and-run vehicle whose owner or operator cannot be identified," causes the direct object, "an object," to hit the indirect object, the insured. This is grammatically distinct from describing a situation where the subject driver causes the insured to hit an object. Moreover, the grammar of direct and indirect objects reflects a commonsense understanding of causation. Plaintiff's arguments that a dictionary finds "to hit" potentially synonymous with "to meet with" are of no avail in this regard. Although plaintiff is correct that ambiguous terms must generally be construed in favor of the insured and against the insurer, *Rohlman*, *supra*, here the only way to find ambiguity is by way of a "forced or strained construction," *Nesbitt*, *supra*. For plaintiff to have uninsured motorist coverage under her policy, an uninsured vehicle must cause an object to hit plaintiff's vehicle, and not vice versa. Plaintiff may be able to prove that the unidentified vehicle caused her to hit a tree, but she cannot reasonably maintain that the unidentified vehicle caused the tree to hit her. Consequently, plaintiff has no coverage under her policy. Accordingly, the trial court erred in denying defendant's motion for summary disposition. We therefore reverse the decision below, and remand this case to the trial court for entry of an order of summary disposition in favor of defendant.

Reversed and remanded for entry of an order granting summary disposition to defendant. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Karen M. Fort Hood