STATE OF MICHIGAN

COURT OF APPEALS

RITA A. MEDEL, Personal Representative for the Estate of GABRIEL B. MEDEL, Deceased,

Plaintiff-Appellant/Cross Appellee,

v

ST. PAUL TRAVELERS COMPANIES, INC.,

Defendant-Appellee/Cross Appellant,

and

ST. MARY'S OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
April 15, 2008

No. 272769
Saginaw Circuit Court
LC No. 05-056948-CZ

Before: Kelly, P.J., and Cavanagh and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition and denying her cross-motion for summary disposition in this uninsured motorist claim. Defendant St. Paul Travelers Companies, Inc. (Travelers) cross-appeals this same order.[1] We affirm.

Plaintiff's decedent, Gabriel Medel, lost control of the vehicle he was driving when he swerved to avoid hitting Carol Wezell, who was riding a lawn tractor, hit a tree, and died. The lawn tractor was owned by Wezell's neighbor, Roy Smewing, and was being used by Wezell to mow her lawn with his permission. Wezell had ventured onto the paved road to turn the tractor around at the time of the accident. The van that Medel was driving was owned by his employer, St. Mary's of Michigan (St. Mary's). Defendant insured the vehicle. Plaintiff sought uninsured motorist (UIM) benefits and was denied coverage. This lawsuit followed.

Thereafter, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), primarily arguing that the tractor was not a "land motor vehicle" under the policy

[1] Travelers will be referred to as "defendant" in this opinion.

because (a) it was not a motor vehicle as that phrase is commonly understood, and (b) to be a land motor vehicle it would have to be one "[f]or which no liability bond or policy at the time of an 'accident' provides at least the amounts required by the applicable law where a covered 'auto' is principally garaged." Plaintiff filed a cross-motion for summary dismissal under MCR 2.116(C)(9) and (C)(10), primarily arguing the tractor was a land motor vehicle under the policy because (a) it was a vehicle with a motor that travels on land, and (b) the phrase "required by the applicable law" referred to the "amounts" of the liability bond or policy, not the type of policy, i.e., the policy did not need to be a policy required by law. The trial court held that the lawn tractor was a "land motor vehicle" under the policy, but it was not a vehicle that was required to be insured by law under the financial responsibility act, MCL 257.501 *et seq*.; thus, the matter was dismissed. This appeal followed.

On cross-appeal, defendant argues that the lawn tractor was not an "uninsured motor vehicle" because it was not a "land motor vehicle" within the contemplation of the UIM contract.[2] We disagree.

We review de novo a trial court's ruling on a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Admissible evidence submitted by the parties is considered in a light most favorable to the nonmovant to determine if the moving party is entitled to judgment as a matter of law. *Id*. Issues of contract interpretation are also reviewed de novo. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

UIM coverage is not mandated by statute, therefore the provisions of the contract determine the circumstances under which benefits will be awarded. *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 19; 592 NW2d 379 (1998). The same contract construction principles apply to insurance policies as to any other type of contract. *Rory*, *supra* at 461. The insurance contract should be read as a whole, effect should be given to every word, clause, and phrase, and the ordinary and plain meaning is given to its language. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 714-715; 706 NW2d 426 (2005). Policy terms are to be interpreted without reference to statutes, such as the no-fault act, MCL 500.3101 *et seq*., unless otherwise provided in the contract. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 533-534; 676 NW2d 616 (2004).

The UIM policy at issue provides, in pertinent part:

> A. Coverage
>
> 1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle." The damages sustained must result from "bodily injury" sustained by the "insured" caused by an "accident." The owner's or driver's liability for theses damages must result from the ownership, maintenance or use of the "uninsured motor vehicle."

[2] For clarity purposes, the cross-appeal issue will be addressed first.

* * *

F. Additional Definitions

* * *

3. "Uninsured motor vehicle" means a land motor vehicle or "trailer":

a. For which no liability bond or policy at the time of an "accident" provides at least the amounts required by the applicable law where a covered "auto" is principally garaged;

b. That is an underinsured motor vehicle. An underinsured motor vehicle is a land motor vehicle or "trailer" for which the sum of all liability bonds or policies at the time of an "accident" provide at least the amounts required by the applicable law where a covered "auto" is principally garaged but that sum is less than the Limit of Insurance of this coverage;

c. For which an insuring or bonding company denies coverage or is or becomes insolvent; or

d. That is a hit-and-run vehicle and neither the driver or owner can be identified. . . . .

However, "uninsured motor vehicle" does not include any vehicle:

* * *

c. Designed for use mainly off public roads while not on public roads.

Under this contract, to be considered an uninsured motor vehicle the involved vehicle must first be either a "land motor vehicle" or a "trailer." Defendant claims that the lawn tractor was neither, but the trial court held that it was a "land motor vehicle."

"Land motor vehicle" is not defined in the contract. In deciding that the lawn tractor was a land motor vehicle under the policy, the trial court relied on *Farm Bureau Mut Ins Co v Stark*, 437 Mich 175; 468 NW2d 498 (1991), overruled in part on other grounds *Smith v Globe Life Ins Co*, 460 Mich 446 (1999), and *Trierweiler v Frakenmuth Mut Ins Co*, 216 Mich App 653; 550 NW2d 577 (1996), and rejected defendant's argument that the holding in *Stanton v City of Battle Creek*, 466 Mich 611; 647 NW2d 508 (2002) controlled. Before considering these cases, we note the observation in *Bianchi v Auto Club of Michigan*, 437 Mich 65, 73; 467 NW2d 17 (1991) that "[t]he decisions of this Court on prior occasions, and the decisions of other courts in other cases, are . . . of limited value to [the] interpretation of that language." Nevertheless, we do not discount the guidance that can be provided by other cases with regard to undefined terms.

First we turn to *Stark*, *supra*. In that case, our Supreme Court addressed whether a moped was a "motor vehicle" and thus excluded from coverage under a homeowner's insurance policy. *Id*. at 179. The policy definition of "motor vehicle" included a "land motor vehicle" to which the Court stated:

> [W]e have no difficulty in concluding that the term 'land motor vehicle,' taken and understood in its plain, ordinary, and popular sense, would include a moped. A 'land motor vehicle,' simplistically described, is a vehicle with a motor that travels on land. *Id*. at 182.

Thus, the Court held that the moped was excluded from the scope of the policy's coverage. *Id*. at 185.

Second, we look to the *Trierweiler* case. In that case, the Court determined that a farm tractor was a "land motor vehicle" entitled to uninsured motorist coverage. The *Trierweiler* Court cited the *Stark* Court's description of the term and held that the case was analogous. *Id*. at 658-659. The Court concluded that a farm tractor was a "land motor vehicle" because it had a motor and travels on land. *Id*. at 659.

Third, we turn to *Stanton*, *supra*. In that case the plaintiff was injured when a forklift driven by a city employee rolled forward and struck the plaintiff at a site owned by the city. The sole question before the Supreme Court was "whether a forklift is a 'motor vehicle' within the ambit of the motor vehicle exception to governmental immunity, MCL 691.1405." *Id*. at 612. The term was not defined in the statute and the governmental tort liability act, MCL 691.1401 *et seq*., did not refer to the motor vehicle code, MCL 257.1 *et seq*., for a definition. *Id*. at 616. Thus, the Court consulted several dictionaries.[3] The Court used the narrowest definition of the term "motor vehicle" to hold that the forklift was not a motor vehicle for purposes of the governmental immunity statute. *Id*. at 618. That definition defined a motor vehicle as "an automobile, truck, bus, or similar motor-driven conveyance." *Id*. at 617, quoting *Random House Webster's College Dictionary* (2001). The Court found that "[a] forklift—which is a piece of industrial construction *equipment*—is not similar to an automobile, truck, or bus." *Id*. at 618 (emphasis in original).

Here, the trial court was persuaded by plaintiff's argument that the *Stark* case was more similar to this case than the *Stanton* matter and thus it should lend the most guidance. We also note that several cases decided after *Stark* have cited the case as holding that the ordinary meaning of "land motor vehicle" is a vehicle with a motor that travels on land. *Snider v State Farm Mut Auto Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued December 5, 2000 (Docket No. 219109), slip op p 3; *Maryland Cas Co v Transamerica Ins Corp of America*, 199 Mich App 561, 563; 502 NW2d 749 (1993); *Allstate Ins Co v Castanier*, 195 Mich App 630, 633; 491 NW2d 238 (1992). Of these, only *Snider* involved uninsured motorist coverage. The other cases involved homeowner's insurance policies. Because *Snider* is unpublished, it has no precedential value. MCR 7.215(C)(1).

We agree that the *Stark* case is more analogous to this matter. Contrary to defendant's urging, we conclude that *Stanton* is not persuasive. In that case, the phrase "motor vehicle" and not "land motor vehicle" was considered. The inclusion of the word "land" as a modifier of "motor vehicle" means that it was contemplated that the vehicle would travel on more than just roads. See *Trierweiler*, *supra* at 658. Therefore, the addition of the word "land" necessarily

[3] The Court may refer to dictionary definitions to ascertain the meaning of a particular undefined term. *Morinelli v Provident Life & Acc Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

expands the category, suggesting a broader definition than the one used in *Stanton*. Further, in *Stanton* a narrow construction of the phrase "motor vehicle" was necessary because "the immunity conferred upon governmental agencies and subdivisions is to be construed broadly and [] statutory exceptions are to be narrowly construed." *Id*. at 618. Here, there is no such constructional limitation.

We conclude that a "land motor vehicle," considered in its plain, ordinary, and popular sense, is a vehicle with a motor that travels on land. Thus, we agree with the trial court and conclude that the lawn tractor is a land motor vehicle. We reject defendant's contention that because the lawn tractor's primary purpose is not vehicular, i.e., to transport people, but rather is to cut grass, it cannot be considered a motor vehicle. Whether the lawn tractor is a "motor vehicle" is not at issue here. Further, defendant's reliance on *Brown v Farm Bureau Gen Ins Co*, 273 Mich App 658; 730 NW2d 518 (2007), is misplaced because that case concerned motorized land conveyances, not land motor vehicles. See *id*. at 664. Thus, the trial court properly concluded that the lawn tractor was a "land motor vehicle" within the scope of the endorsement.

Nevertheless, the trial court dismissed this matter on the ground that the lawn tractor was not an uninsured motor vehicle under the contract. It did so after concluding that the lawn tractor did not meet a second definitional requirement of section F, paragraphs 3(a) or (b),[4] because the lawn tractor was not a vehicle mandated "by the applicable law" to have motor vehicle insurance. Plaintiff appeals this conclusion arguing that the lawn tractor was an underinsured motor vehicle under paragraph 3(b) because it was covered by insurance—homeowners insurance—and its policy limit of $300,000 is greater than $20,000, the minimum amount of liability insurance required by the motor vehicle code, MCL 257.520(b)(2), but less than the instant policy's limit of $2 million. We disagree with plaintiff's interpretation of the contract.

Section F, paragraph 3(a) provides that an uninsured motor vehicle is a land motor vehicle

> [f]or which no liability bond or policy at the time of an 'accident' provides at least the amounts required by the applicable law where a covered 'auto' is principally garaged.

Section F, paragraph 3(b) provides that an underinsured motor vehicle is a land motor vehicle

> for which the sum of all liability bonds or policies at the time of an "accident" provide at least the amounts required by the applicable law where a covered 'auto' is principally garaged but that sum is less than the Limit of Insurance of this coverage.

Plaintiff claims that because the phrase "liability bond(s) or policy(ies)" is not further defined, it refers to any liability policy; thus, a motor vehicle insurance policy is not mandatory—a homeowner's insurance policy satisfies the requirement. She also argues that the phrase "required by the applicable law" modifies the word "amounts," and does not refer to "liability bond or policy." Therefore, the lawn tractor had "at least" the amounts required by the

[4] It is uncontested that section F, paragraphs 3(c) and (d) are not applicable to this matter.

applicable law, which was zero, because no law required insurance for the lawn tractor. She asserts that the "sum of all liability bonds or polices" can be zero. Thus, essentially, plaintiff claims that any land motor vehicle that is operated on a public road at the time of an accident is afforded uninsured motorist benefits under this policy.

Defendant argues that the difference between paragraphs 3(a) and 3(b) lies in whether a vehicle has no liability insurance or some liability insurance, but that under either paragraph the vehicle is required to have motor vehicle liability insurance to qualify as an uninsured or underinsured motor vehicle. Defendant claims that the phrase "required by the applicable law" refers to "liability bond or policy." Because a motor vehicle liability policy is the only insurance for motor vehicles required by law, this necessarily is the type of policy required under the definitions of uninsured and underinsured motor vehicles in paragraphs 3(a) and 3(b), respectively. See MCL 257.501 *et seq*., MCL 500.3101 *et seq*. And, plaintiff's interpretation of the phrase "required by the applicable law" renders the phrase meaningless. Therefore, defendant contends, because the lawn tractor was not required by law to have motor vehicle insurance, it cannot be an uninsured or underinsured motor vehicle under either provision.

We agree with defendant's, as well as the trial court's, interpretation. In defining "uninsured motor vehicle," both paragraphs 3(a) and 3(b) reference the existence or nonexistence of liability bonds or policies that "provide(s) at least the amounts required by the applicable law." Because in the application of this provision we are dealing with motorized vehicles and the only type of insurance that could possibly be deemed "*required* by the applicable law" is motor vehicle insurance, "liability bonds or policies" must refer to motor vehicle liability bonds or policies. The "amounts" referred to as "required by the applicable law" must be the "amounts" of the motor vehicle liability bonds or policies. And the use of the word "required" in paragraphs 3(a) and 3(b) indicates that some amount is mandated by the applicable law, consistent with mandatory provisions of the no-fault act, MCL 500.3101 *et seq*., and financial responsibility act, MCL 257.501 *et seq*.

So plaintiff's claim that any liability bond or policy, including a homeowner's policy, is sufficient to meet the definition is without merit, as is plaintiff's claim that the phrase "required by the applicable law" modifies the word "amounts." Plaintiff's construction of paragraph 3(a) might suffice if, for example, it defined an uninsured motor vehicle as a land motor vehicle for which no liability bond or policy at the time of an accident existed. With regard to paragraph 3(b), the very term "*under*insured" in paragraph 3(b) connotes some insurance, as does the phrase "sum of all liability bonds or policies." But the insurance, i.e., the liability bond or policy, must be that which is required by the applicable law. The fact that no "applicable law" mandated the lawn tractor to be insured renders the lawn tractor neither uninsured nor underinsured under the terms of the policy.

Further, we note and reject plaintiff's contention that paragraph c of the exclusionary provision under section F "means off road vehicles used on the road are defined by the policy as 'uninsured motor vehicles.'" The exclusionary provision at issue provides that an "uninsured motor vehicle" does not include a vehicle that is "[d]esigned for use mainly off public roads while not on public roads." This exclusion, however, is only relevant if the lawn tractor was a land motor vehicle that met the requirements of paragraph 3(a), 3(b), 3(c), or 3(d). It is axiomatic that before the application of a policy exclusion is considered, coverage under the policy must first be determined. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 172; 534

NW2d 502 (1995). Because the lawn tractor was not an uninsured motor vehicle under the policy, the issue of coverage is not further tested under the exclusionary provision.

Finally plaintiff argues that, if eligibility for coverage under the UIM contract is dependent on the land motor vehicle being required to have motor vehicle liability insurance, the lawn tractor is an uninsured motor vehicle under paragraph 3(a) because it was required to have insurance when it was on the road and it did not. This issue was not raised below, thus it is not preserved for appellate review. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004). Because plaintiff has failed to establish plain error, we decline to further consider this matter. See *id*.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell