STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

FRANCINE SCOTT,

Defendant,

and

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
September 30, 2010

No. 291911
Wayne Circuit Court
LC No. 07-713613-NF

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

At issue in this appeal is whether defendant Farmers Insurance Exchange ("Farmers") is liable for no-fault personal injury protection ("PIP") benefits for two individuals who were injured while occupying a vehicle owned by defendant Francine Scott. Farmers insured the vehicle under a no-fault policy issued to Willie Sims. The trial court granted Farmers' motion for summary disposition and dismissed plaintiff Auto Club Insurance Association's claim for reimbursement of PIP benefits from Farmers on the ground that Farmers' policy did not provide coverage for the injured individuals. Plaintiff appeals as of right. We reverse the order of summary disposition in favor of Farmers and remand for entry of an order of partial summary disposition in favor of plaintiff and for further proceedings not inconsistent with this opinion.

The underlying facts are not in dispute. Farmers issued a no-fault insurance policy for a 2000 Dodge Caravan. The named insured was Willie Sims, but the vehicle was actually owned by Sims' daughter, Francine Scott, who resided with her son, Vernest Scott, and his wife, Kim Scott. Sims did not reside with Francine. According to Francine, the vehicle was insured in Sims' name in order to take advantage of a discounted rate. In May 2006, the vehicle was involved in an accident while being used by Vernest and Kim Scott, with Francine's permission. Vernest and Kim filed claims for no-fault PIP benefits with the Michigan Assigned Claims Facility (MACF) and their claims were assigned to plaintiff. Plaintiff thereafter filed this action against Francine and Farmers, seeking reimbursement of the PIP benefits it had paid to Vernest and Kim. In its answer to the complaint, Farmers admitted that the vehicle was covered by a no-

fault policy on the date of the accident. Farmers later moved for summary disposition under MCR 2.116(C)(10) on the ground that the injured claimants did not qualify for PIP benefits under MCL 500.3114. Plaintiff opposed the motion and sought summary disposition under MCR 2.116(I)(2) on the ground that the insurance policy issued to Sims established the injured claimants' entitlement to PIP benefits from Farmers. The trial court determined that the policy did not provide coverage for the injured claimants and granted Farmers' motion.

We review de novo a trial court's decision regarding a motion for summary disposition pursuant to MCR 2.116(C)(10). *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 433; 773 NW2d 29 (2009). "Summary disposition should be granted only where the evidence fails to establish a genuine issue regarding any material fact." *Id*. We also review de novo whether an insurance policy is ambiguous. *Id*. at 434. Although an insurance policy is governed by principles of contract interpretation, mandatory statutory provisions must be read into the policy. *Id*. at 433-435. Contractual language is ambiguous only where two provisions irreconcilably conflict, or a term is equally susceptible to more than one meaning. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007).

We conclude that the trial court erred in finding that Farmers' insurance policy did not provide coverage for the injured claimants. The insurance policy provides coverage for PIP benefits for an "insured person," which is defined, in pertinent part, as "any other person occupying your insured car." Because the parties do not dispute that the injured claimants qualify as "any other person occupying," we turn to the policy's definition of "your insured car." The policy provides:

> Your Insured Car means *the vehicle described in the declarations for which the Liability Insurance of this policy applies, and which security under the provisions of the Code is required*; or a motor vehicle to which the Liability Insurance of this policy applies, if it does not have the security required by the Code, and is operated but not owned by you or a family member. [Emphasis added.]

We agree with plaintiff that the Dodge Caravan that the injured claimants were using at the time of the accident qualifies as "your insured car" under the first part of this definition. There is no dispute that the Dodge Caravan is described in the declarations and that the liability insurance applies to it. The material question is whether the phrase "and which security under the provisions of the Code is required" is linked to the Dodge Caravan, as argued by plaintiff, or to any owners or registrants of the vehicle, as argued by Farmers based on the security requirements of MCL 500.3101(1). We agree with plaintiff's argument.

Although we agree that the word "Code," as defined in the general definitions section of the insurance policy, refers to the no-fault act, the requirements of the no-fault act are not dispositive of the meaning of the disputed phrase, inasmuch as policy provisions that do not directly conflict with the no-fault act are permitted. See *Doss v Citizens Ins Co of America*, 146 Mich App 510, 512-514; 381 NW2d 409 (1985). Here, Farmers has not established any conflict.

The disputed phrase commences with the word "and," which is defined as "with; as well as; in addition to" when "used to connect grammatically coordinate, words, phrases, or clauses." *Random House Webster's College Dictionary* (1997), p 49; see, also, *Karaczewski v Farbman*

Stein & Co, 478 Mich 28, 33; 732 NW2d 56 (2007) (word "and" generally reflects that both requirements must be satisfied), and *Singer v American States Ins*, 245 Mich App 370, 377; 631 NW2d 34 (2001) (absent a clearly defined definition in an insurance policy, a policy term is given its commonly understood meaning). Examined in its grammatical context, the phrase "and which security under the Code is required" unambiguously links the required security to the vehicle, regardless of who provides it. Cf. *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 39; 748 NW2d 574 (2008) (MCL 500.3113(b), as construed in its grammatical context, linked the required security for a person to avoid being disqualified from PIP benefits to the vehicle). Indeed, while not dispositive of our construction of the policy, this result is consistent with the facts of this case, which involve the issuance of an insurance policy to an individual, Sims, who was not required to insure the Dodge Caravan under MCL 500.3101(1).

We conclude that the well-established rule that PIP coverage applies to the insured person, *Amerisure Ins Co v Coleman*, 274 Mich App 432, 438; 733 NW2d 93 (2007), is immaterial to how the disputed provision of the insurance policy should be construed. To the extent that Farmers views its dispute with plaintiff as one involving a priority dispute, and not merely whether the insurance policy provides coverage for the injured claimants, we conclude that this case does not present any priority issue because plaintiff, as an MACF assignee, would be an insurer of last priority. MCL 500.3172(1); *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 225; 779 NW2d 304 (2009), lv pending. Although MCL 500.3114 also contains priority provisions in the sense that it defines when a particular insurer is liable for PIP benefits, *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 531-532, n 1; 740 NW2d 503 (2007), where, as in this case, there is evidence that an injured claimant operated the motor vehicle, the language of the insurance policy is appropriately considered to determine the insurer's liability. MCL 500.3114(4)(b); *Amerisure Ins Co*, 274 Mich App at 436-437. Therefore, Farmers has not established any basis for avoiding liability for PIP benefits based on the no-fault act's priority provisions for insurers.

In sum, we conclude that the meaning of "insured person" in Farmers' insurance policy unambiguously includes the injured claimants because they both qualify as "any other person occupying your insured car." Accordingly, we reverse the trial court's order of summary disposition in favor of Farmers and remand for entry of an order of partial summary disposition under MCR 2.116(I)(2) in favor of plaintiff with respect to this contractual issue.

Reversed and remanded for entry of an order of partial summary disposition in favor of plaintiff and for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly