STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU INSURANCE COMPANY OF MICHIGAN,

Plaintiff-Appellee,

v

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION,

Defendant-Appellant,

and

AMERICAN INTERNATIONAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 21, 2010

No. 293747
Ingham Circuit Court
LC No. 09-000240-CK

Before: MURPHY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

Defendant Michigan Catastrophic Claims Association (MCCA) appeals as of right the trial court's order denying its motion for summary disposition and granting summary disposition in favor of plaintiff Farm Bureau General Insurance Company of Michigan (Farm Bureau) and defendant American International Insurance Company (American). The facts in this case are generally not in dispute; rather, the parties dispute the proper interpretation of the no-fault act, MCL 500.3101 *et seq.*, in applying the law to the facts. We affirm.

This case arises out of a motor vehicle accident in which Sally Ross was injured while riding as a passenger in a vehicle owned by a friend. The accident occurred on March 16, 2002. At that time, Mrs. Ross had two vehicles titled in her name, a 1991 Olds Cutlass Supreme and a 2000 Chevy Blazer. Mrs. Ross had a no-fault insurance policy issued by Farm Bureau that covered those two vehicles for the policy period of February to August 2002, making it effective at the time of the accident. The Farm Bureau policy solely listed Mrs. Ross as the named insured. Her husband, Brent Ross, had his own 1991 Olds Cutlass Supreme, which was titled in his name and covered by a no-fault insurance policy issued by American that encompassed a policy period of November 2001 to May 2002, making it effective at the time of the accident.

The American policy listed both Mr. and Mrs. Ross as named insureds. The Farm Bureau and American policies identified Mr. and Mrs. Ross as drivers of all three vehicles. The Farm Bureau policy, however, contained a notation indicating that Mr. Ross was "insured separately." There was documentary evidence indicating that the Rosses viewed the Farm Bureau policy as being Mrs. Ross's policy and viewed the American policy as being Mr. Ross's policy. While they paid from joint accounts, Mr. Ross took care of making the premium payments on the American policy and Mrs. Ross saw to it that the premium payments on the Farm Bureau policy were paid. A couple of years before the accident, when the Rosses were covered solely by American, Mrs. Ross decided to insure her vehicles through Farm Bureau after being dissatisfied with American's handling of a claim. However, Mr. Ross opted to remain with American. Mrs. Ross was never deleted as a named insured from the American policy.

Under operation of law, MCL 500.3114(1), and generally speaking, Mrs. Ross was covered by the American policy at the time of the accident given her status as Mr. Ross's spouse, and she was of course covered by the Farm Bureau policy. No claim for personal protection insurance (PIP) benefits was made against American, and Farm Bureau alone paid PIP benefits to and on behalf of Mrs. Ross. Once Farm Bureau paid in excess of $250,000 in benefits, it requested indemnification from the MCCA under MCL 500.3104(2)(a). The MCCA rejected the request, finding that Farm Bureau and American were both obligated to pay PIP benefits and that the MCCA's indemnification obligation would not arise until $500,000 in total benefits were paid. Farm Bureau sued the MCCA in a declaratory judgment action and also sued American, in the alternative, although Farm Bureau and American essentially had the same stance, i.e., Farm Bureau alone was obligated to pay PIP benefits under MCL 500.3114(1); therefore, the MCCA was required to indemnify Farm Bureau for losses sustained in paying PIP benefits in excess of $250,000. The trial court agreed with the insurers and granted their motion for summary disposition, while denying the MCCA's motion for summary disposition.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Manuel v Gill*, 481 Mich 637, 643; 753 NW2d 48 (2008). Issues of statutory construction are also reviewed de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). Additionally, "[a] trial court's ruling in a declaratory action is reviewed de novo." *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 10; 743 NW2d 902 (2008).

MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a party's cause of action. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. *Id.* at 549. If the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and we must enforce the statute as

written. *Id.* "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

This appeal involves the broad question whether the MCCA had a statutory obligation to indemnify Farm Bureau for PIP benefits paid to or on behalf of Mrs. Ross that exceeded $250,000. There are two statutory provisions at play in this case. First, MCL 500.3104 provides in relevant part:

> (2) The association shall provide and each member shall accept indemnification for 100% of the amount of ultimate loss sustained under personal protection insurance coverages in excess of the following amounts in each loss occurrence:
>
> (a) For a motor vehicle accident policy issued or renewed before July 1, 2002, $250,000.00.

Next, MCL 500.3114(1) provides in pertinent part:

> Except as provided in subsections (2), (3), and (5),[1] a personal protection insurance policy . . . applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. . . . When [PIP] benefits . . . are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse . . ., the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer.

If the two household policies at issue here are in the same order of priority and the final sentence in § 3114(1) is not implicated, § 3115(2) dictates that the insurer paying benefits is entitled to partial recoupment "in order to accomplish equitable distribution of the loss among [the] insurers."

The MCCA argues that Farm Bureau and American were of equal priority under the no-fault act to pay PIP benefits, as the above-quoted last sentence from § 3114(1) is simply not implicated. The MCCA contends that the American policy was Mrs. Ross's policy because she was a named insured in the policy. According to the MCCA, Mrs. Ross was a named insured under both policies and therefore they were both her policies for purposes of MCL 500.3114(1),

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[1] Subsection 2 addresses injuries arising out of the operation of vehicles in the business of transporting passengers, subsection 3 concerns vehicles owned or registered by employers, and subsection 5 regards accidents involving motorcycles. Accordingly, none of these provisions are implicated here.

thereby rendering the exception in § 3114(1) inapplicable and making both insurers responsible for sharing in the cost of making PIP benefit payments. Finally, the MCCA contends that because Farm Bureau and American were in dual order of priority, both insurers had to pay in excess of $250,000 before the MCCA became obligated to provide indemnification or reimbursement.

There are several underlying issues posed to us in this appeal, but we need not address most of them to resolve the case. We shall break down the last sentence in § 3114(1) and carefully scrutinize its language. First, it is necessary to have a situation in which PIP benefits are payable to or on behalf of the injured person "under his or her own policy[.]" There is no dispute here that PIP benefits were payable to or on behalf of Mrs. Ross under the Farm Bureau policy and that said policy was her own policy. Indeed, for there to be any consistency in the MCCA's argument, the MCCA had to concede that the Farm Bureau policy was Mrs. Ross's own policy, where she was the sole named insured in that policy. Next, it is necessary for the situation to additionally include circumstances in which PIP benefits are also payable "under the policy" of the uninjured spouse. Generally speaking, PIP benefits were payable to or on behalf of Mrs. Ross under the American policy regardless of any cancellation efforts to the contrary, where she was covered as Mr. Ross's spouse, MCL 500.3114(1). The issue becomes, for purposes of priority and recoupment,[2] whether the American policy was Mr. Ross's policy, which issue requires interpretation of the language "under the policy of his or her spouse[.]"

Assuming that the American policy was Mrs. Ross's policy as argued by the MCCA, this does not negate the fact that it was also Mr. Ross's policy.[3] With regard to the policy in which the uninjured spouse has an interest, it matters not that said policy is also held in the name of the injured spouse, such that it could also be called "their" policy.

Accordingly, Farm Bureau, as the injured person's insurer, is required to "pay all of the benefits and is not entitled to recoupment from the other insurer." MCL 500.3114(1). Therefore, because Farm Bureau has sustained losses in paying no-fault benefits in excess of $250,000, and because Farm Bureau alone is ultimately obligated to pay amounts in excess of $250,000 without a right of recoupment, the MCCA is mandated to indemnify Farm Bureau for 100 percent of PIP benefits paid to or on behalf of Mrs. Ross that exceed $250,000. MCL 500.3104(2)(a).

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[2] The closing language in § 3114(1), which provides that "the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer[,]" makes clear that, if implicated, Farm Bureau and Farm Bureau alone has to make all of the PIP benefit payments.

[3] At different points in its brief, the MCCA argues that the American policy was Mrs. Ross's own policy, suggesting that it was not Mr. Ross's policy. This argument contradicts the MCCA's own theory that a policy is a person's policy if the person is a named insured, considering that Mr. Ross is a named insured in the American policy.

Affirmed. Farm Bureau and American, having fully prevailed on appeal, are awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher