

STATE OF MICHIGAN
COURT OF APPEALS

YUAN LEI, by BRIAN GOETZ, Next of Friend,
Plaintiff-Appellee,

UNPUBLISHED
February 16, 2016

v

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

No. 325168
Washtenaw Circuit Court
LC No. 13-000436-NI

Defendant-Appellant,

and

DONNA MCBRIDE, STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
CITIZENS INSURANCE COMPANY OF
AMERICA, and HOME-OWNERS INSURANCE
COMPANY,

Defendants.

Before: O'CONNELL, P.J., and OWENS and BECKERING, JJ.

BECKERING, J. (*dissenting*).

I respectfully dissent. In this auto negligence action, defendant Progressive Michigan Insurance Company (Progressive) appeals as of right the trial court's January 24, 2014 order denying Progressive's motion for summary disposition under MCR 2.116(C)(8) and (10) with respect to its coverage of plaintiff, Yuan Lei, under an uninsured motorist (UM) policy issued to Lei's step-grandmother. Contrary to my colleagues, I would find that the trial court was correct in interpreting the applicable language of the insurance policy to include as a "relative" the named insured's step-grandchildren¹ who are residing in the named insured's home. As such, I would affirm the trial court's ruling denying Progressive's motion for summary disposition.

¹ According to the American Grandparents Association, a step-grandparent/step-grandchild relationship is formed through marriage, and exists in one of several ways: "A stepgrand may

I. PERTINENT FACTS AND PROCEDURAL HISTORY

As noted by the majority, on November 9, 2012, Lei was crossing a street on foot near her high school when she was struck by an uninsured driver. The driver estimated that she was traveling at a speed of around 35 miles per hour when she struck Lei. Lei suffered serious injuries. At the time of the accident, Lei was 17-years old. Her mother, Yufang Cai, and her father, Kai Zhi Lei, were divorced. Lei's mother was remarried to Brian Goetz, Lei's stepfather. Although Lei's father had been granted physical custody in the divorce, Lei lived part of the time with her mother and stepfather in her step-grandmother Marilyn Goetz's home.

At issue on appeal is whether Lei was covered by Marilyn's UM policy with Progressive.² Although Marilyn had passed away about three months before Lei's accident, per its terms, her insurance policy remained in effect until the end of the policy period, which in this case was December 20, 2012. The applicable section of the policy provided UM coverage to "you or a relative." The policy defined "you" as "a person shown as a named insured on the declaration page; and . . . the spouse of a named insured if residing in the same household at the time of the loss." It defined a "relative" as "a person residing in the same household as you, and related to you by blood, marriage, or adoption, and includes a ward, stepchild, or foster child. Your unmarried dependent children temporarily away from home will qualify as a relative if they intend to continue to reside in your household."³

Progressive filed a motion for summary disposition, contending that Marilyn's UM policy did not cover Lei because Lei was not a "relative" as defined by the policy. The trial court denied the motion, stating, "given the Court's review of the specific language clearly the child is a step-grandchild and the child is clearly related to the original policy holder . . . by marriage, in the sense that she is the grandchild as a result of the marriage[.]"

II. STANDARDS OF REVIEW

"A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim on the basis of the pleadings alone and the ruling is reviewed de novo." *Bailey v*

have married someone who already has grandchildren; married someone with children who later have children of their own; or have a grown child who married someone with children from a previous marriage." See <http://www.grandparents.com/family-and-relationships/family-matters/step-grandparents-and-step-grandchildren>.

² The parties stipulated that Citizens Insurance Company of America (Citizens), which insured Kai Zhi Lei, was the insurer of highest priority for the payment of Lei's no-fault personal injury protection (PIP) benefits. Although Kai Zhi Lei's insurance policy with Citizens also provided UM benefits, Citizens argued that it was only partially responsible for the UM benefits because Lei only resided with her father part time. Lei, Citizens, and Progressive have entered into a settlement agreement, as memorialized in a consent judgment, regarding payment of Lei's UM benefits should Progressive's policy be deemed to cover Lei.

³ While the policy uses bold font to indicate terms that it defines in other sections, I omit this emphasis.

Schaaf, 494 Mich 595, 603; 835 NW2d 413 (2013). Because a (C)(8) motion tests the legal sufficiency of a claim, “the court must accept as true all factual allegations contained in the complaint[,]” and “[t]he motion must be granted if no factual development could justify the plaintiff’s claim for relief.” *Id.* (quotation marks and citation omitted). This Court reviews de novo the trial court’s decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A party is entitled to summary disposition under MCR 2.116(C)(10) if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” When a party moves the trial court for summary disposition under MCR 2.116(C)(8) and (10) and the trial court considered documents outside the pleadings when deciding the motion, we review the trial court’s decision under MCR 2.116(C)(10). *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007).

This Court reviews de novo both the interpretation of contractual language, *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003), and the legal effect of a contractual provision, *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012).

III. ANALYSIS

Progressive contends that its UM policy does not cover Lei because, although she is Merilyn’s step-grandchild, she does not qualify as “a relative” as defined in the policy. I disagree.

“[A]n insurance contract must be enforced in accordance with its terms.”⁴ *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1990). We are to construe contractual terms in context, *Id.*, and we must interpret a contract in a way that gives every word, phrase, and clause meaning, and must avoid interpretations that render parts of the contract surplusage, *Klapp v United Ins Group Agency Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). If no reasonable person could dispute the meaning of the contract’s plain language, we must enforce that language as written. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). Where a contract provision is ambiguous, the contract is construed in favor of the insured. *Henderson*, 460 Mich at 354. “If a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading of it leads one to understand there is no coverage under the same circumstances the contract is ambiguous and should be construed against its drafter and in favor of coverage.” *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (1999).

As noted above, Merilyn’s policy defines “insured person” as “you or a relative,” and defines “a relative” as “a person residing in the same household as you⁵, and related to you by

⁴ Because this is a UM policy, the mandatory provisions of the No-Fault act do not apply, as they do in regard to PIP coverage.

⁵ Progressive does not dispute that Lei was “residing in the same household” as Merilyn at the time of her death in August 2012, except for a brief statement that “[a]ll we know is that the plaintiff was living in Merilyn’s house *after* Merilyn’s death.” Progressive made this

blood, marriage, or adoption, and includes a ward, stepchild, or foster child. Your unmarried dependent children temporarily away from home will qualify as a relative if they intend to continue to reside in your household.”

Initially, I would reject Progressive’s argument that Lei was not covered by the policy because she was not a “relative” of “the Estate of M. Goetz.” Progressive’s agreement listed Merilyn Goetz as the named insured and Brian Goetz as a driver or household resident. After Merilyn’s death, the named insured was changed to “the Estate of M. Goetz.” The policy provided that “if a named insured shown on the declarations page dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, *and* for persons covered under this policy *on the date of the named insured’s death* (emphasis added).” As such, pursuant to the clear terms of the contract, if Lei is deemed to have been a “relative” of Merilyn on the date of Merilyn’s death, she is covered under the policy.

The crux of the issue before this Court is whether the definition of who constitutes a relative, as set forth in the policy, encompasses the step-grandchild/step-grandparent relationship. In arguing that it does not, Progressive first examines the step-grandparent/step-grandchild relationship in criminal prosecutions for incest and in visitation and child custody disputes, citing cases from Kentucky, Georgia, Tennessee, and other states. However, none of that law is remotely relevant to the issue of the intent of the parties in this contract interpretation case for purposes of insurance coverage. Progressive further argues that word “includes” in the phrase “and includes a ward, stepchild, or foster child” is a term of limitation, and the list of relations stated in the policy—“a ward, stepchild, or foster child”—is exhaustive. According to Progressive, because step-grandchildren are not specifically listed by the policy, they are not entitled to coverage.

statement in the context of its discussion about whether Lei was a part of the same family as Merilyn, and it did not argue further that Lei did not “reside” with Merilyn or examine definitions of the word. Progressive’s only other mention of Lei’s residence is in a footnote in its reply brief on appeal arguing that there was nothing on the record to suggest that Lei ever lived in the house while Merilyn was alive. However, both Lei and Brian testified that Lei began to spend more time with her mother at Merilyn’s house in 2012 and that by the summer of 2012, Lei was living there on weekdays and visiting her father on the weekends. Lei testified that she was responsible for certain chores when she lived with her mother, and she mentioned that Merilyn helped her clean the bathroom. Although it is not clear how long Lei lived in the home while Merilyn was still alive, there is evidence on the record to show that Lei and Merilyn resided in the same household for some period of time before Merilyn’s death in August of 2012. Progressive does not point to any evidence in the record tending to show that Lei did not live with her mother while Merilyn was alive. Therefore, to the extent that it is at issue, I would find that there is no genuine issue of material fact as to whether Lei “resided in the same household” as Merilyn.

Lei, on the other hand, argues that Progressive’s broad definition of the term “relative” encompasses Lei as a step-grandchild. According to Lei, she was related to Marilyn by marriage because her mother married Marilyn’s son, Brian. Lei argues that certain statutes acknowledge the existence of the step-grandparent/step-grandchild relationship, which demonstrates that a step-grandparent and step-grandchild are related under the common understanding of the term. Lei also argues that many families are “blended” today, and the modern interpretation of “family” includes step relationships. For example, this Court has held that the term “related by marriage” is “unambiguous and susceptible of a common understanding as inclusive of a stepparent relationship that endures the death of the biological parent.” *Patmon v Nationwide Mut Fire Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued December 23, 2014 (Docket No. 318307), p 3.⁶ Lei further argues that Progressive’s exclusionary understanding of the term “includes” is contorted and irrational because, under Progressive’s interpretation, a significant group of close relatives would be excluded from coverage, such as natural children, grandchildren, or any other family members. Lei contends that the policy’s use of the term “includes” preceding the words “a ward, stepchild, or foster child” exemplifies an intent to illustrate the broad nature of the coverage and include persons who might not be considered related if only the phrase “related to you by blood, marriage, or adoption” were utilized.

“When used in the text of a statute, the word ‘includes’ can be used as a term of enlargement or of limitation, and the word in and of itself is not determinative of how it is intended to be used.” *Frame v Nehls*, 452 Mich 171, 178-179; 550 NW2d 739 (1996). “In some cases, the word ‘includes’ may limit the pertinent category.” *Bedford Pub Sch v Bedford Ed Ass’n MEA/NEA*, 305 Mich App 558, 567; 853 NW2d 452, 457 (2014), lv den 497 Mich 989 (2015). However, in other cases, the “use of the word ‘include’ can signal that the list that follows is meant to be illustrative rather than exhaustive.” *Samantar v Yousuf*, 560 US 305, 317; 130 S Ct 2278; 176 L Ed 2d 1047 (2010).

Examining the definition of “relative” as a whole, I would find that the phrase “and includes a ward, stepchild, or foster child” following the phrase, “related to you by blood, marriage, or adoption” was intended to both expand coverage beyond those strictly related by blood, marriage, or adoption and to provide illustrations as to who should be considered a relative under the broad meaning of that word.⁷ A ward and a foster child are not necessarily related to the guardian or foster parent by blood, marriage, or adoption, but the policy makes clear that they should nevertheless be considered a relative. On the other hand, a step-child is related to a step-parent by marriage. There is no need to “expand” coverage to a step-child when the phrase “related by marriage” is included in the policy language. Thus, the clarification that

⁶ This case is unpublished and is therefore not binding on this Court under MCR 7.215(c)(1).

⁷ I would note, however, that this Court need not decide how far the phrase, “related to you by blood, marriage, or adoption” goes in terms of the scope of relatives intended to be included, other than determining whether it extends to the grandparent/grandchild relationship by way of marriage. It is also critical to note that however far it extends, the relative must be residing in the named insured’s home.

stepchildren are “included” in the policy is illustrative of the breadth of the definition for who constitutes a “relative.” Progressive argues, and the majority agrees, that including the word “stepchildren” means that the phrase “related by marriage” does not include step-children. But then what *does* that phrase mean? *Who is* it meant to include? Only the married spouse? If that were the case, the policy could have simply said, “your spouse.” But more people must be intended to be included in the phrase “related to you by . . . marriage” because the policy defines the word “you” (as in “you or a relative”) to *include* the named insured’s spouse. The word “you” is defined in the policy as “a person shown as a named insured on the declaration page; and . . . the spouse of a named insured” Hence, when it comes to who is considered a “relative,” the phrase “related to you by . . . marriage” must mean *more* than just the named insured’s spouse; otherwise, it would render the phrase “related to you by . . . marriage” mere surplusage. *Klapp*, 468 Mich at 468. Furthermore, the next sentence of the policy reads, “Your unmarried dependent children temporarily away from home will qualify as a relative if they intend to continue to reside in your household.” This supports the conclusion that unmarried, dependent children are “relatives,” i.e. related by blood, even though they are not specifically listed in the policy language alongside wards, stepchildren, and foster children. When read in context, it is clear that word “including” preceding the phrase “and includes a ward, stepchild, or foster child” is not meant to be limiting, but rather, illustrative and expansive so as to exemplify the broad meaning of the word “related.”

The next question, then, is whether Lei, a step-grandchild, qualifies as being related to Marilyn “by marriage,” as that phrase is intended in the Progressive policy. When a contract’s term is undefined, “[c]ourts may consult dictionary definitions to ascertain the plain and ordinary meaning.” *Holland v Trinity Health Care Corp*, 287 Mich App 524, 527-528; 791 NW2d 724 (2010). *Black’s Law Dictionary* (10th ed) defines “related” as “[c]onnected by blood or marriage; allied by kinship, esp. by consanguinity,” and *Merriam-Webster’s Collegiate Dictionary* (11th ed) defines “related” as “connected by common ancestry or sometimes by marriage.” No one would dispute the fact that a grandchild is related to a grandparent by blood. It is only logical to conclude that a step-grandchild is related to a step-grandparent by marriage. Progressive does not take issue with the reasonableness of concluding that a grandchild would be covered under the phrase “related by blood” in the policy. Otherwise, the definition of “relative” would merely say “child” or otherwise define the degrees of consanguinity intended. Likewise, it is reasonable to conclude that a “step-grandchild” is related to a step-grandparent by marriage according to the phrase “related by marriage” in the policy at issue. Further, it would make little sense to consider a wholly unrelated ward “a relative” but not a grandchild or step-grandchild. Because I agree with the trial court’s interpretation of the policy language in this case, I would affirm the trial court’s denial of Progressive’s motion for summary disposition.

/s/ Jane M. Beckering