

STATE OF MICHIGAN
COURT OF APPEALS

FREMONT MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

UNPUBLISHED

November 22, 1996

No. 181291

LC No. 94-014790-CK

SCOTT T. RANSOM, WAYNE G. RANSOM,
CHRISTINE RANSOM, and SANDRA M.
RICKERT, as next friend of MATTHEW L.
RICKERT, a minor,

Defendants-Appellees,

and

FRANK A. VANORSCHOT,

Defendant.

Before: Sawyer, P.J., and Griffin and M.G. Harrison,* JJ.

PER CURIAM.

Plaintiff appeals from a grant of summary disposition in favor of defendant on plaintiff's declaratory judgment action to determine insurance coverage. We reverse.

Plaintiff issued a homeowner's policy to the Ransoms. The Ransoms' son, Scott Ransom, was operating an ATV with Matthew Rickert as passenger. The ATV was being operated on a public road when it was involved in a collision with a motor vehicle. The Rickerts instituted a suit against the Ransoms and Vanorschot, the driver of the vehicle involved. The Ransoms tendered defense of the suit to plaintiff under the homeowner's policy. Plaintiff instituted the instant action, seeking a declaratory judgment that it did not owe a duty to defend and indemnify under the policy. The trial court rejected

* Circuit judge, sitting on the Court of Appeals by assignment.

plaintiff's argument that the policy exclusion applicable to recreational motor vehicles applied and granted summary disposition to defendants.

Exclusion 1.a(3) excludes coverage for

bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:

* * *

(3) any recreational motor vehicle owned by any insured, if the bodily injury or property damage occurs away from the residence premises; but this subdivision (3) does not apply to golf carts while used for golfing purposes.

Furthermore, the definitions section defines "recreational motor vehicle" to include "if not subject to motor vehicle registration, any other land motor vehicle designed for recreational use off public roads." The basis of defendants' argument, and the trial court's ruling is that because all motorized vehicles must be registered if operated on a public road, the ATV in this case was subject to registration because it was being operated on a public road at the time of the accident and, therefore, by definition was not a recreational motor vehicle at the time of the accident. Plaintiff responds by arguing that an off-road vehicle does not lose its characteristic as an off-road vehicle merely because it is being operated on a road and that, in any event, ATVs cannot, in fact, be registered as a motor vehicle.

We do not believe it is necessary to resolve this question because an exclusion applies. Obviously, if we accept plaintiff's reasoning, then the recreational motor vehicle exclusion applies. However, even if we accept defendants' reasoning that the ATV was subject to registration because it was being operated on a road, then another exclusion applies, namely the motor vehicle exclusion. This exclusion, found in paragraph 1.a(2) of Section II, applies to

any motor vehicle owned or operated by, or rented or loaned to any insured; but this subdivision (2) does not apply to bodily injury or property damage occurring on the residence premises because it is used exclusively on the residence premises or kept in dead storage on the residence premises.

Further, the definitions section defines "motor vehicle" as

a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto) but does not include, except while being towed by or carried on a motor vehicle, any of the following: utility, boat, camp or home trailer, recreational motor vehicle, crawler or farm type tractor, farm implement or, if not subject to motor vehicle registration, any equipment which is designed for use principally off public roads. [Emphasis added.]

One might rightfully object to classifying an ATV as a motor vehicle because an ATV is designed principally for use off public roads, not for travel on public roads. However, as the last clause in the definition of motor vehicle makes clear, motor vehicle includes an off-road vehicle that is subject to motor vehicle registration. Therefore, if we accept the argument that the ATV was subject to motor vehicle registration merely because it was being operated on a public road, then we must also accept the conclusion that it became a motor vehicle as defined in the policy and, therefore, the motor vehicle exclusion applies.

In sum, either the operation of the ATV on a public road made it subject to motor vehicle registration or it did not. If it did not, then the recreational motor vehicle exclusion in paragraph 1.a(3) of Section II applies. If the ATV did become subject to motor vehicle registration, then it became a motor vehicle under the definitions and the motor vehicle exclusion in paragraph 1.a(2) of Section II applies. In either event, plaintiff would be entitled to summary disposition.

Reversed and remanded for entry of judgment in favor of plaintiff. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael G. Harrison