STATE OF MICHIGAN

COURT OF APPEALS

AETNA CASUALTY & SURETY COMPANY,

Plaintiff-Appellee/Cross-Appellant,

v

SAM D. KASSAB individually and d/b/a DRYDEN MARKET, SAM DISTRIBUTING, INC., and KASSAB FOOD, INC.,

Defendant,

and

FAYE KASSAB, next friend of DANNY KASSAB, a minor,

Defendants-Appellants/Cross-Appellees.

UNPUBLISHED
August 19, 1997

No. 194208
Lapeer Circuit Court
LC No. 95-021749-CK

AETNA CASUALTY & SURETY COMPANY,

Plaintiff-Appellee,

v

SAM D. KASSAB individually and d/b/a DRYDEN MARKET and KASSAB FOODS, INC.,

Defendant-Appellant,

and

FAYE KASSAB, next friend of DANNY KASSAB, a Minor,

Defendants.

No. 194210
Lapeer Circuit Court
LC No. 95-021749-CK

Before: Corrigan, C.J., and Markey, and Markman, JJ.

PER CURIAM.

Defendants separately appeal as of right from an order for declaratory judgment issued in favor of plaintiff that stated that plaintiff did not have a duty to defend or indemnify defendant Sam D. Kassab or any of the corporations owned by Sam D. Kassab (namely, Sam Distributing, Inc., a video distribution business, and Kassab Food, Inc., a retail food business that operated under the name of Dryden Market) for any damages sustained in a negligence action brought by his wife, defendant Faye Kassab, as the next friend of their injured minor son, Danny Kassab. We affirm.[1]

Plaintiff issued a commercial general liability policy to Kassab Food, Inc., doing business as Dryden Food Center. The policy excluded coverage for injuries related to motor vehicles, but the policy was modified by the purchase of a "Hired and Non-owned Automobile Liability" endorsement. Sam Kassab was the president and sole shareholder of Kassab Foods, Inc., and Sam Distributing Company, Inc. In 1993, Sam Kassab owned a Ford van, which he attested was used both for personal matters and in his two businesses. The title to the van listed the owners as "Sam Distributing Co/Sam D Kassab." Sam Kassab claims that on July 22, 1993, he was planning to drive to Flint to purchase some cigarettes for the market owned by Kassab Foods in the van used in his businesses. He dropped his three sons and a neighbor child off at their church, which was on his way to Flint. While they were crossing the street, one of Kassab's sons, Danny, was struck by a passing vehicle and severely injured. Faye Kassab, as next friend of her son, Danny, filed a complaint against Sam Kassab, individually and as corporate representative of Kassab Foods, Dryden Market, and Sam Distributing (*Faye Kassab v Sam D Kassab et al*, Lapeer Circuit Docket No. 93-019809-NI). Five months after receiving written notice of this claim, plaintiff agreed to provide a defense with a reservation of its rights to later deny coverage for the incident. Plaintiff then filed this action for declaratory judgment eight months later.

Defendants argue that the trial court erred by granting summary disposition because the policy was ambiguous and could be construed in favor of coverage. We disagree. There is no ambiguity in the policy's definitions of "hired auto," "non-owned auto," or an "insured," and based on this policy language, there is no coverage for this tragic incident. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566-567; 489 NW2d 431 (1992) (an insurance policy will be enforced if it is unambiguous and consistent with public policy); *Farm Bureau Mutual Ins Co v Stark*, 437 Mich 175, 182; 468 NW2d 498 (1991) (a policy is not ambiguous if it fairly admits of only one interpretation). Although there was some initial confusion as to the proper version of the endorsement that applied to this policy, this confusion was conclusively resolved prior to summary disposition.

The hired auto liability portion of the endorsement provides coverage for damages "arising out of the maintenance or use of a 'hired auto' by you or your employees in the course of your business." A "hired auto" is defined as any automobile that "you lease, hire or borrow," excluding any automobile

that "you lease, hire, or borrow from any of your employees or members of their households, or from any partner or executive officer of yours." Even construing facts in the light most favorable to defendants, the van is not a "hired auto" because it was borrowed from one of the insured's executive officers, Sam Kassab.

The non-owned auto liability portion of the endorsement provides coverage for damages "arising out of the use of any 'non-owned auto' in your business by any person other than you." A "non-owned auto" is defined as any automobile that "you do not own, register, lease, hire or borrow which is used in connection with your business," including automobiles "owned by your employees, or partners or members of their households but only while used in your business or your personal affairs." Construing facts in a light most favorable to defendants, the van was owned by a partner, but not necessarily borrowed from that partner. Therefore, there conceivably could be coverage if Sam Kassab was an "insured" for purposes of this provision. *Churchman, supra* at 566.

However, an "insured" includes "with respect to a 'non-owned auto,' any partner or executive officer of yours," but excludes "any partner or executive officer with respect to any 'auto' owned by such partner or officer or a member of his or her household." Construing these two clauses together, there is coverage for an executive officer who drives a vehicle owned by another person, but not one owned by that executive officer. Sam Kassab is an executive officer who was driving a vehicle that he owned. Therefore, Kassab is excluded from coverage because he is not an "insured" under the policy while he was driving his own vehicle. Therefore, there is no coverage for this incident because the policy is unambiguous, even if it is "inartfully worded or clumsily arranged." *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991).

Defendants next argue that the trial court erred by granting summary disposition because there was a reasonable expectation of coverage based on the purchase of an endorsement for non-owned and hired automobile liability. We disagree. After reading the policy language, there was no reasonable expectation of coverage. *Powers v DAIIE*, 427 Mich 602, 631-632; 398 NW2d 411 (1986). Defendants incorrectly rely on *State Farm Mutual Auto Ins Co v Ruuska*, 412 Mich 321; 314 NW2d 184 (1982), which pertains only to automobile no-fault insurance policies and not to this general commercial liability policy. Defendants' other arguments do not suggest why Kassab, as a policyholder, would have reasonably expected coverage after reading the contract language. Further, the small additional premium paid (approximately 1.3% of the total premium) and the written materials provided by the insurance agent were insufficient to create such a reasonable expectation. See *Transamerica Ins Corp v Buckley*, 169 Mich App 540, 547-548; 426 NW2d 696 (1988).

Defendants next argue that the trial court erred by granting summary disposition because plaintiff was estopped to deny coverage given the insurer's unreasonably delay in denying coverage. We disagree. Plaintiff undertook the defense with an explicit reservation of rights and that reservation was made within a reasonable time after it received written notice of the claim. The five-month delay between plaintiff's receipt of written notice of the claim and its reservation of rights was not unreasonable. *Fire Ins Exchange v Fox*, 167 Mich App 710, 714; 423 NW2d 325 (1988) (as a matter of law, four months is not an unreasonable period of time between the initiation of an underlying claim and an insurer's reservation of rights). Further, defendants were not prejudiced by the timing of

the declaratory judgment action because plaintiff provided independent counsel for the defense of the underlying action and gave clear notice to the insured of its reservation of rights to deny coverage at a later date. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 197 Mich App 482, 492; 496 NW2d 373 (1992).

Defendants finally argue that the trial court committed error requiring reversal because it failed to review all the parties' briefs and supporting documents before granting plaintiff's motion for summary disposition. We disagree. The trial court will not be reversed because this Court's de novo review revealed that the trial court reached the correct decision without regard to whether it reviewed all the documentation. See *Michigan Employment Security Comm v Westphal*, 214 Mich App 261, 267; 542 NW2d 360 (1995) (the trial court will not be reversed for reaching the correct result for the wrong reasons).

Affirmed.

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman

[1] Plaintiff cross-appealed in the context of Docket No. 194208, but failed to cross-appeal in Docket No. 194210. It was not technically necessary, however, for plaintiff to file the cross-appeal because it only reiterated issues already presented on appeal or raised additional reasons for affirming the trial court's judgment. *Ass'n of Businesses Advocating Tariff Equity v Public Service Comm*, 192 Mich App 19, 24; 480 NW2d 585 (1991) (an appellee may argue reasons rejected by the lower court which support the judgment issued in his favor without filing a cross-appeal).