STATE OF MICHIGAN

COURT OF APPEALS

LOLA WRIGHT, Conservator of the Estate of KATORIA SCARBOROUGH, a minor,

Plaintiff-Appellant,

v

BLUE CROSS & BLUE SHIELD OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
December 5, 2000

No. 220604
Saginaw Circuit Court
LC No. 96-015562-CK

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On September 12, 1988, Katoria Scarborough (DOB 5-25-86) sustained permanently disabling injuries in a motor vehicle accident. She was insured under an uncoordinated no-fault policy issued by the Automobile Club of Michigan (AAA). All medical expenses resulting from the accident have been paid by AAA. On August 31, 1995, the circuit court found Alan J. Gandini to be Katoria's biological father, and ordered him to provide health insurance for her. Gandini procured coverage for Katoria through the State Health Plan, which is administered by defendant.

Plaintiff, Katoria's grandmother and conservator, filed suit seeking benefits from defendant. The complaint acknowledged that all expenses had been paid by AAA, but contended that the estate was entitled to payment from defendant as well for the reason that both the no-fault policy and the health insurance policy were uncoordinated. Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court denied plaintiff's motion and granted defendant's motion. The trial court found that ¶ 26 of defendant's policy's general exclusions, which provided that benefits would not be paid for "Charges for services and supplies for which no charge would be made if the family member did not have coverage or for which no family member is legally required to pay," operated to preclude recovery under

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

defendant's policy for the reason that neither plaintiff nor any other family member was legally obligated to pay the medical expenses incurred by Katoria as a result of the accident.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

An insurance contract is clear if it fairly admits of but one interpretation. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can be reasonably understood in different ways. *Nikkel*, *supra*, 566-567. Ambiguities and exclusionary clauses are construed against the insurer. *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996); *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996). We review a lower court's interpretation of contractual language de novo on appeal. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. A double recovery of benefits is not necessarily precluded if a claimant is covered under uncoordinated no-fault and health insurance policies. *Smith v Physicians Health Plan*, 444 Mich 743, 752; 514 NW2d 150 (1994); *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 642; 552 NW2d 671 (1996). Plaintiff's reliance on *Shanafelt*, *supra*, is misplaced under the circumstances. That case, which held that an insured incurs expenses for treatment rendered even if those expenses are paid directly by the carrier, *id*., 637, concerned a suit brought against a no-fault carrier. Moreover, the policy at issue in that case contained no language comparable to that in ¶ 26 of defendant's policy limiting the insured's right to receive benefits in the context of duplicate coverage. An insurance contract must be read as a whole, and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Notwithstanding the fact that both the no-fault policy and defendant's policy were uncoordinated, the presence of specific language limiting the right to recover in the context of duplicate coverage, *Shanafelt*, *supra*, as well as public policy discouraging double recovery, *Smith*, *supra*, 757, supports the result in this case.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber