STATE OF MICHIGAN

COURT OF APPEALS

RONALD CONNORS,

Plaintiff-Appellee,

and

DAVID COOK,

Intervening Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
October 19, 2001

No. 222224
Oakland Circuit Court
LC No. 98-008360-CK

Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

In this declaratory judgment action, intervening plaintiff, David Cook, appeals as of right from the trial court's order granting defendant Citizens Insurance Company of America's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

At issue in the case is whether a machine, referred to as a "racing snowmobile" and a "drag sled,"[1] was a "motor vehicle" for purposes of an exclusion in a homeowner's insurance policy held by the owner of the machine, plaintiff Ronald Connors. According to Connors, the machine differs substantially from a snowmobile. However, Connors admitted that "drag sled racing" is what laymen might refer to as snowmobile racing.[2]

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[1] More specifically, it is an "open mod drag sled", according to Connors.

[2] We note that Connors testified that the machine in question had a certification number from the Michigan Snowmobile Drag Racing Association. Further, we note that Connors' complaint characterized the machine in question as a "racing snowmobile", but in later documents and testimony referred to it as a "drag sled."

The need for a determination of coverage stems from a January 1997 incident where Jack Middleton was operating the machine on the frozen surface of a lake and lost control, striking Cook. Cook and his wife filed a separate lawsuit against Connors,[3] who then tendered the complaint to Citizens, his insurer under a homeowner's policy. Citizens subsequently advised Connors that he would not be afforded a defense under the policy, citing a provision that excluded liability for the following:

> Coverage E--- Personal Liability and Coverage F- Medical Payments to Others do not apply to 'bodily injury' . . . :
>
> * * *
>
> f. arising out of:
>
> 1) the ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances, including trailers, owned or operated by or rented or loaned to an 'insured';
>
> 2) the entrustment by an 'insured' of a motor vehicle or any other motorized land conveyance to any person . . . .

Connors then commenced this declaratory action, seeking a determination that the foregoing exclusion was not applicable to the machine in question. Citizens filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that, because the machine met the statutory definition of a "snowmobile," it was a "motor vehicle" and, therefore, coverage was excluded.[4] Connors filed a response, arguing that he was entitled to summary disposition pursuant to MCR 2.116(C)(10) and MCR 2.116(I)(2). Cook filed a motion to intervene, along with an answer to Citizens' motion and a concurrence to Connors' request for summary disposition. The trial court granted Cook's motion to intervene, but then granted Citizens' motion for summary disposition.

Cook appeals from the trial court's order granting Citizens summary disposition. We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Russell v Dep't of Corrections*, 234 Mich App 135, 136; 592 NW2d 125 (1999).

An insurance contract should be read as a whole and meaning given to all its terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). The terms of an insurance policy are given their commonly used meanings, in context, unless clearly defined in the policy. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999); *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992).

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[3] *Cook v Connors*, Oakland Circuit Court, Docket No. 98-006104-NO.

[4] Acknowledging that the particular snowmobile could not be operated on land, Citizens did not rely on the portion of the exclusion referring to "motorized land conveyances."

"Omitting the definition of a word that has a common usage does not create an ambiguity within the policy." *Group Ins Co, supra*; *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). In *Trierweiler v Frankenmuth Mutual Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996), this Court summarized the basic rules applicable in reviewing an insurance policy:

> In interpreting an insurance policy, this Court construes clear and unambiguous provisions according to the plain and ordinary meaning of the terms used in the policy. A provision is ambiguous when its words may reasonably be understood in different ways. An ambiguous insurance policy is to be construed against the drafter and in favor of coverage. Exclusionary clauses in insurance policies are strictly construed in favor of the insured. However, coverage under a policy is lost if any exclusion in the policy applies to an insured's particular claim. Clear and specific exclusions must be given effect. An insurance company should not be held liable for a risk it did not assume. An insurer is free to define or limit the scope of coverage as long as the policy language fairly leads to only one reasonable interpretation and is not in contravention of public policy. [Citations omitted.]

In the present case, having examined the exclusion at issue in the context of the policy as a whole and having reviewed the deposition testimony presented to the lower court, we conclude that the trial court did not err in determining that the "drag sled" was a "motor vehicle" within the meaning of the policy exclusion. Simply because the term "motor vehicle" is not defined in the insurance policy does not necessarily create an ambiguity. *Group Ins Co, supra*. The policy, with few exceptions, excludes from coverage land vehicles, watercraft, and aircraft, and it is apparent that the intent of the policy is to preclude coverage of these types of machines absent a limited exception. Here, although arguably not a snowmobile in the common sense of the word, the machine in question is, under a common sense view, a type of snowmobile and clearly a motor vehicle. Although Connors testified that the machine in question is substantially different from a snowmobile and although some statutes include reference to use on highways in their definitions of motor vehicles, that does not change the intent of the insurance policy. Not only does a motor propel the machine in question, the machine conveys a person along the ice. The fact that the machine is basically limited to use on a surface of ice, rather than on dirt or pavement, does not distinguish it from being a motor vehicle in the commonly used meaning of that phrase.

The trial court noted that the dictionary definition of the term "motor vehicle" was not limited to vehicles used solely on streets or highways. The parties also cited dictionary definitions in support of their arguments below and on appeal. However, because the definition of "motor vehicle" varies depending on which dictionary is consulted, we find that reliance on a dictionary definition is less than helpful here. Rather, we look to the insurance contract as a whole, *Auto-Owners Ins Co, supra*, from which the intent is clear. We agree with the trial court

that "[Connors'] snowmobile even as modified by [Connors][5] and referred to by [Connors] as a drag racing sled is a motor vehicle for purposes of [Connors'] homeowner policy."

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Brian K. Zahra

[5] The record indicates that the sled was not made according to any specifications supplied by plaintiff. The only modification that plaintiff made was to change the engine in order to increase the horsepower.