STATE OF MICHIGAN

COURT OF APPEALS

KARL DALE MARTINIE and DAWN MARTINIE,

Plaintiffs-Appellants,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
June 21, 2002

No. 230419
Kent Circuit Court
LC No. 99-006315-CZ

Before: Jansen, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(10) in this declaratory judgment action. We affirm.

The facts of this case are not in dispute. On June 22, 1997, plaintiff Karl Martinie[1] was seriously injured when the vehicle in which he was a passenger collided with a vehicle being driven by Darrin Hoonhorst. Darrin's vehicle was a 1992 Chevrolet Lumina owned jointly by him and his father, Fred Hoonhorst. Defendant issued two insurance policies to Fred, one for the Lumina and another for a 1988 Lincoln Town Car. The liability limits of the Lumina policy were $20,000, while the liability limits for the Town Car policy were $250,000.

Plaintiffs received $20,000 from defendant, pursuant to the limits of the Lumina policy, and subsequently filed this suit to collect $230,000, representing the remaining liability limits of the Town Car policy. The parties had entered into a settlement agreement in September 1998 agreeing that plaintiffs had a valid legal claim against only the Lumina policy or the Town Car policy, but not both. In exchange for receiving the liability limits from the Lumina policy, plaintiffs agreed to waive any further payments pursuant to the Lumina policy. Consequently, this suit concerns whether plaintiffs are entitled to receive payment under the Town Car policy.

Both parties moved for summary disposition in the trial court, and the court ultimately concluded that coverage in this case was provided by and limited to the liability limits set forth in the Lumina policy. The trial court thus granted defendant's motion for summary disposition

[1] The claim of Dawn Martinie, Karl Martinie's wife, is wholly derivative as she was not involved in the accident.

and denied plaintiffs' motion. We review de novo the trial court's ruling regarding a motion for summary disposition. *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 537; 620 NW2d 836 (2001). This case also concerns the proper interpretation and application of an insurance contract, which is likewise reviewed de novo. *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 528; 620 NW2d 840 (2001).

We begin with the language of the Town Car insurance policy, which provides liability coverage in the following manner:

> We will pay damages for which any insured person is legally liable because of bodily injury to any person and property damage arising out of the ownership, maintenance or use of a private passenger car, utility car, or a utility trailer.

Defendant contends that the following exclusion applies to deny coverage under the Town Car policy:

> This Coverage does not apply to:
>
> * * *
>
> 10. Bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle other than your insured car, which is owned by or furnished or available for regular use by you or a family member.

It is not disputed that Darrin Hoonhorst is a family member because he is Fred Hoonhorst's son and was residing at his father's house. Further, "your insured car" is defined in the policy:

> The vehicle described in the Declarations of this policy or any private passenger car or utility car with which you replace it. You must advise us within 30 days of any change of private passenger car or utility car. If your policy term ends more than 30 days after the change, you can advise us anytime before the end of that term.

Under the liability section, additional definitions, "your insured car" is also included as:

> Your insured car, as used in this part, shall also include any other private passenger car, utility car, or utility trailer not owned by or furnished or available for the regular use of you or a family member.

Plaintiffs contend that the following section provides for coverage under the Town Car policy:

> If any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such policies shall not exceed the limits provided by the single policy with the highest limits of liability.

We find that the trial court did not err in granting summary disposition in favor of defendant because plaintiffs have not shown that defendant is liable to indemnify them under the Town Car policy. The Town Car was not involved in the accident. The exclusion clearly and

unambiguously provides that there is no coverage (under the Town Car policy) for bodily injury arising out of the ownership, maintenance, or use of any vehicle other than your insured car, which is owned by the insured or a family member. Here, "your insured car" is the vehicle described in the declaration section of the policy, which is a 1988 Lincoln Town Car, the only vehicle described in the declaration section of the policy. The undisputed facts of this case are that Darrin Hoonhorst, while driving his Chevrolet Lumina, struck and injured Karl Martinie. Consequently, defendant is not liable for any coverage under the Town Car policy because the exclusion clearly and unambiguously states that there is no coverage for bodily injury arising out of the use of any vehicle other than the insured car owned by a family member. See *Farm Bureau Mutual Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999) (where no ambiguity exists, the insurance contract must be enforced as written).

Plaintiffs contend, however, that the provision governing the amount of coverage afforded where the named insured has other applicable coverage (an anti-stacking provision) creates ambiguity in the scope of coverage. Specifically, plaintiffs argue that the exclusion and the anti-stacking provision are mutually exclusive and inherently contradictory, and therefore create an ambiguity in the policy. We disagree with plaintiffs' contention that the exclusion and the anti-stacking provision are necessarily mutually exclusive and inherently contradictory. Here, the exclusion in the Town Car policy provides that there is no coverage in the first instance. Therefore, the anti-stacking provision is simply not reached in this case. The anti-stacking provision merely provides for a liability limit of the highest amount set forth in a single policy rather than combining the liability amounts of the applicable policies; however, it does not create coverage in the first instance.

Plaintiffs rely on *State Farm Mutual Automobile Ins Co v Tiedman*, 181 Mich App 619; 450 NW2d 13 (1989), but we do not find that case to be applicable or dispositive. There, the plaintiff's insured, Daniel McNerney, was driving a Ford Bronco that collided with a vehicle driven by Julie Tiedman. The Bronco was owned by McNerney's wife that was insured by a policy listing both Mr. and Mrs. McNerney as the named insureds. Mr. McNerney also owned a GMC pickup truck that was separately insured by a policy that listed only Mr. McNerney as the named insured. The Tiedmans had filed an action against the McNerneys and a settlement agreement was reached where the Tiedmans received the liability limits under the Bronco policy and reserved any rights they might have under the GMC policy. The trial court ruled in favor of the plaintiff that the anti-stacking provisions applied and the defendants were precluded from receiving no-fault benefits under the GMC policy as well. On appeal, the only issue addressed by this Court was whether the anti-stacking provisions in the two policies were valid and applicable. Although the plaintiff had raised another issue (whether the GMC policy applied where it contained a clause excluding coverage for vehicles owned by one's spouse), that issue was not addressed by this Court.

In *State Farm*, this Court held that anti-stacking provisions are valid and not in contravention of public policy because they are clear and unambiguous. *Id.* at 624. Specifically, this Court held that the anti-stacking provision clearly and unambiguously provided that, where two or more policies issued to the insured *apply* to the same accident, coverage is limited to the policy with the highest limit of liability. Thus, the anti-stacking provision applied despite the fact that one policy named both the husband and wife as the named insureds, while the other applicable policy named only the husband as the named insured. *Id.* at 623-624. This ruling

with respect to the anti-stacking provision is simply not pertinent to the present case because the Town Car policy does not apply to the accident that occurred here.

The trial court correctly ruled that the exclusion and the anti-stacking provision are not mutually exclusive, and that the provisions are clear and unambiguous. The trial court correctly held that coverage is limited to the amount set forth in the Lumina policy, the vehicle that was actually involved in the accident. Accordingly, we find that the trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Kathleen Jansen
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder