STATE OF MICHIGAN

COURT OF APPEALS

SOUTHERN MICHIGAN INSURANCE COMPANY, Plaintiff-Appellant,	UNPUBLISHED April 29, 2004
v	No. 243859 Wayne Circuit Court
HEALTHCHOICE OF MICHIGAN, Defendant-Appellee.	LC No. 01-119788-NI

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

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

This case involves a dispute over liability for the cost of medical treatment rendered to Mohamad Abdelsater, who was injured in two automobile accidents. Plaintiff, Abdelsater's no-fault insurer, argued that defendant, Abdelsater's health care coverage provider, was primarily liable. Defendant asserted that coverage for such expenses was excluded under its policy. The trial court agreed and dismissed plaintiff's complaint.

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). "When determining what the parties' agreement is, the trial court should read the contract as a whole and give meaning to all the terms contained within the policy." *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). Clear and unambiguous language may not be rewritten under the guise of interpretation. *South Macomb Disposal Auth v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997). Courts may not create ambiguities where none exist, but must construe ambiguous policy language in the insured's favor. *Id*. Policy language is ambiguous when, after reading the entire document, its language can be reasonably understood in different ways. *Royce*, *supra*. "However, if a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998). The construction and interpretation of an insurance policy and whether the policy language is ambiguous are questions of law that are

reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co,* 460 Mich 348, 353; 596 NW2d 190 (1999). Similarly, the trial court's ruling on a motion for summary disposition is also reviewed de novo. *Id.*

> Under the no-fault act, an insurer has the duty to offer its insureds the option, at a correspondingly lowered premium rate, to coordinate their personal protection benefits with their other health and accident coverage. MCL 500.3109a; MSA 24.13109(1). When the insured chooses this coordination option, the insured's health coverage becomes the primary insurance for any physical injuries sustained in a motor vehicle accident "to the extent the health insurer has agreed to pay for or provide [the] necessary medical care." [*Westfield Cos v Grand Valley Health Plan,* 224 Mich App 385, 388; 568 NW2d 854 (1997), quoting *Tousignant v Allstate Ins Co,* 444 Mich 301, 308; 506 NW2d 844 (1993).]

Pursuant to MCL 500.3109a, the no-fault insurance policy issued by plaintiff excluded coverage for medical expenses where other insurance was available. Defendant's policy both excluded coverage where no-fault insurance was available and limited its coverage to expenses exceeding coverage provided by other insurance. This Court has repeatedly held that escape and excess clauses such as the ones in defendant's policy are invalid, and, rather than exclude or limit coverage, "benefits are available, but coordinated." *Transamerica Ins Co of America v IBA Health & Life Assurance Co,* 190 Mich App 190, 194; 475 NW2d 431 (1991); see also *Michigan Mut Ins Co v American Community Mut Ins Co,* 165 Mich App 269, 273-274; 418 NW2d 455 (1987); *Auto-Owners Ins Co v Lacks Indus,* 156 Mich App 837, 839-840; 402 NW2d 102 (1986).

Although coverage would normally be available under the coordination of benefits clauses, defendant's policy has a separate clause excluding coverage for medical expenses incurred as a result of an automobile accident without regard to the existence of other insurance coverage. This is a valid exclusion that precludes coverage under the health care policy. *Wolverine Mut Ins Co v Rospatch Corp Employee Benefit Plan,* 195 Mich App 302, 306; 489 NW2d 204 (1992); *Auto-Owners Ins Co v Autodie Corp Employee Benefit Plan,* 185 Mich App 472, 474-475; 463 NW2d 149 (1990). This exclusion is not rendered ambiguous by the escape clause because each exclusion is to be read independently of other exclusions. *Fresard v Michigan Millers Mut Ins Co,* 414 Mich 686, 697-698; 327 NW2d 286 (1982) (Fitzgerald, C.J.); *Hawkeye-Security Ins Co v Vector Constr Co,* 185 Mich App 369, 384-385; 460 NW2d 329 (1990). Thus, despite the fact that defendant's policy would provide coverage for Abdelsater's medical expenses pursuant to the coordination of benefits clauses, the automobile accident exclusion clearly excludes coverage for any medical expenses incurred as a result of a motor vehicle accident. Accordingly, coverage is not available under defendant's policy and the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski