STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,

Plaintiff/Counter defendant-Appellant,

v

TONYA JEFFERSON,

Defendant/Counter plaintiff-Appellee,

and

HOWARD GOODMAN, BRIDGET BURTON, and DEBRANNDYON HILL,

Defendants.

UNPUBLISHED
September 23, 2004

No. 247579
Oakland Circuit Court
LC No. 2000-027724-CK

Before: Murphy, P.J., and O'Connell and Gage, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court's decision to grant a declaratory judgment in defendant's favor. We affirm.

This case involves an award of uninsured motorist benefits to defendant, a victim of a motor vehicle accident. A jury found that defendant was standing on the running boards of her friend's truck when she was struck by an uninsured vehicle, rendering her a quadriplegic and causing her to lose her unborn child. At the time, the truck was parked at a well lit curb with its lights on. An insurance policy covering the truck states that plaintiff will pay benefits to anyone injured by an uninsured vehicle while occupying the truck. On appeal, plaintiff only asserts that standing on the insured truck's running boards did not qualify as "occupying" the vehicle for contract purposes, so defendant may not claim benefits under the contract. Plaintiff contends that we should construe the term "occupying" restrictively and hold that it only encompasses actual occupancy of the interior of the vehicle, entrance into the vehicle with the intention of

being transported, or egress from the vehicle at the completion of actual transport. Because defendant's contact with the insured vehicle at the time of the accident was solely for the purpose of social contact and not for transportation,[1] plaintiff argues that defendant did not meet the "occupying" requirement. Plaintiff argues that defendant's failure to satisfy the "occupying" requirement means the trial court erred when it denied plaintiff's motion for summary disposition. Because the policy employs a definition of "occupying" that encompasses defendant's relative presence on the truck's running boards, we disagree.

We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A court should grant a motion for summary disposition under MCR 2.116(C)(10) when affidavits and other proofs demonstrate that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

The insurance contract at issue includes a provision for uninsured motorist coverage, but that particular provision of the policy does not define "occupying." Nevertheless, the definition section of the no-fault insurance endorsement in the same contract defines the term "occupying" as "in or upon or entering into or alighting from a motor vehicle." Because uninsured motorist benefits are not mandated by statute, we analyze the language of the applicable insurance policy rather than blindly applying our previous interpretation of the term "occupying" as used in a statute. We read an insurance contract as a whole and attempt to ascribe meaning to all of its terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Therefore, we apply the contract's use of the term "occupying" to mean "upon" so that the term's meaning will remain "consistent throughout the document in keeping with the policy of interpreting insurance contracts as a whole." *Allstate Insurance Company v Tomaszewski*, 180 Mich App 616, 619; 447 NW2d 849 (1989). We do not adopt plaintiff's suggestion that we should interpret the same, defined term differently in different portions of the contract because such an approach would run contrary to these established principles of contract interpretation. Pursuant to the policy's definition of "occupying," which was adopted by the insureds and plaintiff in the contract, defendant, by her presence "upon" the vehicle, was "occupying" it when she incurred her bodily injury. *Rednour v Hastings Mutual Insurance Co*, 468 Mich 241, 249-250; 661 NW2d 562 (2003).

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Hilda R. Gage

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[1] We note that defendant at one point leaned into the driver's side compartment to give the driver a hug, but neither party argues that her later posture on the running boards qualified as "getting . . . out of" or "alighting from" the truck.