STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF JOHN RICHARD PHELPS, by and through its personal representatives, RICHARD PHELPS and SHELLEY PHELPS,

Plaintiff-Appellant,

v

ALLSTATE PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 10, 2010

No. 289537
Kalamazoo Circuit Court
LC No. 07-000444-NF

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

In this lawsuit for uninsured motorist benefits, plaintiff appeals as of right the trial court's denial of a motion for reconsideration following the grant of defendant's motion for declaratory judgment. We affirm.

On August 14, 2006, the decedent, John Richard Phelps, and several of his friends were in a Toyota 4Runner driven by Bjorn Grubelich, owned by Grubelich's mother, and insured by defendant. A second car, driven by Alan Goodwin, collided with Grubelichs' vehicle causing it to overturn several times, killing Phelps and two other passengers. Goodwin was uninsured at the time of the accident. The Grubelichs' insurance policy included personal injury and uninsured motorist (UM) benefits, both of which were capped at $100,000 a person and $300,000 an accident. Plaintiff filed a wrongful death lawsuit against Goodwin, Grubelich, and Grubelich's mother, alleging that the negligence of each contributed to Phelps death. Plaintiff subsequently filed this separate lawsuit against defendant to obtain the UM benefits. Plaintiff accepted defendant's offer of over $100,000 from the bodily injury provisions of the policy in settlement of the first lawsuit. In the interim, defendant also sought a declaratory judgment in this lawsuit, asking the trial court to enforce a setoff provision in the UM section of the insurance policy which defendant contended would allow it to reduce any UM benefits it paid by the value of the benefits remitted in accordance with the bodily injury provisions of the policy. The trial court granted defendant's motion for declaratory judgment and denied plaintiff's motion for reconsideration. This appeal ensued.

Plaintiff primarily contends that the setoff provision in the contract of insurance impermissibly imposes joint and several liability in violation of MCL 600.2956. A trial court's

ruling on a declaratory judgment, statutory interpretation, and interpretation and construction of an insurance contract are all reviewed de novo on appeal. *Toll Northville, Ltd v Northville Twp*, 480 Mich 6, 10-11; 743 NW2d 902 (2008); *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

"Uninsured motorist benefits are distinct from personal protection insurance [PIP] benefits." *Citizens Ins Co of America v Buck*, 216 Mich App 217, 224; 548 NW2d 680 (1996). "Uninsured motorist coverage is not required by statute but may be purchased to provide the insured with a source of recovery for excess economic loss and noneconomic loss if the tortfeasor is uninsured." *Id.* (citations omitted). This Court stated in *Berry v State Farm Mut Automobile Ins Co*, 219 Mich App 340, 346-347; 556 NW2d 207 (1996) (citations omitted):

> Because uninsured motorist benefits are not required by statute, the contract of insurance determines under what circumstances such benefits will be awarded. The policy definitions control. Thus, this Court's duty is to determine from the language of the policy the parties' apparent intention. Doubtful or ambiguous terms must be construed in favor of the insured and against the insurer, the drafter of the policy.

The parties do not dispute that Phelps was insured under the policy, that Goodwin was uninsured, or that the UM benefits apply as a result of the motor vehicle accident. Rather, the dispute centers on the interpretation of the setoff provision within the UM section of the policy, which provides, in pertinent part:

> The limits of liability will be reduced by:
>
> 1. all amounts paid by or on behalf of the owner or operator of the uninsured auto or anyone else legally responsible, including partial payments made by an insolvent insurer. This includes all sums paid under the Bodily Injury Liability coverage of this or any other auto insurance policy.

The setoff provision does not, contrary to plaintiff's argument, impose or transfer Goodwin's liability to the Grubelichs. The Grubelichs have not accepted Alan's "degree of fault" and nor have they agreed to pay the full amount of plaintiff's damages. Joint and several liability is not an issue here. Rather, the UM policy is a contractually added benefit to the Grubelichs' car insurance policy, and provides additional coverage up to $100,000 a person for uninsured tortfeasors. The UM policy has not changed Goodwin's exposure for his own negligence, and he remains liable for his percentage of fault. For these reasons, we find that this setoff provision does not impose joint and several liability, and, therefore, does not contradict MCL 600.2956.

Further, MCL 600.2956 does not apply at all in this lawsuit to recover UM benefits because the statute does not apply to contract disputes. *Zahn v Kroger Co*, 483 Mich 34, 38-40; 764 NW2d 207 (2009); *Sherman-Nadiv v Farm Bureau Gen Ins Co of Michigan*, 282 Mich App 75, 78; 761 NW2d 872 (2008) ("Because insurance policies are contractual agreements, they are subject to the same rules of contract interpretation that apply to contracts in general."). Although the damages at issue here arose from a personal injury action, plaintiff seeks benefits through a contractual provision for UM benefits.

Next, plaintiff argues that the plain language of the setoff provision indicates that a reduction is not required because although the parties settled under the bodily injury portion of the policy, the amounts paid were not "by or on behalf of" Goodwin. A plain reading of the policy language indicates that the UM benefits can be reduced by "all amounts paid by or on behalf of the owner or operator of the uninsured auto" *or* "by or on behalf of . . . anyone else legally responsible." The second phrase clearly includes in the reduction amounts "all sums paid under the Bodily Injury Liability coverage of this . . . policy." There is no question that the over $100,000 settlement came from the bodily injury liability provisions of the policy and that the sum was paid on behalf of the Grubelichs, consistent with the definition of "anyone else legally responsible." The trial court properly interpreted the plain language of the policy and granted defendant's motion for declaratory judgment.

Next, plaintiff asserts entitlement to 12 percent interest on the UM benefits for defendant's failure to pay out in a timely manner, MCL 500.2006(4), and it requests that this Court instruct the trial court to address the statutory interest upon remand. Based on our determination that the trial court did not err in granting a declaratory judgment in favor of defendant, plaintiff's argument pertaining to an award of interest is rendered moot and need not be addressed by this Court. *Eller v Metro Contracting*, 261 Mich App 569, 571; 683 NW2d 242 (2004).

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot