STATE OF MICHIGAN

COURT OF APPEALS

KENNETH ADMIRE, Plaintiff-Appellee,	UNPUBLISHED February 15, 2011
v	No. 289080 Ingham Circuit Court
AUTO-OWNERS INSURANCE COMPANY, Defendant-Appellant.	LC No. 07-001752-NF

Before: METER, P.J., and FITZGERALD and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying its motion for summary disposition and granting summary disposition to plaintiff under MCR 2.116(I)(2). We affirm.

Plaintiff was injured in a motor vehicle accident in 1987, leaving him bound to a wheelchair that requires the use of a modified vehicle. The parties entered into a Transportation Purchase Agreement in April 2000, which provided that Auto-Owners would pay $37,807.76 for a van to meet plaintiff's transportation needs, that the operational use was estimated at seven years, and that

> [u]pon expiration of the operational use agreed to above, the van shall be traded in on a replacement van (i.e., the equity or value of that can [sic] shall be applied toward the purchase price of a replacement). [Plaintiff or his conservator and guardian] will give [Auto-Owners] (60) sixty days advance written notice of their intent to purchase a replacement van.

On December 26, 2006, plaintiff gave Auto-Owners notice of his intent to replace the van. On January 31, 2007, Auto-Owners advised that it did not believe it was obligated to purchase a new van under either the no-fault act, MCL 500.3101, *et seq*., or the transportation purchase agreement. However, it stated that plaintiff could trade in the existing van toward the price of a new van and that it would pay for "necessary medical modifications." Plaintiff did so. After deducting the modification expenses and the $6,000 trade-in value, the remaining cost was $18,388.50. This lawsuit concerns whether plaintiff is entitled to the $18,388.50.

The trial court granted summary disposition to plaintiff, holding that defendant was bound to pay for the van. Although not entirely clear, it appears that the court based its ruling on

the Transportation Purchase Agreement executed in 2000 and similar agreements that apparently preceded it.

We review de novo a trial court's decision regarding a motion for summary disposition. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). Interpretation of statutes and contracts is similarly subject to de novo review. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005); *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). Estoppel, being an equitable issue, is also reviewed de novo. *AFSCME Int'l Union v Bank One*, 267 Mich App 281, 293; 705 NW2d 355 (2005).

Unambiguous contracts must be enforced as written. *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). Absent ambiguity, contractual interpretation begins and ends with the actual words of a written agreement. See *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). If provisions are capable of conflicting interpretations, the contract is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003).

If a contract is ambiguous, its meaning becomes a question of fact, "requiring a factual determination as to the intent of the parties in entering the contract. Thus, the fact finder must interpret the contract's terms in light of the apparent purpose of the contract as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning." *Id*. at 469 (internal citation and quotation marks omitted).

The parties' transportation purchase agreement, signed on April 26, 2000, provides, in pertinent part:

> 1. [Auto-Owners] shall pay the sum of $37,807.76 used to meet the transportation needs of KENNETH ADMIRE by purchasing on his behalf a 2000 Grand Caravan van. . . . In consideration of this payment, and of the mutual covenants agreed to herein, the parties agree as follows:
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> (a) The operational use of the 2000 Grand Caravan van purchase shall be estimated at seven (7) years from the date of purchase. If the claimant dies prior to the vehicle reaching the seven (7) years operational use, the market value of the vehicle at the time of death shall revert back to [Auto-Owners].
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> (b) Upon expiration of the operational use agreed to above, *the van shall be traded in on a replacement van* (i.e., the equity or value of that can [sic] shall be applied toward the purchase price of a replacement). [Plaintiff and/or his conservator and guardian] will give [Auto-Owners] (60) sixty days advance written notice of their intent to purchase a replacement van.
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> (c) The vehicle . . . will be registered in the name of [plaintiff and his conservator and guardian]. Valid insurance shall be maintained in accordance with the Michigan No-Fault Statute and payment by [plaintiff's conservator on plaintiff's] behalf.

> d) [Auto-Owners] shall not be responsible for the cost of maintenance, repairs or service and/or any other such related expenses on the vehicle itself since payment of these shall be the responsibility of [plaintiff's conservator]; provided however, that [Auto-Owners] shall be responsible for the payment of the cost of maintenance, repairs, service or replacement, if necessary, on the handicapped equipment. [Emphasis added.]

Defendant argues, based on paragraph (d), that the agreement unambiguously provides that it is responsible only to pay for replacement of the handicap equipment. However, this provision speaks only to "the vehicle itself." It clearly applies only to the actual van purchased in 2000. It does not address whether Auto-Owners is contractually obligated to buy plaintiff a new van at the expiration of the seven-year period. We conclude that paragraph (d) is inapposite to the resolution of this appeal.

Defendant also argues that the trial court erred in looking at previous agreements to discern whether it was responsible for the new van. Case law indicates that extrinsic evidence could be examined *if the purchase agreement is ambiguous*. The trial court did not expressly address ambiguity. However, whether an ambiguity exists can be determined as a matter of law under de novo review. See, generally, *Archambo*, 466 Mich at 408.

The purchase agreement unambiguously provides that Auto-Owners had to provide plaintiff with a van in 2000; that for seven years, it was entitled to the market value of the van if plaintiff died; that after seven years, the equity in the van was to be applied toward the purchase of a new van; that plaintiff had to give Auto-Owners notice he was purchasing a new van after seven years; and that during the seven years, plaintiff was responsible for costs associated with the 2000 van while defendant was responsible for costs associated with the modifications to the 2000 van. On its face, the contract does not provide that defendant is required to buy a new van. It says that the van shall be traded in on a replacement van but it does not say that defendant will pay for the replacement. However, the contract also does not say that plaintiff is responsible for buying the new van.

Klapp, 468 Mich at 467, indicates that a contract is ambiguous if its provisions are capable of conflicting interpretations. The problem here is there is no provision that speaks to the question. The contract does not say that anyone will pay for a new van. It implies that defendant will pay for the replacement because it compels the purchase of a new van and requires that plaintiff give defendant notice. However, the contract could also be read to mean that plaintiff is entitled to use the equity to buy a new van upon the expiration of seven years. We conclude that this creates an ambiguity. Accordingly, the trial court erred in evidently concluding that the transportation purchase agreement mandated that it grant summary disposition to plaintiff.

Plaintiff contends that the trial court's decision should nevertheless be affirmed based on promissory estoppel. "Promissory estoppel is a judicially created doctrine that was developed as an equitable remedy applicable in common-law contract actions." *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 549 n 4; 619 NW2d 66 (2000). The elements are: "(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, and (3) that in fact produced reliance or

forbearance of that nature in circumstances such that the promise must be enforced if injustice is to be avoided." *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 686-687; 599 NW2d 546 (1999).

Plaintiff argues that promissory estoppel applies because, when it negotiated the original agreement regarding the van in 1988, it gave up the possibility of a judgment that may have provided for a van more than every seven years and may have required payment for maintenance, insurance, and other costs. However, there is nothing in the record regarding a prior agreement. We therefore decline to address this issue.

The remaining consideration involves the no-fault act. Plaintiff contends that the trial court's decision should be affirmed based on the provisions of that act. Defendant contends that reimbursement for the van under the no-fault act is not required.

In *Davis v Citizens Ins Co*, 195 Mich App 323, 327-328; 489 NW2d 214 (1992), this Court held that the cost of a modified van was an allowable expense under the facts of that case. Moreover, a recent published decision of this Court specifically addressed the effect of *Griffith*, 472 Mich 521,[1] on the *Davis* holding and concluded that *Davis* was not overruled by *Griffith*. See *Begin v Michigan Bell Telephone Co*, 284 Mich App 581, 594; 773 NW2d 271 (2009). The *Begin* Court allowed reimbursement for a van and held that "because *Davis* was issued on or after November 1, 1990, the *Davis* decision is binding precedential authority until it is 'reversed or modified by the Supreme Court, or by a special panel' of this Court. MCR 7.215(J)(1)." *Begin*, 284 Mich App at 594.

The *Begin* Court further stated that, in certain instances:

> the product, service, or accommodation used by the injured person before the accident is so blended with another product, service, or accommodation that the whole cost is an allowable expense if it satisfies the statutory criteria of being sufficiently related to injuries sustained in a motor vehicle accident and if it is a reasonable charge and reasonably necessary for the injured person's care, recovery, or rehabilitation under MCL 500.3107(1)(a). The latter inquiry, of course, is factual and dependent on the circumstances of each case. [*Begin*, 284 Mich App at 596-597.]

The *Begin* Court made the above statement in the course of discussing food in an institutional setting and modified shoes necessitated by an automobile accident. *Id*. at 596. It stated:

> We also note that the *Griffith* Court, when discussing the cost of food provided to an injured person in an institutional setting, did not suggest that only

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[1] In *Griffith*, 472 Mich at 535-536, the Court held that the injured person's at-home food costs were not allowable because they were not related to his care, recovery, or rehabilitation and would have been incurred even in the absence of the injury.

> the marginal increase in the cost of such food served in an institutional setting would be an allowable expense. Nor did the Court suggest that only the marginal cost of modifying regular shoes would be a recoverable "allowable expense" under MCL 500.3107(1)(a). [*Begin*, 284 Mich App at 596.]

The *Begin* Court implied that a modified van was analogous to the institutional food and the modified shoes. *Id*. at 596-597. The Court additionally stated:

> We agree with the trial court that the present case is factually distinguished from *Griffith* because here plaintiff claimed, and presented evidence, that his transportation needs were different from those of an uninjured person and that the modified van for which he sought reimbursement was related to care necessitated by his injuries arising out of the operation or use of a motor vehicle. [*Id*. at 593.]

In the instant case, defendant contends that the van was not reasonably necessary for plaintiff's care. Defendant suggests, for example, that plaintiff could use public transportation for services related to his care, recovery, and rehabilitation. In *Davis*, 195 Mich App at 327-328, the Court stated:

> In this case, the cost of the van was reasonable, and obviously the expense was incurred. We also find that the van was reasonably necessary. Transportation is as necessary for an uninjured person as for an injured person. However, the modified van is necessary in this case given the limited availability of alternative means of transportation. The ambulance service is limited to Branch County, traveling outside the county two or three times a week. Although this service is available twenty-four hours a day, seven days a week, advance notice is preferred for clients who, like plaintiff, reside more than five miles from town. Moreover, because the ambulance service is the only one in the county, transportation could be delayed or unavailable because of medical emergencies. The local transit authority provides door-to-door service to clients who make advance reservations, but it is unavailable during evenings. The van allows plaintiff to travel outside the county for medical purposes and vacations. In addition, the van was reasonably necessary according to plaintiff's treating physician. He testified that when he discharged plaintiff, one of the requirements was that plaintiff use a van for her transportation, allowing her the independence to go to work. Under these circumstances, we find that the modified van is an allowable expense.

Plaintiff clearly established below that he could not drive a standard vehicle and needed a modified van for his transportation needs. Defendant did not make a showing that plaintiff could easily use alternative transportation for his needs but instead focused on *Griffith* and on the argument that because plaintiff would have had a vehicle regardless of his injuries, the van is not compensable. *Begin* clearly counters this argument. Moreover, defendant did not make a showing that the amount requested for reimbursement was unreasonable. Under these circumstances, we cannot conclude that the trial court erred in granting summary disposition to plaintiff.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Michael J. Kelly