

STATE OF MICHIGAN
COURT OF APPEALS

GARY SCOTT OWENS,

Plaintiff-Appellant/Cross-Appellee,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

August 11, 2011

No. 297590

Genesee Circuit Court

LC No. 08-088951-NI

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of summary disposition in favor of defendant. We affirm.

I

Plaintiff, Gary Scott Owens, was standing outside a pub near a line of parked motorcycles when he was struck by a van. Plaintiff allegedly received extensive injuries from the accident. At the time of the accident, the driver of the van that struck plaintiff was an uninsured motorist. Both parties have agreed for the purposes of this appeal that plaintiff was a pedestrian that was struck by an uninsured motorist. Plaintiff lived with his mother at the time of the accident. Plaintiff filed a complaint against defendant Auto Owners Insurance Company for an alleged breach of contract for failure to pay uninsured-motorist benefits under his mother's Auto Owners insurance policy as a resident relative.

II

Plaintiff contends that the trial court incorrectly concluded that he owned a 1995 Buick Riviera at the time of the accident, which barred him from recovering uninsured-motorist benefits under his mother's policy. We disagree.

An appellate court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Summary disposition is appropriate under MCR 2.116(C)(10) if no genuine issue of any material fact exists, and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A genuine issue of material fact exists when the

record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Id.* Specifically, for insurance policies, the proper interpretation and application is a question of law that we review de novo. *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 528; 620 NW2d 840 (2001).

“An insurance policy is enforced in accordance with its terms.” *Allstate Ins Co v McCarn*, 466 Mich 277, 280; 645 NW2d 20 (2002). If a term is not defined, the common meaning of the term should be used. *Id.*

Under plaintiff’s mother’s insurance policy, uninsured-motorist coverage extends to a relative who resides with the insured and does not own an automobile. The Auto-Owners insurance policy defines an automobile as a private-passenger automobile, a truck, truck tractor, trailer, farm implement, or other land motor vehicle. The item at issue here is a 1995 Buick Riviera. Appellant contends that the Buick Riviera should not be considered an automobile for insurance-policy purposes because the Buick Riviera is an inoperable frame that was only used for parts.

In an affidavit, plaintiff stated that shortly after the vehicle was purchased, he was in an accident. Plaintiff said that the vehicle was not functional, but he did later sell it to someone to fix up or for parts. Nothing in plaintiff’s affidavit indicates that the 1995 Buick Riviera was literally a frame of an automobile as suggested in plaintiff’s arguments. Instead, plaintiff’s affidavit suggests more that the car had been damaged in an accident and had never been repaired. Just because a vehicle is non-functional and in need of repairs does not mean that it is not an automobile. The terms “operable” and “function” are not required under the definition of an automobile in the policy. Furthermore, at the time of the accident, plaintiff had title to the Buick Riviera.

Because plaintiff has failed to show that a genuine issue of material fact existed as to the ownership of the 1995 Buick Riviera, the trial court correctly granted summary disposition in favor of defendant.

III

Because we affirm the trial court’s grant of summary disposition in favor of defendant, there is no need to consider defendant’s cross-appeal.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering