STATE OF MICHIGAN

COURT OF APPEALS

DONNA DODD and KELLY OLIVER,

Plaintiffs-Appellants,

v

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 16, 2021

No. 355594
Wayne Circuit Court
LC No. 18-002090-NF

Before: SAWYER, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

Plaintiffs, Donna Dodd and Kelly Oliver, appeal as of right from the trial court's stipulated order of dismissal of plaintiffs' remaining claims for medical benefits after suffering a motorcycle accident in Ohio. On appeal, plaintiffs argue that the trial court erred by granting defendant summary disposition because they contend that they could "double dip" under the terms of Oliver's uncoordinated automobile insurance policy. For the reasons explained below, we affirm.

I. BACKGROUND

The facts in this case are largely not in dispute. On May 13, 2017, plaintiffs suffered injuries in an accident when a motor vehicle traveling ahead of them lost cargo from their vehicle, causing another vehicle ahead of plaintiffs to brake. Plaintiffs, who were on a motorcycle, collided with the rear end of the braking vehicle. Plaintiffs were treated for injuries related to the crash.

At the time of the accident, Oliver had a no-fault insurance policy issued by defendant which specified that no person could recover duplicate benefits for the same expenses or loss. Based on that provision, defendant denied payment for certain claims submitted by plaintiffs because the claims had already been paid by plaintiffs' health insurance. Plaintiffs later brought suit.

Plaintiffs moved for summary disposition under MCR 2.116(C)(10), asserting that Oliver's no-fault policy was uncoordinated, meaning defendant could not deny payment simply because another insurer reimbursed plaintiffs for the claims. For its part, defendant opposed the motion

and sought summary disposition under MCR 2.116(I)(2), asserting that the nonduplication of payments provision in the insurance policy allowed it to deny payment. The trial court ultimately agreed with defendant and granted summary disposition in its favor. This appeal followed.

II. STANDARD OF REVIEW

"Appellate review of the grant or denial of a summary-disposition motion is de novo . . . ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We "review a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Summary disposition is appropriate . . . if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West*, 469 Mich at 183. "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 might differ." *Id*. "Summary disposition is properly granted [under MCR 2.116(I)(2)] to the opposing party if it appears to the court that that party, rather than the moving party, is entitled to judgment." *Michelson v Voison*, 254 Mich App 691, 697; 658 NW2d 188 (2003) (quotation marks and citation omitted) (alteration in original).

"This Court reviews questions of statutory interpretation de novo." *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 470; 719 NW2d 19 (2006). "The role of this Court in interpreting statutory language is to ascertain the legislative intent that may reasonably be inferred from the words in a statute." *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019) (quotation marks and citation omitted). "[W]here the statutory language is clear and unambiguous, the statute must be applied as written." *Id*. (quotation marks and citation omitted) (alteration in original). "The construction and interpretation of the language of an insurance contract presents an issue of law that is reviewed de novo." *Hellebuyck v Farm Bureau Gen Ins Co of Mich*, 262 Mich App 250, 254; 685 NW2d 684 (2004).

III. ANALYSIS

Although the facts are not in dispute, the parties disagree about the meaning and import of the nonduplication of payments provision in the insurance policy between Oliver and defendant. Plaintiffs claim that the provision does not prevent their duplicate recovery because their medical bills were covered by their health insurance and defendant's policy provided only that they could not recover more than once for personal injury protection (PIP) benefits. Defendant argues that the provision prevents plaintiffs from recovering more than they already have received.

"The terms of an insurance policy are to be enforced as written when no ambiguity is present." *Hellebuyck*, 262 Mich App at 254. "This Court interprets an insurance contract by reading it as a whole and according its terms their plain and ordinary meaning." *Farm Bureau Mut Ins Co v Buckallew*, 246 Mich App 607, 611; 633 NW2d 473 (2001). "An insurance contract must be construed so as to give effect to every word, clause, and phrase, and a construction should be avoided that would render any part of the contract surplusage or nugatory." *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005).

Oliver's no-fault insurance policy specified the following nonduplicate payment provision:

> Regardless of the number of motor vehicles insured, or the number of insurers or self-insurers providing security under the provisions of Chapter 31 of the Michigan Insurance Code, or the provisions of any other law providing for no fault benefits for motor vehicle accidents, no person may recover duplicate benefits for the same expenses or loss.
>
> If the injured person is entitled to recover benefits under more than one policy, the maximum recovery under all policies will not exceed the amount payable under the provisions of the policy providing the highest dollar limit.

Contrary to plaintiffs' arguments, nothing in the provision limits the nonduplication requirement exclusively to PIP benefits. The prefatory language that begins the provision does not, as plaintiffs suggest, entitle them to duplicate payments so long as the benefits are not PIP benefits. The plain language of the policy stated that "no person may recover duplicate payments," regardless of the number of vehicles insured or number of no-fault insurers. The policy's language does not limit defendant's ability to deny payment for a benefit that had been already paid and we decline to read into the policy such limitation.

Plaintiffs contend that *Haefele v Meijer, Inc*, 165 Mich App 485; 418 NW2d 900 (1987),[1] supports their interpretation that the nonduplication provision does not prevent them from double recovery. In that case, the plaintiff already received benefits under an uncoordinated automobile insurance policy for damages suffered as a result of a motor vehicle accident and sought duplicate payment from her health insurer. *Haefele*, 165 Mich App at 488-489. This Court reversed the trial court's order granting summary disposition in favor of the defendants, reasoning that the coordination of coverage provision in the health insurance policy's plain language limitation only applied to other "group health plans" and not privately purchased automobile insurance. *Id*. at 498-499.

Contrary to plaintiffs' arguments, *Haefele* is inapposite. The relevant provision in that case had been "apparently directed only toward other 'group health plans.' " *Id*. at 498. In contrast, the nonduplication provision in defendant's policy in this case lacks such similar limitation. The policy prevents any duplicate payments for the same loss, regardless of the other insurance obtained by the insured. Without limitation, defendant's policy caps recovery to "the amount payable under the provisions of the policy providing the highest dollar limit."

Plaintiffs also claim that the insurance policy contravenes MCL 500.3109a. The version of MCL 500.3109a in force at the time of the accident and lawsuit provided:

> An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, deductibles and

[1] Cases published before November 1, 1990, are not binding on this Court but may be considered for their persuasive value. See MCR 7.215(J)(1); *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012).

> exclusions reasonably related to other health and accident coverage on the insured. Any deductibles and exclusions offered under this section are subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured, and any relative of either domiciled in the same household.

To the extent plaintiffs suggest defendant violated MCL 500.3109a when it denied payment, they never pleaded such claim in their complaint. Moreover, plaintiffs provide no authority suggesting that they would have a private right of action for such a violation.

We are not persuaded by plaintiffs' arguments that the provision at issue does not prevent duplicate recovery. The plain language of the nonduplication provision prevents duplicate recovery for the same expense or loss, and the trial court correctly granted defendant summary disposition as to Oliver's claims.

Dodd was not a named insured in the policy between defendant and Oliver, and the parties agree that Dodd's entitlement to benefits, if any, are solely statutory. See *Harris v Auto Club Ins Ass'n*, 494 Mich 462, 471-472; 835 NW2d 356 (2013) (explaining that when a claimant is not a third-party beneficiary or subrogee of the no-fault policy, the claimant's "right to PIP benefits arises solely by statute."). Moreover, the accident at issue took place in Ohio, triggering application of MCL 500.3111, which provided at the time of the accident and lawsuit as follows:

> Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.

Defendant claims Dodd is not entitled to any statutory benefits under MCL 500.3111 because she was not a named insured or spouse or relative of the insured, and was not an occupant of a motor vehicle. While defendant is correct that Dodd was not named in the policy with Oliver, and while there is no contention by plaintiffs that Dodd constituted Oliver's spouse or relative, defendant is incorrect in suggesting that Dodd cannot recover benefits under MCL 500.3111. Defendant misreads the applicable section by arguing that because Dodd was not an occupant of a *motor vehicle*, she cannot recover. The term "motor vehicle" does not appear in MCL 500.3111. Instead, MCL 500.3111 entitles a claimant to benefits if they were the occupant of a "vehicle" whose owner or registrant had insurance.

While the term "motor vehicle" is defined in the statute to specifically exclude motorcycles, see MCL 500.3101(3)(*i*), the term "vehicle" is not so defined. Thus, this Court may look to dictionary definitions to interpret its meaning. See *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 240; 615 NW2d 241 (2000). Merriam-Webster's Dictionary defines "vehicle" as "a means of carrying or transporting something" or "a piece of mechanized equipment." *Merriam-*

Webster's Collegiate Dictionary (11th ed). The dictionary definition of "vehicle" is more expansive than the statute's definition of motor vehicle and would include a motorcycle as a "vehicle" since it is a mechanized piece of equipment that transports or carries individuals and cargo. Defendant's argument that Dodd is not entitled to benefits, therefore, is unfounded because the statute does not limit recovery to out-of-state claimants to only those involved in motor vehicle accidents.

That Dodd may be entitled to benefits under MCL 500.3111 does not, however, mean that she is entitled to duplicate benefits. Plaintiffs claim that Dodd is entitled to payment of benefits, without regard to coordination of coverage, under MCL 500.3114(5). That section states:

> (5) A person suffering accidental bodily injury arising from a motor vehicle accident that shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
>
> (b) The insurer of the operator of the motor vehicle involved in the accident.
>
> (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.
>
> (d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident. [MCL 500.3114(5).]

Plaintiffs offer no analysis as to why MCL 500.3114(5) entitles Dodd to duplicate payment of benefits from defendant. The statute does not authorize such. In *Harris*, our Supreme Court addressed a similar argument. In that case, the plaintiff who suffered injury while riding a motorcycle sued Blue Cross Blue Shield of Michigan after it denied claims that were already paid by the other driver's automobile insurance. *Harris*, 494 Mich at 465-466. The Court determined that the plaintiff lacked entitlement to uncoordinated coverage by virtue of the motor vehicle driver's insurance. The Court stated: "[A]n insured must pay a premium to obtain insurance policies that provide for double recovery. Harris has simply not shown that he paid the necessary premiums to receive a double recovery." *Id*. at 472 (footnote omitted). Thus, the plaintiff had no right to duplicate payment under MCL 500.3114(5). *Id*. at 473.

The same is true in this case. Regardless whether Oliver could recover duplicate payment by virtue of his policy with defendant, Dodd unquestionably lacked any right to duplicate recovery. She had statutory entitlement to benefits and, under *Harris*, could not recover twice for the same expense or injury.

Plaintiffs urge that *Shanafelt v Allstate Ins Co*, 217 Mich App 625; 552 NW2d 671 (1996), controls the outcome of this case. The facts in *Shanafelt* are similar to those presented here. The plaintiff had an uncoordinated no-fault policy and a coordinated health care policy. *Shanafelt*, 217 Mich App at 629. The defendant denied the plaintiff's claims which were already paid by the

health insurer. *Id*. This Court rejected the defendant's argument that *Smith v Physicians Health Plan, Inc*, 444 Mich 743; 514 NW2d 150 (1994), controlled the outcome, stating:

> *Smith* stands for the narrower proposition that the no-fault act provides no justification for ignoring a coordination of benefits provision contained in a coordinated health insurance contract. *Smith* is a defense of one's right to contract freely, not a decision detracting from that right. [*Id*. at 641-642.]

This Court determined that because the uncoordinated policy at issue did not contain any language limiting the insured's right to double recovery, *Smith* did not apply, and the plaintiff could recover from the defendant. *Id*. at 642.

Defendant suggests that this Court should look to *Smith* when deciding this case. In *Smith*, the plaintiff had an uncoordinated no-fault policy and a coordinated health care policy with the defendant through his employer. *Smith*, 444 Mich at 747. The defendant denied the plaintiff's claims because they had already been paid by the no-fault insurance carrier. *Id*. at 748. Our Supreme Court rejected the plaintiff's claims and explained: "It is when both the no-fault automobile insurance and the health insurance are uncoordinated policies that multiple recovery is possible for the insured." *Id*. at 752. In the circumstance presented by the plaintiff—coordinated health insurance and uncoordinated no-fault insurance—double recovery was not permitted. *Id*. at 758-761. "*Smith* is a defense of one's right to contract freely, not a decision detracting from that right." *Shanafelt*, 217 Mich App at 641-642.

In the policy at issue, Oliver and defendant contractually agreed that "no person may recover duplicate benefits for the same expenses or loss." This is distinguishable from *Shanafelt*, in which this Court found no language within the insurance policy that supported the defendant's contention that the policy prohibited double recovery. Defendant's policy in this case included such language, and *Smith* instructs that Courts must enforce the policy.

Affirmed.

/s/ David H. Sawyer
/s/ Michael J. Riordan
/s/ James Robert Redford