

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVEN MCGUINNESS and HELEN  
MCGUINNESS,

UNPUBLISHED  
November 29, 2011

Plaintiffs-Appellants,

v

No. 299902  
Macomb Circuit Court  
LC No. 2009-003426-CK

IDS PROPERTY CASUALTY INSURANCE  
COMPANY,

Defendant-Appellee.

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Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this insurance coverage dispute, plaintiffs Steven and Helen McGuinness appeal as of right the trial court's order granting summary disposition in favor of defendant IDS Property Casualty Insurance Company. We affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS BELOW**

This case arises out of a theft committed by plaintiff Steven McGuinness's son, Steven Bek McGuinness (Bek) and Steven McGuinness's ex-wife, Jennifer Larson. On or about July 5, 2008, plaintiffs discovered that they were missing an extensive comic book collection of about 600 to 1,000 comic books. Plaintiffs had a homeowner's insurance policy with defendant at the time the comic books went missing. According to the police report, plaintiff Steven McGuinness (McGuinness) received a call from Larson's estranged husband, who notified him of the thefts. The report indicated that Bek was stealing the books and giving them to Larson to sell. At the time of the larceny, Bek was a minor, the subject of a parenting time dispute in the Oakland Circuit Court, and dividing his time between his parents' residences. Plaintiffs made a claim under their homeowner's policy and filed a proof of loss with defendant for the value of the comic books. Defendant denied the claim.

Bek's custodial status is complicated. In October 1996, McGuinness and Larson were divorced. At that time, Larson had physical custody, and McGuinness and Larson shared joint legal custody. In 1998, the Oakland Circuit Court entered an order giving McGuinness temporary physical custody of Bek and Larson reasonable parenting time. The court modified the order in May 2000 to include additional parenting time for Larson. In May 2008, the court again modified parenting time. At the time of the larcenies, which allegedly occurred between

December 2007 and July 2008, McGuinness had either temporary or joint physical custody of Bek. McGuinness further testified that Bek spent alternating weeks at his and Larson's homes. The police report filed in this matter shows Bek as having the same address as McGuinness.

Plaintiffs sued defendant, alleging in their complaint breach of contract, specific performance and declaration of rights, and violation of the Uniform Trade Practices Act, MCL 500.2001 *et seq.* Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiffs' claim of loss is excluded from coverage under the policy because the theft was perpetrated by an insured. The trial court granted defendant's motion for summary disposition and later denied plaintiffs' motion for reconsideration.

## II. STANDARD OF REVIEW

This Court reviews *de novo* a trial court's grant or denial of summary disposition under MCR 2.116(C)(10). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties must be considered by the court when ruling on a motion brought under MCR 2.116(C)(10). When reviewing a decision on a motion for summary disposition under MCR 2.116(C)(10), this Court must consider the documentary evidence presented to the trial court in the light most favorable to the nonmoving party. A trial court has properly granted a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law.

To the extent that the issues in this case require this Court to interpret insurance contracts and engage in statutory interpretation, these are questions of law that we review *de novo*. [*American Home Assurance Co v Mich Catastrophic Claims Ass'n*, 288 Mich App 706; 716-717; 795 NW2d 172 (2010) (citations and quotations omitted).]

## III. LAW & ANALYSIS

Plaintiffs argue on appeal that the trial court erred in granting defendant summary disposition because (1) Bek was not an insured or, at a minimum, a question of fact exists as to whether he was an insured under the policy and (2) the insurance policy language does not meet the minimum requirements of the Michigan Standard Policy because it fails to incorporate "the innocent co-insured doctrine."<sup>1</sup>

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<sup>1</sup> Plaintiffs also argue in their brief on appeal that Larson's involvement in allegedly talking her son into the theft should have some bearing on coverage. But, plaintiffs have abandoned this

“An insurance policy is a contract between the parties,” *Fire Ins Exch v Diehl*, 450 Mich 678, 683; 545 NW2d 602 (1996), and is “subject to the same rules of contract interpretation that apply to contracts in general,” *Sherman-Nadiv v Farm Bureau Gen Ins Co of Mich*, 282 Mich App 75, 78; 761 NW2d 872 (2008). To decide whether a policy covers a particular loss, the court must determine what the parties agreed to in the policy, which involves a two-part analysis. *Fire Ins Exch*, 450 Mich at 683. First, a court must determine if the occurrence at issue is covered under the general terms of the agreement. *Id.* Second, a court must determine “if coverage is denied under one of the policy’s exclusions.” *Id.*

An insured’s claims are lost if any exclusion in the insurance policy applies. *Hayley v Allstate Ins Co*, 262 Mich App 571, 574; 686 NW2d 273 (2004). Courts strictly construe exclusionary clauses in insurance policies in favor of the insured. *Id.* A court must enforce an insurance contract in accordance with its terms to avoid holding an insurance company liable for a risk that it did not assume. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Therefore, when an exclusion in an insurance policy is clear and specific, the exclusion must be enforced. *Hayley*, 262 Mich App at 574.

As defendant agrees, the policy at issue “without question” covers incidents of theft. The policy states: “We insure against theft or attempted theft, including loss of property from a known place if it is likely that a theft has occurred.” Because this is an occurrence that is covered under the policy, the next step is to determine whether coverage is precluded per the policy exclusions.<sup>2</sup> The policy expressly excludes theft committed by an insured person and states: “This peril does not apply to theft: a) committed by an insured person.” In addition, the policy states: “We do not cover loss caused directly or indirectly by any of the following . . . any loss arising out of any act an insured person commits or conspires to commit . . . .”<sup>3</sup>

Next, the definition of “insured person” must be reviewed to determine whether it applies to Bek. The policy states: “Insured person means: 1. you; 2. your relatives residing in your household; and 3. any other person under the age of 21 residing in your household who is in your care or the care of a resident relative.”

At the time the incidents occurred, McGuinness had at least joint physical custody of Bek, and Bek was spending about one-half of his time with McGuinness. Despite the fact that Bek was spending one-half of his time with Larson, his legal address was with McGuinness. Viewing the facts in a light most favorable to plaintiffs, no reasonable minds could differ as to

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argument because they fail to cite any supporting authority for their position. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

<sup>2</sup> Although defendant argues that a rider or special coverage was required in order to insure the comic books, given our findings in this opinion, we need not address the matter.

<sup>3</sup> The same exclusionary provision also states: “In the event of such loss, no insured person is entitled to coverage, even insureds who did not commit or conspire to commit causing the loss.” The exclusion states that it “does not apply, with respect to loss covered property caused by fire, to an insured person who does not commit, or direct another to commit, any act that results in loss by fire.”

whether Bek was residing in plaintiffs' household at the time of the thefts. Therefore, Bek was an insured under both provisions two and three of the policy's definition of "insured."

Plaintiffs argue that MCL 500.2833 applies to this case and that they are entitled to recovery under an "innocent-insured" exception. Under its express language, MCL 500.2833 applies to losses caused by fire or lightning; thus, plaintiffs' reliance on the statute is misplaced.<sup>4</sup>

Accordingly, the trial court did not err when it granted summary disposition for defendant.

Affirmed.

/s/ William B. Murphy  
/s/ Jane M. Beckering  
/s/ Amy Ronayne Krause

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<sup>4</sup> Plaintiffs' reliance on *Simon v Security Ins Co*, 390 Mich 72; 210 NW2d 322 (1973), is misplaced. *Simon* does not address MCL 500.2833 and, therefore, does not stand for the proposition that MCL 500.2833 applies in this case.