

STATE OF MICHIGAN
COURT OF APPEALS

KIMBERLY BEDDINGFIELD,

Plaintiff-Appellee,

v

DAVID EARL VAUGHN and MATTHEW
VAUGHN,

Defendants,

and

FARM BUREAU GENERAL INSURANCE
COMPANY,

Defendant-Appellant,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
January 19, 2012

No. 300471
Washtenaw Circuit Court
LC No. 09-001052-NI

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Defendant Farm Bureau General Insurance Company appeals by leave granted the order denying its motion for summary disposition. We affirm.

Plaintiff was a passenger in a vehicle operated by John Powers. Power's vehicle was struck by an uninsured vehicle owned by Matthew Vaughn and operated by David Earl Vaughn. Plaintiff sustained cervical spine and jaw injuries that necessitated surgical repair. At the time of the accident, Farm Bureau insured the Powers vehicle and provided uninsured motorist coverage with a policy limit of \$500,000. Plaintiff had her own automobile insurance policy through State Farm Mutual Automobile Insurance Company (State Farm) with uninsured motorist coverage up to \$100,000.

Plaintiff filed suit against Farm Bureau seeking payment of uninsured motorist benefits. Plaintiff later amended her complaint and added State Farm as a defendant. Farm Bureau moved for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), arguing that its insurance policy contained an “escape clause” that excluded coverage. Specifically, Farm Bureau argued that its coverage did not apply because plaintiff had uninsured motorist coverage available through her State Farm policy.

Plaintiff opposed Farm Bureau’s motion and argued that she did not have uninsured motorist coverage available under her State Farm policy because State Farm’s coverage was excess, meaning that it did not apply until other coverage, i.e. Farm Bureau’s coverage, was exhausted. The trial court denied Farm Bureau’s motion from the bench, explaining:

The policy—The policy language of the exclusion for the Farm Bureau policy, which was the vehicle that the injured party was occupying, states that if there is other uninsured motorist coverage available, the coverage will not apply. It talks about it there.

The State Farm policy, upon which Farm Bureau is asserting total exclusion, states that except for certain conditions, which don’t apply here, this is an “excess” coverage policy. And because the State Farm policy indicates it’s “excess” coverage, i.e., coverage above and beyond the primary coverage, that is not the type of other insurance available to an insured, under the—under the exclusion clause; and, therefore, Farm Bureau’s motion is denied.

The trial court entered a stipulated order staying proceedings pending appeal.

We review de novo a trial court’s decision on a motion for summary disposition. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002). Likewise, we review a trial court’s decision construing an insurance contract de novo as a question of law. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 533; 676 NW2d 616 (2004).

This case involves a contest between competing “other insurance” clauses. “[O]ther insurance’ clauses are provisions included in insurance policies to vary or limit the insurer’s liability when additional insurance coverage can be established to cover the same loss.” *Pioneer State Mut Ins Co v TIG Ins Co*, 229 Mich App 406, 411; 581 NW2d 802 (1998). An escape clause “provide[s] that there shall be no liability if the risk is covered by other insurance.” An excess clause “limit[s] the insurer’s liability to the amount of loss in excess of the coverage provided by the other insurance.” *Id.*

When two or more policies contain “other insurance” clauses and cover the same risk, Michigan courts “attempt[] to reconcile the competing provisions by discerning the parties’ intent through an analysis of the clauses.” *Pioneer*, 229 Mich App at 412, quoting *Federal Kemper Ins Co, Inc v Health Ins Admin, Inc*, 424 Mich 537, 543; 383 NW2d 590 (1986), overruled in part by *Auto Club Ins Ass’n v Frederick & Herrud, Inc (After Remand)*, 443 Mich 358; 505 NW2d 820 (1993). Where the competing clauses cannot be rationally reconciled due to an actual problem of circularity, and hence, where the clauses are mutually repugnant, then liability is to be apportioned on the basis of policy limits. *Pioneer*, 229 Mich App at 416.

Farm Bureau's policy includes an escape "other insurance" clause in its uninsured motorist coverage:

E. Additional Conditions

1. Other Insurance

* * *

If there is other Uninsured Motorist Coverage available to an Insured, other than you or any of your relatives, for **bodily injury** such Insured sustains while **occupying your covered auto**, this coverage will not apply. [Boldface in original.]

The language employed by Farm Bureau evidences an intent to escape liability where other uninsured motorist coverage is available. Thus, the issue in this case is whether State Farm's uninsured motorist coverage is "available" to plaintiff. The term "available" is not defined by Farm Bureau's policy and, therefore, it is accorded its commonly understood meaning. *Twichel*, 469 Mich at 534. A court may establish the meaning of a term through a dictionary definition. *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 84; 730 NW2d 682 (2007). *Random House Webster's College Dictionary* (1997) defines "available" as "suitable or ready for use; at hand" and "readily obtainable; accessible." In the context of an insurance exclusion, this Court has defined the term available "to mean that which is 'actually' or 'reasonably' available to the insured." *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 12; 512 NW2d 324 (1993).

Farm Bureau argues that uninsured motorist coverage is "available" to plaintiff as primary coverage through her State Farm policy. To determine whether other uninsured motorist benefits are "available" to plaintiff we must examine the State Farm policy. State Farm's policy provides for uninsured motorist benefits however, it contains the following exclusion:

If Other Uninsured Motor Vehicle Coverage Applies

* * *

3. Except as provided in item 2 above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

This is an excess "other insurance" clause and limits State Farm's liability when other uninsured motor vehicle coverage applies. "[A] policy containing an excess 'other insurance' clause is not considered to be other valid and collectible primary insurance . . ." *St Paul Fire & Marine Ins Co v American Home Assurance Co*, 444 Mich 560, 575; 514 NW2d 113 (1994). "Where an excess clause is inserted in a typical . . . liability insurance policy the usual intent of the insurer is that the policy will afford only secondary coverage when the loss is covered by 'other insurance.'" *Id.* at 576, quoting *Jones v Medox, Inc*, 430 A2d 488, 491 (DC App, 1981). Under these circumstances, plaintiff does not have other available, i.e. "readily obtainable; accessible," uninsured motorist coverage through State Farm. Rather, State Farm's uninsured motorist coverage is only available upon exhaustion of the primary coverage provided by Farm Bureau. In other words, there is a condition precedent to the availability of State Farm's

uninsured motorist benefits, i.e., the exhaustion of primary coverage provided by Farm Bureau. Consequently, Farm Bureau's escape clause does not apply.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter