STATE OF MICHIGAN

COURT OF APPEALS

JERALD SOURS, III,

Plaintiff-Appellee,

v

TITAN INSURANCE COMPANY,

Defendant/Cross-Plaintiff-Appellant,

and

WESTFIELD INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
December 27, 2011

No. 301328
Washtenaw Circuit Court
LC No. 10-000411-NF

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Titan Insurance Company appeals as of right an order granting Westfield Insurance Company's motion for summary disposition under MCR 2.116(C)(10) in this no-fault priority matter. We reverse and remand for further proceedings.

The basic facts are undisputed. Jerald Sours III (Sours) was a passenger in a vehicle that was owned and being operated by Nakeysha Vond (Vond). They were in an automobile accident and Sours sustained injuries. Sours did not have automobile insurance and was not entitled to coverage as set forth in MCL 500.3114(1). Vond's vehicle was uninsured, but she resided with her father, Daniel Vond, and he had a no-fault insurance policy with Westfield Insurance Company (Westfield). That policy provided, in pertinent part, that it would "pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident." An "insured" was defined as "you or any family member for the ownership, maintenance or use of any auto or trailer." And a "family member" was defined as "a person related to you by blood . . . who is a resident of your household." It is undisputed that Vond was Daniel Vond's daughter and she lived with him in his household.

However, Sours' personal protection insurance benefits were paid by Titan Insurance Company (Titan) which was assigned the claim under MCL 500.3172(1). After Titan denied further claims, Sours sued Titan. Titan then filed a cross-claim against Westfield, alleging that Westfield was higher in priority under MCL 500.3114(4) and, thus, responsible for Sours' insurance benefits. Westfield eventually moved for summary disposition of the cross-claim, which was granted by the trial court on the ground that Vond was not an "insured" within the meaning of the Westfield policy because it excluded from coverage "any vehicle . . . owned by any family member." This appeal followed.

Titan argues that the trial court erroneously construed MCL 500.3114(4) and, thus, its conclusion that Westfield was not liable for Sours' personal protection insurance benefits must be reversed. We agree. We review de novo questions of statutory interpretation, as well as the decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Spiek v Mich Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

MCL 500.3114 sets forth the order of insurer responsibility for the payment of no-fault insurance benefits. Because Sours had no applicable coverage as set forth in MCL 500.3114(1), he was required to seek personal protection benefits first from "the insurer of the owner or registrant of the vehicle occupied and, second, from "the insurer of the operator of the vehicle occupied." MCL 500.3114(4). Vond was both the owner and operator of the vehicle Sours was occupying when he sustained his injuries. Thus, the issue here is whether Westfield was "the insurer of the owner" and "the insurer of the operator," i.e., Vond's insurer, for purposes of MCL 500.3114(4). For that determination we turn to Westfield's insurance policy. See *Amerisure Ins Co v Coleman*, 274 Mich App 432, 436; 733 NW2d 93 (2007).

As discussed above, Vond's father, Daniel Vond, had a no-fault insurance policy with Westfield. Under the liability coverage section, that policy provided, in pertinent part, that Westfield would "pay damages for bodily injury or property damage for which any insured becomes legally responsible because of an auto accident." An "insured" was defined as "[y]ou or any family member for the ownership, maintenance or use of any auto or trailer." And a "family member" was defined as "a person related to you by blood . . . who is a resident of your household." According this contractual language its ordinary and plain meaning, *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003), it is clear that, for purposes of MCL 500.3114(4), Vond was an "insured" of Westfield and, thus, Westfield was "the insurer of the owner" and "the insurer of the operator" of the vehicle occupied by Sours.

The facts of this case are very similar to those presented in *Coleman*, 274 Mich App at 432. In that case, three individuals were riding in an uninsured vehicle and were involved in an accident. The backseat passenger was injured and uninsured. This Court looked to MCL 500.3114(4) to determine if the passenger could make a claim against the driver's insurer. Like Vond, the driver in *Coleman* did not have his own insurance policy. In other words, he was not the "named insured" on any policy. However, the driver's wife was a named insured on a policy. This Court rejected the argument that the insurance company only acted as an "insurer" to those "named insured." *Id*. at 437. Like Daniel Vond's policy, the policy in *Coleman* defined "insured" as including "you or any family member." As a family member residing in his wife's household, the driver fell within the policy definition of "insured," and, correspondingly, the insurance company was the "insurer" for MCL 500.3114(4) purposes. *Id*.

Westfield attempts, however, to distinguish this case from *Coleman* by arguing that a policy exclusion applied to negate liability coverage under the circumstances of this case. That is, the policy indicated that liability coverage was not provided "for the ownership, maintenance or use of . . . any vehicle, other than your covered auto, which is owned by any family member . . . ." However, this exclusion is not relevant to defining *who* is an "insured" for purposes of MCL 500.3114(4). The exclusion merely sets forth a circumstance not covered by insurance. It is the presence of a contractual insured-insurer relationship, not the terms of that relationship, which is the determinative inquiry for defining the "insurer" under the plain language of MCL 500.3114(4).

Similarly, Westfield argues that it was not the insurer of Vond for purposes of PIP benefits because of a policy exclusion. That is, under the PIP coverage section, an "insured" was defined as "anyone else injured in an auto accident . . . if the accident involves any other auto . . . which is operated by you or any family member . . . ." However, Westfield argues, an exclusionary provision indicated that it did not provide PIP coverage for bodily injury "sustained by the owner or registrant of an auto involved in the accident and for which the security required under the Michigan Insurance Code is not in effect." Again, this exclusion merely sets forth a circumstance not covered and is not relevant to defining *who* is an "insured" for purposes of MCL 500.3114(4). And, in any case, there is no requirement that an owner's PIP claim be successful for purposes of MCL 500.3114(4).

In summary, Westfield was the insurer of Vond, who was the owner and operator of the vehicle occupied by Sours when he sustained injuries in a motor vehicle accident. Thus, for purposes of MCL 500.3114(4), Westfield is higher in priority than Titan with respect to the payment of Sours' personal protection insurance benefits. Accordingly, the trial court's grant of summary disposition in favor of Westfield is reversed and this matter is remanded for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter