

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

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WYVONNE SPENCER,

Plaintiff-Appellee,

v

GEICO INDEMNITY COMPANY,

Defendant-Appellant,

and

HARTFORD ACCIDENT AND INDEMNITY  
COMPANY,

Defendant-Appellee.

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UNPUBLISHED

December 19, 2013

No. 312044

Wayne Circuit Court

LC No. 11-003037-NF

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

PER CURIAM.

In this “priority” case between two no-fault insurers, defendant Geico Indemnity Company (Geico), appeals the trial court’s order that granted summary disposition to codefendant, Hartford Accident and Indemnity Company (Hartford). For the reasons stated below, we affirm.

Geico argues that the trial court: (1) erroneously interpreted an exclusionary clause in Geico’s insurance policy, and (2) erred when it indicated that its exclusionary clause could not be enforced because it conflicts with Michigan’s no-fault act. Although we agree that the trial court did not correctly interpret the meaning of the exclusionary clause, we affirm the grant of summary disposition because the exclusionary clause conflicts with the no-fault act.

**I. FACTS**

While driving her husband’s Ford Ranger, plaintiff Wyvonne Spencer was in an accident and suffered severe injuries. Hartford insured the Ranger through a no-fault, automobile insurance policy that included only plaintiff’s husband as a “named insured.” Plaintiff also held a no-fault insurance policy issued by Geico, which listed both she and her husband as the “named insured,” but the Geico policy did not cover the Ranger.

As such, the heart of this case is a priority dispute between two no-fault insurers—namely, where one insurer covers the person involved in an accident (Geico), and another covers the vehicle (Hartford), and each claims that the other must pay for plaintiff’s PIP benefits. See, eg, *Farmers Ins Exchange v AAA of Michigan*, 256 Mich App 691; 671 NW2d 89 (2003). The priority order in which insurance companies are required to pay benefits to their policy holders is governed by MCL 500.3114(1). Before analyzing the priority dispute, however, we must first examine Geico’s insurance policy, which Geico claims excludes plaintiff’s accident from its coverage.

## II. ANALYSIS

### A. THE EXCLUSIONARY CLAUSE<sup>1</sup>

“Insurance policies are contracts and, in the absence of an applicable statute, are ‘subject to the same contract construction principles that apply to any other species of contract.’” *Titan Ins Co*, 491 Mich at 554, quoting *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Terms of a policy are to be given their “ordinary and plain meaning if such would be apparent to a reader of the instrument.” *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003). “[T]echnical, constrained constructions should be avoided.” *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). “Ambiguities in the policy are construed against the insurer, who is the drafter of the contract.” *Id.*

The exclusionary clause at issue states: “[t]here is no coverage for bodily injury to you while occupying or while as a pedestrian through being struck by any motor vehicle owned by or registered to you which is not an insured auto.” The use of the word “while” twice in the provision acts as a signal, starting two separate clauses, separated by the word “or.” A plain reading of the provision reveals two situations in which coverage is excluded: (1) “[t]here is no coverage for bodily injury to you while occupying . . . any motor vehicle owned by or registered to you which is not an insured auto”; and (2) “[t]here is no coverage for bodily injury to you . . . while as a pedestrian through being struck by any motor vehicle owned by or registered to you which is not an insured auto.” In other words, the exclusionary clause informs<sup>2</sup> Geico customers that if Geico does not insure the vehicle involved in an accident—the “insured auto”—there is no coverage under the policy.

Therefore, Geico is correct that, by its stated terms, the insurance policy did not cover plaintiff’s accident, because the vehicle involved in the accident was not insured by Geico.

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<sup>1</sup> A trial court’s decision on a motion for summary disposition is reviewed de novo. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). “The proper interpretation of a contract is also a question of law that this Court reviews de novo.” *Id.*

<sup>2</sup> Admittedly, the exclusionary language is not a model of clarity.

However, though the exclusionary clause appears to negate coverage, it is nonetheless invalid because the clause violates the no-fault act and cannot be enforced.<sup>3</sup>

## B. CONFLICT WITH THE NO-FAULT ACT

“Insurance policy provisions that conflict with statutes are invalid . . . .” *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 434; 773 NW2d 29 (2009). Though the trial court was somewhat unclear, it indicated that Geico’s exclusionary clause conflicted with MCL 500.3114(1), the section of the no-fault act that governs the priority order in which insurance companies are required to pay benefits to their policy holders.<sup>4</sup> Geico argues that this interpretation is incorrect, as the exclusionary clause does not actually conflict with the statute.

“Under the no-fault automobile insurance act, MCL 500.3101 *et seq.*, insurance companies are required to provide first-party insurance benefits, referred to as personal protection insurance (PIP) benefits for certain expenses and losses. MCL 500.3107; MCL 500.3108. PIP benefits are payable for four general categories of expenses and losses: survivor’s loss, allowable expenses, work loss, and replacement services.” *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). MCL 500.3114(1) provides, in relevant part:

Except as provided in subsections (2), (3), and (5),<sup>5</sup> a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy,<sup>6</sup> the person’s spouse, and a relative of either

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<sup>3</sup> The Court of Appeals “will not reverse a trial court’s order if it attained the correct result, albeit for the wrong reason.” *Spohn v Van Dyke Public Schools*, 296 Mich App 470, 479; 822 NW2d 239 (2012).

<sup>4</sup> It is unclear if the trial court held on this matter. “Generally, an issue is not properly preserved if it is not raised before, addressed by, or decided by the lower court or administrative tribunal.” *General Motors Corp v Dep’t of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010). However, “a party ‘should not be punished for the omission of the trial court.’” *Klooster v City of Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011) (quoting *Peterman v Dep’t of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994)). “This Court may review an unpreserved issue if it is an issue of law for which all the relevant facts are available.” *Vushaj v Farm Bureau General Ins Co of Michigan*, 284 Mich App 513, 521; 773 NW2d 758 (2009). Because the relevant facts necessary to decide this issue are available, this Court will decide the issue. Again, a trial court’s decision on a motion for summary disposition is reviewed de novo. *Titan Ins Co*, 491 Mich at 553.

<sup>5</sup> None of these subsections are relevant to this case. MCL 500.3114(2) concerns accidents involving vehicles in the business of transporting passengers, such as buses and taxicabs. MCL 500.3114(3) concerns accidents involving employees covered by their employer’s policy. MCL 500.3114(5) concerns accidents involving motorcycles.

<sup>6</sup> “[T]he phrase ‘the person named in the policy,’ as it is used in this section, is synonymous with the term ‘the named insured.’” *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 264; 548 NW2d 698 (1996).

domiciled in the same household, if the injury arises from a motor vehicle accident. . . . When personal protection insurance benefits . . . are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer. [Footnotes added.]

“[I]t is the policy of the no-fault act that persons, not motor vehicles, are insured against loss.” *Lee v Detroit Auto Inter-Ins Exch*, 412 Mich 505, 509; 315 NW2d 413 (1982); see also *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 255; 819 NW2d 68 (2012) (“PIP coverage protects the person, not the motor vehicle” (quotation and citation omitted)). As stated by our Supreme Court:

[T]he Legislature, in its broader purpose, intended to provide benefits whenever, as a general proposition, an insured is injured in a motor vehicle accident, whether or not a registered or covered motor vehicle is involved; and in its narrower purpose intended that an injured person's personal insurer stand primarily liable for such benefits whether or not its policy covers the motor vehicle involved and even if the involved vehicle is covered by a policy issued by another no-fault insurer. . . . [T]he personal insurer of an injured claimant may stand liable for benefits despite the fact that it has written no coverage respecting any vehicle involved in the accident and indeed that no vehicle involved in the accident has any coverage whatever. [*Lee*, 412 Mich at 515–516.]

The exclusionary clause in Geico's insurance policy denies PIP coverage to the named insured if the named insured occupies a vehicle that is not insured by Geico. By its terms, Geico's policy covers and follows the vehicle—not the policy holder. This framework violates the no-fault act, which intends that “an injured *person's* personal insurer stand primarily liable for [PIP] benefits *whether or not its policy covers the motor vehicle involved and even if the involved vehicle is covered by a policy issued by another no-fault insurer.*” *Id.* at 515 (emphasis added). Viewed from the policy holder's perspective, MCL 500.3114(1) requires the policy holder to seek compensation from his personal policy, regardless of whether that policy insures the vehicle involved in the accident. See *Lee*, 412 Mich at 515; *Corwin*, 296 Mich App at 255. Stated simply, “a motor-vehicle insurer cannot avoid or shift its statutory primary responsibility for PIP benefits.” *Corwin*, 296 Mich App at 247. If enforced, Geico's exclusionary language would do exactly that.

Nonetheless, Geico asserts that its exclusionary clause is permissible under the financial responsibility act, which states that “[t]he requirements for a motor vehicle liability policy may be fulfilled by the policies of 1 or more insurance carriers which policies together meet such requirements.” MCL 257.520(j). Yet Geico's argument necessitates the combination of coverage as “a named insured” under one policy, and then supplementing that coverage as a “family member” under another policy—a situation specifically addressed by the no-fault act itself. And it is the no-fault act—not the financial responsibility act—that controls. *Citizens Ins Co of America v Federated Mut Ins Co*, 448 Mich 225, 232; 531 NW2d 138 (1995) (“[t]he no-fault act, as opposed to the financial responsibility act, is the most recent expression of this state's public policy concerning motor vehicle liability insurance. Therefore, while [the]

insurance policy might well be reconciled with the financial responsibility act, its failure to comply with the no-fault act nevertheless renders it violative of public policy”). MCL 500.3114(1) dictates that in such instances the injured *person’s* own insurer—here, Geico—is solely liable. See *Lee*, 412 Mich at 515–516.<sup>7</sup>

Accordingly, the trial court correctly granted summary judgment in favor of Hartford, because only Geico is liable for paying plaintiff’s PIP benefits under the no-fault act.

Affirmed.

/s/ Patrick M. Meter  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad

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<sup>7</sup> Geico asserts that an insurer may make exclusions to the PIP benefits required by the no-fault act, relying on *Bronson Methodist Hosp v Michigan Assigned Claims Facility*, 298 Mich App 192; 826 NW2d 197 (2012). But that case is not apposite. The exclusion at issue in *Bronson Methodist* was expressly permitted by MCL 500.3009(2). *Id.* No such statutory authority exists for the exclusion Geico seeks to enforce. As noted, the exclusion at issue here conflicts with MCL 500.3114(1) and therefore is invalid. *Corwin*, 296 Mich App at 260–261.