This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0818

Gail Ann Frauendorfer,
Appellant,

vs.

Meridian Security Insurance Company,
Respondent.

Filed April 10, 2017
Reversed and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CV-15-20388

Matthew J. Barber, James S. Ballentine, Peter W. Riley, Schwebel, Goetz & Sieben, P.A., Minneapolis, Minnesota (for appellant)

Brian A. Meeker, Law Office of Brian A. Meeker, Minneapolis, Minnesota (for respondent Meridian)

Beth A. Jenson Prouty, Bassford Remele, P.A., Minneapolis, Minnesota (for amicus curiae Property Casualty Insurance)

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

ROSS, Judge

A car driven by a negligent, underinsured motorist struck a motorcycle, injuring motorcycle passenger Gail Frauendorfer and precipitating this insurance-coverage dispute. Frauendorfer filed a claim with her insurer, Meridian Security Insurance Company. Meridian denied the claim and Frauendorfer sued. The district court granted summary judgment to Meridian, accepting Meridian's argument that its policy providing Frauendorfer underinsured-motorist coverage excludes coverage for injuries suffered by an insured who was occupying an owned-but-not-covered "motor vehicle" and that a motorcycle is a "motor vehicle." We hold that, although in ordinary usage a motorcycle is a motor vehicle, the insurance policy expressly excludes motorcycles from its definition of "motor vehicle." We therefore reverse summary judgment and remand the case to the district court for further proceedings.

FACTS

Gail Frauendorfer was a passenger on a motorcycle struck by a car being driven by a negligent, insured motorist in September 2013. Frauendorfer's injuries exceeded the motorist's liability coverage. Frauendorfer co-owned the motorcycle with her husband, who insured it under a policy issued by Progressive Preferred Insurance Company. But the Progressive policy did not include optional underinsured-motorist (UIM) coverage. Frauendorfer insured a different vehicle under a policy issued by Meridian Security Insurance Company. That Meridian policy is the subject of this dispute.

Frauendorfer settled her liability claim against the motorist and then filed a claim with Meridian seeking UIM benefits. Meridian denied the claim. Frauendorfer sued Meridian to obtain a declaration of UIM coverage, and Meridian defended in part by asserting that Frauendorfer's policy has a provision excluding UIM coverage for injuries she sustains while she occupies a "motor vehicle" owned by her but not covered by her policy. Frauendorfer owned the motorcycle, she was injured while occupying it, and the motorcycle is not a covered vehicle under her policy.

Whether Frauendorfer's motorcycle is a "motor vehicle" under that exclusion clause, therefore, became the central issue in the parties' competing motions for summary judgment (and is now the central issue in this appeal). The key policy language answering that question is in its following provisions:

> We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" or "underinsured motor vehicle" because of "bodily injury":
>
> 1. Sustained by an "insured"; and
> 2. Caused by an accident.
>
> . . . .
>
> We do not provide coverage . . . for "bodily injury" sustained by any insured."
>
> 1. While "occupying" any motor vehicle owned by that "insured" which is not insured for this coverage. This includes a trailer of any type used with that vehicle.

The policy's "Personal Injury Protection" (PIP) endorsement includes the following language defining what is (and what is not) a "motor vehicle":

> The Definitions Section is amended as follows:
>
> A. [Replacements of several definitions.]

B. The following definition is added:

> "Motor vehicle" means every vehicle which is [required to be registered, self-propelled, and intended for use on roadways to transport people or property.]
> . . .
> However, "motor vehicle" does not include:
> a. A motorcycle; or
> b. Any vehicle with fewer than four wheels.

The district court granted Meridian's motion for summary judgment and denied Frauendorfer's motion. The district court qualified its decision, observing that it was neither certain nor comfortable with it. But it held that a motorcycle is a motor vehicle under the policy.

Frauendorfer appeals.

D E C I S I O N

Frauendorfer challenges the district court's entry of summary judgment for Meridian. On appeal from summary judgment where, as here, there are no disputed material facts, we review the judgment de novo. *Kelly v. State Farm Mut. Auto Ins. Co.*, 666 N.W.2d 328, 330 (Minn. 2003). Frauendorfer argues that the district court misapplied the policy's owned-but-not-covered exclusion because she did not occupy a "motor vehicle" at the time of the collision because a motorcycle is not a "motor vehicle" under the exclusion. The argument prevails.

The district court implicitly adopted a common-meaning definition of "motor vehicle" when it held that a motorcycle is one under the policy. Meridian urges us to take the same approach. We interpret an insurance policy de novo, as a matter of law. *Cedar Bluff Townhome Condominium Ass'n, Inc. v. Am. Family Mut. Ins. Co.*, 857 N.W.2d 290,

293 (Minn. 2014). For the following reasons, we believe the owned-but-not-covered exclusion does not apply because Frauendorfer did not occupy a "motor vehicle" as defined by the insurance policy.

Meridian recognizes that the policy's definition of "motor vehicle" in the PIP endorsement excludes motorcycles, but it contends that the restrictive definition applies *only* to the PIP endorsement and not to any other provision in the policy, like the owned-but-not-covered UIM exclusion. It is true that the disputed narrow definition of "motor vehicle" sits in the PIP endorsement. But the operative words and the policy's organization belie Meridian's argument that the PIP endorsement's "motor vehicle" definition applies only to the endorsement.

By its express terms, definitions in the PIP endorsement amend definitions that apply comprehensively in the policy. The endorsement is prefaced in bold lettering: "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY." The disputed definition then follows under the statement, "The Definitions Section is amended as follows . . . ." The word "Definitions" in that statement appears in bold print, which refers the reader to the separate section of the policy. The "Definitions" section is not in the endorsement; instead, it constitutes the first section of the policy. And the definitions in *that* section undisputedly apply to the entire policy. The PIP language goes on to say, "The following definition *is added*: 'Motor vehicle' means . . . ." (Emphasis added.) In other words, the definition of "motor vehicle" in the PIP endorsement "is added" to the generally applicable "Definitions section" of the policy to "amend" that section. This language and its placement in the policy lead to only one conclusion, which is that the

disputed motor-vehicle definition does not define "motor vehicle" *only* for the PIP endorsement; rather, it defines "motor vehicle" generally throughout the policy.

This conclusion that the endorsement's definition of "motor vehicle" applies throughout the policy is clear from the text. And it is buttressed by the fact that Meridian demonstrates that, when it wants a definition instead to reach only the endorsement where the definition sits, it does so expressly. In the very next paragraph of the same endorsement, for example, unlike the generalizing language directing the reader to widely apply the endorsement's definition of "motor vehicle," the definitions of the terms "Insured" and "Named insured" follow the plainly restrictive introduction, "As used in *this* endorsement . . . ." (Emphasis added.) If Meridian intended these two definitional paragraphs to be similarly restrictively "used in this endorsement" only, we presume it would have introduced both paragraphs with similarly restrictive language. It did not.

Meridian insists that reasonable people understand that motorcycles are motor vehicles. Meridian is undoubtedly correct. The term "motor vehicle" carries a common understanding in everyday vernacular and motorcycles are of course included. After all, a motorcycle is, quite literally, a person-transporting "vehicle" that is propelled by a "motor." But in contract law, even if it looks like a duck and quacks like a duck, it is not a duck if the parties sign an agreement that expressly says it is not. *See Polaris Industries, L.P. v. Continental Ins. Co.*, 539 N.W.2d 619, 622 (Minn. App. 1995) ("In interpreting terms in an insurance policy, we apply ordinary and usual meanings *unless the parties use some other meaning in the contract*.") (emphasis added), *review denied* (Minn. Jan. 25, 1996). And here, Meridian's contract expressly says that a motorcycle is not a motor vehicle.

"Although we begin with the plain and ordinary meaning of the terms, the terms of a contract must be read in the context of the entire contract." *Quade v. Secura Ins.*, 814 N.W.2d 703, 705 (Minn. 2012) (quotation omitted). Given what we have already said about the unambiguous contract language defining "motor vehicle," we reject Meridian's everyday-usage definition as an unreasonable construction in the context of the contract.

Meridian and supporting amicus curiae Property Casualty Insurance argue further for a common-meaning reading based on punctuation. They contend that a policy term takes on a policy-defined meaning only when quotation marks frame the term, and that when the same term is used without quotation marks, it must take on its common meaning. The same term, they imply, will have a different (even contradictory) meaning when it sits in different parts of the same insurance contract depending on whether or not it is offset by quotation marks. On this theory, the amicus curiae urges that "motor vehicle" should carry a common meaning everywhere in the policy (so as to include motorcycles) except where it appears within quotation marks (when it excludes motorcycles). It concludes that, because the term appears within quotation marks only within the PIP endorsement but not in the UIM provision, the term used in the UIM provision must carry its ordinary meaning. The amicus curiae cites other jurisdictions that have accepted this quotation-mark theory.

Frauendorfer correctly points out that Meridian did not raise this argument in the district court. "We generally will not consider arguments raised for the first time on appeal and we generally will not decide issues raised solely by an amicus." *Hegseth v. American Family Mut. Ins. Grp.*, 877 N.W.2d 191, 196 n.4 (Minn. 2016) (citations omitted). Whether or not the argument has merit, the district court had no opportunity to address it and

Frauendorfer was limited to respond to it only in her reply brief. We therefore will not address it here.

We add that, accepting Meridian's everyday-usage definition as a reasonable one would, at most, establish a second reasonable definition—an ambiguity. We would then construe the ambiguity against Meridian, the policy drafter, and decide the question the same way, favoring Frauendorfer, the insured. *See Am. Family Ins. Co. v. Walser*, 628 N.W.2d 605, 609 (Minn. 2001) (construing ambiguity regarding coverage in favor of the insured); *see also Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 894 (Minn. 2006) (restating that courts construe insurance exclusions "narrowly and strictly" against the insurer). That is, valid or not, Meridian's argument that an everyday-usage definition is reasonable could not prevent reversal in the face of the contract's reasonable contrary language.

In sum, Meridian drafted the policy, expressly defined "motor vehicle" to exclude motorcycles, and expressly incorporated its restrictive "motor vehicle" definition into its generally applicable definitions section. Meridian's policy prevents our applying the everyday understanding of a motorcycle as a motor vehicle. And it requires us to reverse summary judgment and remand on this ground.

We briefly consider the No-Fault Act's use of the term and the parties' related argument over it. The parties argue about whether we should apply the No-Fault Act to require UIM coverage independent of the policy language. The argument does not control our decision but merits a short discussion. The No-Fault Act generally requires uninsured- and underinsured-motorist coverage to compensate for injuries caused by those motorists

involving "motor vehicles." *See* Minn. Stat. § 65B.49, subd. 3a(1) (2016). The act defines a "motor vehicle" as "every vehicle, *other than a motorcycle* or other vehicle with fewer than four wheels." Minn. Stat. § 65B.43, subd. 2 (emphasis added). And the act provides, "The uninsured and underinsured motorist coverages required by this subdivision do not apply to bodily injury of the insured while occupying a motorcycle owned by the insured." Minn. Stat. § 658.49, subd. 3a(8). Portions of the Meridian policy seem to track the language of the No-Fault Act in a way that strongly suggests that Meridian intended to provide only the UIM coverage that the statute mandates. If this is so, Meridian did not intend its policy to cover Frauendorfer for injuries she incurred when she was struck by an underinsured motorist while she was riding on her motorcycle. But an insurance provider's liability is governed by the contract "as long as coverage required by law is not omitted and policy provisions do not contravene applicable statutes." *Am. Nat'l Prop. & Cas. Co. v. Loren*, 597 N.W.2d 291, 292 (Minn. 1999) (quotation omitted). Nothing in the act prohibited Meridian from extending coverage beyond the act's requirements. And as Meridian itself argues in its effort to prevent us from applying the act to require coverage, our decision must follow the policy, not the statute.

Frauendorfer alternatively maintains that the district court erroneously ruled that she must have occupied a "covered auto" to be covered under the UIM policy. We do not address the argument except to observe that Frauendorfer seems to misunderstand the district court's discussion. The district court's references to "covered auto[s]" were made first to establish that Frauendorfer did not have a UIM policy that applied *specifically* to her motorcycle, and second, having implicitly determined that a motorcycle is a "motor

vehicle" for purposes of the UIM exclusion, to clarify that Frauendorfer's motorcycle was an "uncovered auto" subject to the exclusion. If the district court had truly based its decision on whether the motorcycle was a "covered auto," its analysis of what constitutes a "motor vehicle" would have been unnecessary because the motorcycle was not a vehicle listed on the insurance policy. The actual question the district court decided was whether the motorcycle is an owned-but-not-covered "motor vehicle" under the UIM exclusion. We see no error in the district court's reasoning except as we have addressed the definition of "motor vehicle."

Reversed and remanded.