STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellant,

v

JON P. HENDRY, EVELYN J. HENDRY, EVELYN J. HENDRY on behalf of EMILY J. HENDRY, a Minor, SARA M. HENDRY, a Minor, JOSHUA P. HENDRY, a Minor, and JON P. HENDRY, a Minor, NATHAN L. BORAVICH, and NICHOLAS T. BORAVICH,

Defendants-Appellees,

and

WILLIAM NEIL SPAULDING, MISTY LEE TRIPP, and DANIELLE LOUISE PEACOCK,

Defendants.

UNPUBLISHED
July 27, 2001

No. 226002
Alger Circuit Court
LC No. 98-003219-CZ

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

In this declaratory action, plaintiff appeals as of right from the trial court's decision denying plaintiff's request for a declaration of no insurance coverage. We affirm.

We review a declaratory relief decision for an abuse of discretion, and a trial court's factual findings following a civil bench trial for clear error. *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993); MCR 2.613(C); *McFadden v Allstate Ins Co*, 155 Mich App 266, 270; 399 NW2d 58 (1986). "'The terms of an insurance policy should be construed in the plain, ordinary and popular sense of the language used, as understood by an ordinary person.'" *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991), quoting 14 Callaghan, Michigan Civil Jurisprudence, Insurance, § 149, p 134. Further, reviewing courts must interpret the terms of an insurance contract in accordance with the commonly used

meanings of those terms, and the plain meaning of a word or phrase should not be perverted or given an alien construction. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999).

In the present case, plaintiff sought to enforce the exclusion provision in its automobile insurance policy precluding coverage for an insured driving a non-owned automobile that is "available" to the insured "for regular use." We agree that the Bronco was generally "available" to Nathan Boravich. However, for the policy exclusion to apply, the Bronco must have been "available" for "regular use." "Regular" in this context means "'usual; normal; customary'" and "'consistently or habitually.'" *State Farm Mut Automobile Ins Co v Burbank*, 190 Mich App 93, 97; 475 NW2d 399 (1991), quoting The Random House College Dictionary, rev ed, p 1111. Thus, Nathan's use must have been "normal" and "consistent" or frequent. Comparing the facts in *Burbank*, which led to our declaration of coverage in that case, leads us to conclude in the present case that the Bronco was not available for Nathan's frequent use. Nathan did not live consistently at his father's residence, where the Bronco was stored. Further, the Bronco was uninsured, unlicensed, and unregistered. Finally, the Bronco had been in exceedingly poor repair for many months before the incident in question. The vehicle lacked a front grill and a tailgate, one tire was flat, the brakes were not in good working order, and the battery was dead. In order to start the vehicle on the day in question, Nathan had to remove the dead battery and replace it with the battery from another vehicle. In essence, the Bronco was the quintessential "junker" stored on rural property. We conclude from the above facts that the Bronco could not have been available for Nathan's "normal" use – that is, as automobiles are typically or customarily used. See, e.g., *Volpe v Prudential Property & Casualty Ins Co*, 802 F2d 1, 3-4 (CA 1, 1986); *Jenkins v Aetna Casualty & Surety Co*, 324 NC 394, 401-402; 378 SE2d 773 (1989); *MFA Mut Ins Co v Home Mut Ins Co*, 629 SW2d 447, 451-452 (Mo App WD 1981); *Hollander v Nationwide Mut Ins Co*, 60 AD2d 380, 384; 401 NYS2d 336 (1978).

Therefore, the trial court's findings of fact were not clearly erroneous and the trial court did not abuse its discretion in entering judgment for defendants.

Affirmed.

/s/ Michael R Smolenski
/s/ William C. Whitbeck