STATE OF MICHIGAN

COURT OF APPEALS

VERA PYLES and JOHN PYLES,

Plaintiffs-Appellants,

v

MIC GENERAL INSURANCE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
February 21, 2003

No. 237712
Saginaw Circuit Court
LC No. 00-036019-NF

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for reconsideration and motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

A vehicle driven by non-party Melissa Ann Walker collided with a vehicle driven by Vera Pyles. Vera Pyles and Walker's passengers, her husband Robert Walker and their daughter Terri Walker, suffered injuries. Walker's vehicle was insured by Titan Insurance Company. Titan's policy provided liability coverage with limits of $50,000 per person and $100,000 per occurrence. Titan paid $50,000 to Terri Walker. After this payment, $50,000 remained to be divided between Vera Pyles and Robert Walker, both of whom filed suit against Walker.

Plaintiffs' vehicle was insured by defendant. The policy included underinsured motorist coverage with limits of $50,000 per person and $100,000 per occurrence. Plaintiffs' policy defined an "underinsured motor vehicle" as a vehicle "to which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this coverage." Plaintiffs filed suit seeking an order declaring that they were entitled to underinsured motorist benefits from defendant. They contended that because only $50,000 of coverage remained from the Titan policy to be divided between Vera Pyles and Robert Walker, the Titan policy provided less coverage than did defendant's underinsured motorist coverage, which provided a benefit of $50,000 per person.

The claims filed by Vera Pyles and Robert Walker were submitted to case evaluation. Vera Pyles and Robert Walker accepted awards of $32,500 and $17,500, respectively.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that the language of its policy was clear and unambiguous, and that because the Titan policy limits were identical to those provided by its underinsured motorist coverage, the Walker vehicle was not an underinsured vehicle. In response, plaintiffs argued that because the Titan policy was subject to claims from several persons, it provided coverage that was less than the $50,000 per person limit provided by defendant's underinsured motorist coverage.

Plaintiffs relied on *Wilkie v Auto-Owners Ins Co*, 245 Mich App 521; 629 NW2d 86 (2001). In that case, Paul Wilkie was killed and Janna Frank was injured when the vehicle they occupied was struck by a vehicle driven by Stephen Ward. *Id.* at 535. Ward's vehicle was insured under a policy with a single liability limit of $50,000. *Id.* Wilkie's estate and Frank each received $25,000 from Ward's policy. *Id.* Wilkie's vehicle was insured by Auto-Owners under a policy that provided underinsured motorist coverage with policy limits of $100,000 per person and $300,000 per occurrence. *Id.* Wilkie's estate and Frank each sought $75,000 from Auto-Owners. *Id.* Auto-Owners asserted that it owed Wilkie's estate and Frank $50,000 each. *Id.* The trial court granted the plaintiffs' motion for summary disposition, finding that only the amount actually received by each plaintiff and not the entire policy limit should be set off against the amount available to each plaintiff under Auto-Owners' policy. *Id.* at 523-524.

This Court affirmed the trial court's decision. *Id.* at 534. This Court concluded that Auto-Owners' policy was ambiguous in that it could be interpreted to require either that the $50,000 limit of Ward's policy be set off against each plaintiff's claim, or to require that only the amount actually received by each plaintiff be set off against each plaintiff's claim; therefore, the policy must be construed against the insurer. *Id.* at 526-527. In addition, this Court held that an insured reading the underinsured provisions of Auto-Owners' policy could reasonably expect that the limits of underinsured motorist coverage would be reduced only by the amount actually received from the underinsured motorist. *Id*. at 527.

Here, plaintiffs asserted that the language of defendant's policy was ambiguous and created the reasonable expectation that an insured would be entitled to coverage totaling $50,000 per person, regardless of the number of persons making claims. The trial court denied defendant's motion for summary disposition finding that *Wilkie*, *supra*, was factually distinguishable but that its holding, that an insured could reasonably expect that the policy limits of his underinsured motorist coverage would be available whether paid by the underinsured motorist's policy or by his own policy, was persuasive.

Defendant moved for reconsideration, arguing that the trial court erred by relying on *Wilkie, supra*. Defendant asserted that unlike the situation faced by the plaintiffs in *Wilkie*, *supra*, the Titan policy fully covered the damages of $32,500 claimed by Vera Pyles and $17,500 claimed by Robert Walker. Defendant also asserted that the trial court's original decision did not address the issue of whether Walker's vehicle was an "underinsured motor vehicle" as that term was defined by defendant's policy.

The trial court granted defendant's motion for reconsideration and granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court found that it committed palpable error by relying on *Wilkie, supra*, and found that plaintiffs were not entitled to underinsured motorist coverage based on the clear and unambiguous language of defendant's

policy. The trial court found that the damages claimed by Vera Pyles and Robert Walker were within Titan's policy limits.

II. Standard of Review and Applicable Law

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Nikkel*, *supra*, 566-567. Ambiguities are to be construed against the insurer. *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

III. Analysis

Plaintiffs argue that the trial court abused its discretion by granting defendant's motion for reconsideration and erred by granting defendant's motion for summary disposition. We disagree and affirm. Underinsured motorist coverage is not mandated by statute. The scope and limitations of such coverage is governed by the language of the policy itself and by contract law. *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 10-11; 512 NW2d 324 (1993). The Titan policy limits were identical to the limits of the underinsured motorist coverage in defendant's policy. Walker's vehicle did not meet defendant's policy of an "underinsured motor vehicle." That language is clear and unambiguous, and thus fairly admits of but one interpretation. *Nikkel*, *supra* at 566.

Plaintiffs' argument that because only $50,000 was available under Titan's policy to satisfy the claims of both Vera Pyles and Robert Walker Titan policy's limits were less than defendant's policy's limit of $50,000 per person is without merit. Defendant's policy specifically refers to the "limit of liability" for underinsured motorist coverage, and not to the amount of insurance proceeds actually available to injured insureds. No language guaranteed that $50,000 would be available to each insured in the event that more than one person was injured in the same occurrence.

Plaintiffs' reliance on *Wilkie*, *supra*, is misplaced. In that case, the policies at issue did not have identical limits of liability, and the trial court was not required to interpret language similar to that at issue in the instant case. The *Wilkie* Court also found that an insured under the underinsured motorist provisions of the defendant's policy could reasonably expect that the limits of coverage would be available, less any amount received from the underinsured motorist's policy. *Wilkie*, *supra* at 527.

Here, the plain and unambiguous language of defendant's policy's underinsured motorist provisions stated that coverage was not available unless the limits of the underinsured motorist's liability coverage were less than the limits of the underinsured motorist coverage. Plaintiffs were not entitled to underinsured motorist coverage. The trial court was required to enforce the policy as written, and could not create an ambiguity where none existed in order to apply the reasonable expectations rule. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 338; 632 NW2d 525 (2001).

Finally, we reject plaintiffs' argument that summary disposition was improperly granted because questions of fact existed as to the extent of the damages claimed by Vera Pyles and Robert Walker. Vera Pyles and Robert Walker accepted case evaluation awards of $32,500 and $17,500 respectively. No further determination of damages was required.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Helene N. White
/s/ Joel P. Hoekstra