S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

MICHELLE MISTRETTA,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
March 4, 2004

No. 242500
Wayne Circuit Court
LC No. 01-119359-CK

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying its motion for summary disposition, granting plaintiff's motion for summary disposition, and submitting the matter to arbitration. We affirm.

Plaintiff was injured when the vehicle in which she was riding was struck by an uninsured vehicle. The vehicle in which plaintiff was riding was furnished for her mother's use by the Tupperware Company, and was titled in the name of a trust. Plaintiff received uninsured motorist benefits from Travelers Property Casualty, which insured the vehicle.

Defendant insured vehicles owned by plaintiff's family, but did not insure the vehicle in which plaintiff was riding when she was injured. Plaintiff claimed uninsured motorist benefits under defendant's policy. Defendant denied plaintiff's claim on the ground that its policy's "other owned vehicle" exclusion precluded coverage. Under that exclusion, plaintiff was not entitled to uninsured motorist benefits if at the time of her accident she was occupying a vehicle that was owned by a member of her household but was not insured by defendant.

Plaintiff filed a declaratory action seeking a determination that she was entitled to uninsured motorist benefits. She asserted that the exclusion on which defendant relied was inapplicable because the vehicle in which she was riding when she was injured was not owned by a member of her household. Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argued that the statutory definition of "owner" in MCL 500.3101(2)(g) was irrelevant in this case because uninsured motorist benefits were not part of the no-fault act, and noted that the definition of "other car" in defendant's policy distinguished between a vehicle that was literally owned by the insured and one that was leased or simply available for use by the insured. Plaintiff asserted that because defendant's policy distinguished between vehicles that were literally owned by the insured and others that were leased and/or available for use by the

insured, the undefined term "owned" must be construed in her favor. Defendant acknowledged that the term "owned" was not defined in its policy, but asserted that because plaintiff's mother had regular use of the vehicle in which plaintiff was riding when she was injured, plaintiff's mother was an "owner" of the vehicle as that term is defined by the no-fault act and the motor vehicle code. MCL 500.3101(2)(g); MCL 257.37. Defendant argued that the definition of "other car" was irrelevant because the exclusion at issue did not refer to an "other car." The trial court denied defendant's motion, granted plaintiff's motion, and ordered the matter submitted to arbitration.

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).

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 be reasonably understood in different ways. *Nikkel*, *supra* at 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). An exclusionary clause is strictly construed against the insurer. *Zurich-American Ins Co v Amerisure Ins Co*, 215 Mich App 526, 533; 547 NW2d 52 (1996).

Uninsured motorist coverage is not required by the no-fault act; therefore, the scope of such coverage is governed by the language of the policy itself and by contract law. *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 470; 556 NW2d 517 (1996). The term "owned" is not defined in defendant's policy. Undefined policy terms are accorded their commonly used meanings. *Twichel v MIC General Ins Corp*, 251 Mich App 476, 488; 650 NW2d 428 (2002). The commonly used meaning of the "owner" of a vehicle is the person(s) in whose name(s) the vehicle is titled and registered, in this case the trust, not plaintiff's mother.

In both the no-fault act and the motor vehicle act the definition of the "owner" of a motor vehicle includes both the person who holds legal title to a vehicle and a person who has the use of a vehicle, under a lease or otherwise, for a period exceeding thirty days. MCL 500.3101(2)(g); MCL 267.37. However, the policy does not reference either the no-fault act or the motor vehicle code with regard to the definition of an "owned vehicle", when it could easily have done so. Of course, the language of the policy was in the complete control of defendant-insurer. As noted, we construe any ambiguity against the insurer and we strictly construe an exclusionary clause against the insurer. *State Farm, supra* and *Zurich-American, supra.* These legal principles lead us to the conclusion that the trial court correctly granted summary disposition in plaintiff's favor.

Although plaintiff relies extensively on *Twichel, supra*, we conclude that *Twichel* does not undermine the trial court's decision. *Twichel* does not stand for the proposition that when the term "owner" is not defined in an uninsured motorist endorsement, the statutory definitions apply. Rather, *Twichel* held that where the term is undefined in the contract, reference to either dictionary or statutory definitions is reasonable, and therefore the term is ambiguous, and must

be construed against the drafter. In *Twichel*, this Court rejected the insurer's attempt to apply the dictionary definition of "owner" as the only controlling definition where the term was not defined by the insurance contract. The insured argued that the term "owned" as used in the contract was ambiguous at best because while a court might reasonably refer to a dictionary when a term is not defined by the contract, it might also reasonably refer to a statutory definition as well. The Court agreed. The Court's statements regarding the reasonableness of referring to the statutory definition must be read in the context that the insurer was arguing against such an interpretation. The Court did not state that such an interpretation of "owner" was the correct and only reading of the undefined contract term. Application of the *Twichel* Court's final statement - - "To the extent that the policy is ambiguous on what constitutes ownership, that ambiguity must be construed against defendant as the drafter of the policy and in favor of coverage" - - supports the conclusion that where the vehicle in which plaintiff was injured was owned, under the ordinary meaning of that term, by Tupperware, and not plaintiff or her mother, the policy must be construed to provide coverage.

Defendant's policy precludes uninsured motorist coverage if the insured sustains bodily injury while occupying a vehicle owned by the insured or a resident relative unless the vehicle is insured under the policy. Because the definition of the term "owner" in defendant's policy is, at best, ambiguous, the exclusion does not apply.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff
/s/ Helene N. White