STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
April 5, 2005

No. 248723
Mason Circuit Court
LC No. 01-000229-NF

Before: Jansen, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

In this insurance priority dispute, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10) and denying plaintiff's cross-motion for summary disposition. We reverse and remand.

The facts material to this case are not in dispute. Lowell Bailey was injured while traveling as a passenger in a friend's automobile in Canada. Bailey was a named insured on a policy issued by plaintiff, who has paid Bailey's no-fault benefits to date. However, Bailey's name also appears on a policy issued by defendant. Accordingly, plaintiff sought partial reimbursement from defendant, see MCL 500.3115(2), but defendant denied the claim on the ground that the policy in question insured not Bailey personally, but his and another's partnership business, Uncle Punk's Used Cars.

The trial court, after considering the provisions of the policy and certain deposition evidence, determined that the parties did not intend defendant's policy to cover Bailey individually. This appeal followed.

The construction and interpretation of an insurance contract presents a question of law, calling for review de novo. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Where the contract is ambiguous, however, its meaning is a question of fact to be decided by the trier of fact, which is to consider extrinsic evidence. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003). "An insurance contract is ambiguous when its provisions are capable of conflicting interpretations." *Id*. at 463, quoting *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Summary disposition may be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. This Court reviews a trial

court's decision on a motion for summary disposition de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999).

MCL 500.3114(1) states that "a personal protection insurance policy . . . applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." Plaintiff concedes that it is fully liable under the terms of its own contract with Bailey. At issue are the particulars of Bailey's contract with defendant.

The latter lists as the "Named Insured": "L H BAILEY & J L HATHWAY DBA UNCLE PUNKS USED CARS." The declarations continue that "[t]he named insured is an individual unless otherwise stated," and there the designation "[p]artnership" is checked, and the type of business is given as "USED AUTO SALES." All indicated coverage parts are commercial in nature, specifically commercial property, auto, crime, and inland marine coverage. A request for social security or federal employer identification number gives, as "Insured Name," "L H BAILEY & J L HATHWAY." In the endorsement, under the heading "**Who Is An Insured**," the answers to the question include, "You or any 'family member'" (bold in original).

For purposes of MCL 500.3114(1), the phrase "the person named in the policy" is synonymous with the term "named insured." *Cvengros v Farm Bureau Ins*, 216 Mich App 261; 548 NW2d 698 (1996). In *Stoddard v Citizens Ins Co*, 249 Mich App 457, 466; 643 NW2d 265 (2002), this Court held that an individual was a named insured where the policy set forth that individual's name along with the name of the sole proprietorship he operated. Bailey is clearly listed as a named insured, both when listed along with the partnership and when listed without the partnership on the request for social security or federal employer identification.

Although aspects of the policy and the deposition testimony[1] do indeed suggest that the focus was on insuring the vehicles involved in the business partnership, the inclusion of Bailey as "Named Insured" on the contract and as an "Insured Name" on the request for social security or federal employer identification mandates the inclusion of the names of the individual partners, thus, extending coverage to those partners in their individual capacities. As a matter of law, we find that there is no ambiguity that Bailey was a "named insured." See *Henderson, supra* at 353. We hold that Bailey was a named insured and, as a result, he was a "person named in the policy," for purposes of MCL 500.3114(1). See *Cvengros, supra* at 264.

Defendant argues that state law required the naming of the individual partners, along with the partnership itself. This explanation for use of the partners' individual names is not persuasive. Defendant points out that a booklet from the Department of State Bureau of Automotive Regulation, Licensing Section, on how to obtain a license for a car dealership, which

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[1] In this case, defendant's agent testified on deposition that the policy was not intended to include personal injury protection coverage for the partners personally because they had such coverage elsewhere. Additionally, Bailey's son, who obtained the insurance coverage on behalf of the partnership, likewise testified on deposition that he was seeking only a garage policy, and not additional coverage for the partners personally.

instructs the applicant that for surety bonds "the exact business name and address of the dealership must appear on the face of the bond as it appears on the dealer license application form," then later instructs the applicant to "[e]nclose a copy of your fleet insurance certificate," adding, "Your insurance certificate must have the exact business name as listed in item 1." Defendant thus seems to imply that "item 1" demands the name of the partners along with that of the partnership. However, item 1 directs an applicant as follows: "Enter the exact name of the business. The name must match the business name on all documents presented with the application, including the surety bond, the insurance certificate, the assumed name filing, the articles of incorporation, etc." The instruction for the name on the insurance certificate thus incorporates an item focusing on the name of the business, not of its owners. It does not refer to item 9, which instructs the applicant to "[l]ist the full name . . . for all owners, partners, corporate officers, members and directors." As such, this argument lacks merit.

Defendant also contends that coverage does not extend to Bailey because of an exclusion provision. "[C]overage under a policy is lost if any exclusion within the policy applies to an insured's particular claims." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992). The exclusion provision does not exclude or create an ambiguity as to whether Bailey, a named insured, was excluded from receiving personal injury protection benefits. See *Klapp, supra*.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Christopher M. Murray
/s/ Pat M. Donofrio