STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH BURLESON, Personal Representative of the ESTATE OF JAMES GREEN BURLESON, III,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant,

and

HARLEYSVILLE LAKE STATES INSURANCE COMPANY.

Defendant-Appellee.

UNPUBLISHED
November 3, 2005

No. 263288
Wayne Circuit Court
LC No. 04-403774-CK

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant Harleysville Lake States Insurance Company (hereafter "defendant") holding that an exclusion in defendant's insurance policy applied. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent, James Green Burleson, III was killed in an automobile accident on May 15, 2002. This case involves whether defendant insurer is liable for uninsured motorist benefits under decedent's personal auto insurance policy as a result of that fatal accident. At the time of the accident, the decedent was driving a 2002 Burgundy Mercury Marquis that was owned by Burleson, Collinson & Skelly, Inc. (BCS).

BCS owns all the stock of Baker & Collinson, Inc. (B&C), which was the decedent's employer. BCS operates as the holding company and owner of B & C, and owned all the assets used in the course of employment for B&C, including four motor vehicles used by B&C's salespeople. The only source of revenue for BCS was payment from B&C and another wholly owned subsidiary; the revenues from those entities allowed BCS to purchase its assets.

Following the fatal accident, plaintiff requested payment from defendant based on the decedent's personal automobile insurance policy with defendant. Relying on its uninsured motorist coverage policy exclusion, defendant denied payment. The pertinent provision of the insurance policy at issue states as follows:

> III. UNINSURED MOTORISTS COVERAGE
>
> * * *
>
> E. We do not provide Uninsured Motorists coverage while occupying an auto furnished by an "insured" person's employer and operated in the course of that person's employment unless the auto is "your covered auto."

Defendant moved for summary disposition on the basis of this exclusion, arguing that the vehicle driven by the decedent was furnished by his employer with its sole purpose being for the decedent's use during the course of his employment for B&C. Plaintiff, however, argued that the decedent's employer, B&C, could not have furnished the vehicle because the vehicle was owned by BCS, and B&C could not furnish something over which it had no control. The trial court found that the decedent's employer had furnished the vehicle and that because the decedent was operating it in the course of his employment, the exclusion was applicable to preclude coverage.

This Court reviews a trial court's grant of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Royal Property Group, LLC v Prime Ins Syndicate, Inc*, ___ Mich App ___; ___ NW2d ___ (2005), slip op at 4. Summary disposition is proper under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ." *Royal Property Group, supra*, slip op at 4, quoting *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

A trial court's interpretation of an insurance policy is reviewed de novo, and whether contract language is ambiguous is a question of a law that is also reviewed de novo. *Royal Property Group, supra*, slip op at 4. A contract is ambiguous if its words may be reasonably understood in different ways. *Scott v Farmers Ins Exchange*, 266 Mich App 557; 702 NW2d 681 (2005).

"Uninsured motorist benefit clauses are construed without reference to the no-fault act because such insurance is not required under the act." *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 533; 676 NW2d 616 (2004). Insurance policies are enforced according to their terms, and where a term is not defined in the policy it is given its commonly understood, plain and ordinary meaning. *Id.* The Court may refer to dictionary definitions to ascertain the meaning of a particular undefined term. *Morinelli v Provident Life & Accident Ins Co*, 242 MA 255, 262; 617 NW 2d 777 (2000). Courts do not strain to find an ambiguity, but rather "strive to enforce the agreement intended by the parties." *Scott, supra*, 557.

As noted above, the pertinent provision of the insurance policy at issue states that "[w]e do not provide Uninsured Motorists coverage while occupying an auto furnished by an 'insured'

person's employer and operated in the course of that person's employment unless the auto is 'your covered auto.'" The only question before us is whether the vehicle was "furnished by" B&C, the decedent's employer, when it was owned and insured by BCS and not B&C.

The term "furnished" is not defined in the policy and therefore must be given its commonly understood meaning. Random House Webster's College Dictionary (2nd Revised Edition, 2001), defines the word "furnished" to mean "to provide or supply." According to deposition testimony, although the vehicle was owned by BCS, the decedent was provided the vehicle in question for the purpose of driving primarily in his course of employment with B & C. As the decedent's employer, B & C set the terms of employment and thereby established what was acceptable usage of the vehicle. It is noteworthy that all assets used by B&C and its employees were owned by BCS, the parent company and holding company of assets for B&C. Moreover, all BCS revenue was generated by payments from B&C and one other wholly-owned subsidiary, and this revenue enabled BCS to purchase assets, including the vehicles used by B&C employees in the course of their employment. We conclude from these facts that B&C controlled and thus furnished the vehicle in question to the decedent, and we reject plaintiff's contention, that B&C could not have furnished the vehicle when it did not own the vehicle, as a strained interpretation of the policy language.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder