STATE OF MICHIGAN

COURT OF APPEALS

GEORGE A. FERGISON,

Plaintiff-Appellant,

v

STONEBRIDGE LIFE INS COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 1, 2007

No. 271488
Ottawa Circuit Court
LC No. 06-054495-CK

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's grant of summary disposition in defendant's favor. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's wife was killed when she was thrown from a modified golf cart after it collided with another modified cart. The cart in which decedent was a passenger was a gas-powered vehicle that had been modified by the addition of rear seating, headlights and tail lights, a heavy duty suspension, and oversize wheels.

Plaintiff possessed an accidental death and dismemberment insurance policy with defendant. The policy had a three-tier payment provision. At issue is which death benefit amount plaintiff should have received as the beneficiary of the policy. The policy provided for a death benefit of $50,000 if death occurred:

1. in consequence of Occupying a Private Passenger Automobile;

2. by being struck by a Land Motor Vehicle; or

3. while driving a Land Motor Vehicle.

The policy provided for a death benefit of $10,000 if a death occurred as a result of anything other than these three activities or as a passenger traveling by common carrier.

The policy provided the following pertinent definitions:

> PRIVATE PASSENGER AUTOMOBILE means a four wheel automobile which is not licensed to carry passengers for hire and which is of the pleasure, station

> wagon, van, jeep, or truck type with a factory rating load capacity of 2,000 pounds or less. Also included are all self-propelled motor home type vehicles of four wheels or more and recreational vehicles.
>
> LAND MOTOR VEHICLE includes any gasoline, diesel or similarly powered vehicle customarily used for transportation on land and for which the operator is required by law to be licensed. This category includes, but is not limited to, those vehicles considered "Private Passenger Automobiles" by this Certificate. Also included are two-wheeled vehicles (motorcycles, motorscooters) and vehicles with more than four wheels (tractor/trailer rigs, flat bed trucks). Farm equipment and forklifts are specifically excluded.

Defendant determined that the accident did not meet any of the three criteria meriting the $50,000 death benefit, and paid plaintiff $10,000. Plaintiff sued to recover an additional $40,000. Defendant moved for summary disposition. The trial court granted the motion, finding that the golf cart was neither a "private passenger automobile" nor a "land motor vehicle" under the policy.

We review de novo a trial court's decision on a motion for summary disposition. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). Similarly, the proper interpretation of a contract constitutes a question of law subject to de novo review. *Farmers Ins Exchange v Kurzmann*, 257 Mich App 412, 418; 668 NW2d 199 (2003).

We construe the terms of insurance policies in accord with the well-settled principles of contract construction. *Id*. at 417. Insurance companies may define or limit the scope of their coverage under an insurance contract as long as the language leads "to only one reasonable interpretation," and does not contravene public policy or violate applicable statutory regulations. *Id*. at 418. In contrast, when the language in an insurance contract is subject to more than one reasonable interpretation, it is considered ambiguous. *Id*. An ambiguous provision in an insurance contract must be construed against the drafting insurer and in favor of the insured. *Id*. The mere fact that a policy fails to define a particular term does not render it ambiguous. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Rather, undefined words in a legal document are to be given meaning as they are understood in the common language, taking into consideration the text and relative subject matter. *Id*. at 356-357; *Marcelle v Taubman*, 224 Mich App 215, 219; 568 NW2d 393 (1997). If the provision is clear and unambiguous, the terms are to be taken and understood in their plain, ordinary, and popular sense. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994).

Plaintiff first argues that defendant should have paid additional benefits under the policy because the golf cart was covered under the "land motor vehicle" provision. He acknowledges that no license is usually required to operate a golf cart, but maintains that since the cart was being operated on a road at the time of the accident, the operator was required to possess a valid license, pursuant to MCL 257.301(1). Defendant concedes that the operator was required to possess a license to drive the cart on the road, but argues that the actual use of the vehicle or the place of the accident was irrelevant, and that the policy was designed to restrict coverage based on the nature of the vehicle.

We find that plaintiff's first argument is moot. Plaintiff concedes that his wife was not struck by a "land motor vehicle" and was not driving one for hire at the time of the accident. Two of the three circumstances entitling a beneficiary to the $50,000 death benefit thus not met, only the third may apply; only if the golf cart were found to be a "private passenger automobile" would plaintiff be entitled to the larger benefit amount. Plaintiff's argument that the golf cart was covered under the "land motor vehicle" provision is therefore irrelevant.

Plaintiff next argues that the golf cart falls the definition of a "private passenger automobile" as that term is defined in the policy because it is a "recreational vehicle" included in the second sentence of the definition.[1] He contends that, at the least, the term is ambiguous, which requires this Court to construe the term in his favor.

Defendant contends that, under Michigan law, "recreational vehicle" is defined in a manner so as to exclude the golf cart. Defendant notes that the definition section of the Mobile Home Commission Act, MCL 125.2301 *et seq*., provides:

> "Recreational vehicle" means a vehicle primarily designed and used as temporary living quarters for recreational, camping, or travel purposes, including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle. [MCL 125.2302(l).]

As defendant notes, the golf cart clearly does not fall within this definition.[2] However, the parties to the insurance contract neither explicitly nor implicitly adopted this definition from the Mobile Home Commission Act as a coverage limitation.

In response to defendant's arguments, plaintiff counters with a recitation of the definition of "ORV" in the portion of the National Resources Environmental Protection Act regulating motorized recreational vehicles. MCL 324.81101(m) provides in pertinent part:

> "ORV" or "vehicle" means a *motor driven off-road recreation vehicle* capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. [emphasis added].

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[1] "Recreational vehicle" is not further defined in the policy.

[2] A similar provision is found in MCL 125.771, concerning fire protection in mobile homes. Recreational vehicles are exempt from a requirement to have a smoke detection system. MCL 125.772. MCL 125.771(c) defines a recreational vehicle as a "transportable structure which is used for camping or casual travel."

Plaintiff argues that the modified golf cart involved in the accident would be a recreational vehicle under this definition. Again, however, there is simply no connection between the insurance contract and the language of the National Resources Environmental Protection Act.

The trial court found that while plaintiff's claim was "imaginative," it did

> not fall within the definition contained within the insurance policies here. The term recreational vehicle is used in a paragraph that talks about jeeps, trucks, stationwagons [sic], motor homes and the like. And, clearly, does not include a golf cart by any reading that realistically evaluates the language in this insurance policy.

We disagree with the proposition that the meaning of the term "recreational vehicle" in this contract provision is clear.

While the ambiguity in the language of the contract ought more properly be resolved by a trier of fact as a question of fact, because the contract must be interpreted by its terms alone, "it is the court's duty to interpret the language." *Farmers Ins Exchange, supra*, at 419. We must therefore decide whether the modified golf cart involved in this accident qualifies as a recreational vehicle under this policy.

Again, the contract provision defines PRIVATE PASSENGER AUTOMOBILE as

> a four wheel automobile which is not licensed to carry passengers for hire and which is of the pleasure, station wagon, van, jeep, or truck type with a factory rating load capacity of 2,000 pounds or less. Also included are all self-propelled motor home type vehicles of four wheels or more and recreational vehicles.

The trial court concluded that because the provision refers to such vehicles as jeeps, trucks, station wagons, and motor homes, logically it could not also include modified golf carts, presumably because modified golf carts are so different from the other vehicles listed. We find that quite the opposite could be true. Because jeeps, trucks, station wagons, and motor homes are already covered by the definition, one might just as easily ask what else is left to fall into the category of "recreational vehicles."

Upon review of the photographs of the modified golf cart provided by plaintiff, we must admit that it is difficult to imagine one might logically intend to include such a vehicle in the definition of "private passenger automobile," lacking as it does any sort of cabin structure. Absent doors, sides, a roof, or any discernable safety features, we must also admit that it seems unlikely that such vehicles are meant for use on roadways more populated by cars and trucks. However, none of the missing items are required by the definition provided in the contract, nor in any ancillary material that may be affirmatively linked to the contract.

Given the lack of definition of the term "recreational vehicle" in the contract, our task may be aided by the common usage of that term. *Henderson, supra* at 356-357. Although no dictionary definition seems necessary, we note that the term is "generally used to refer to an enclosed piece of equipment dually used as both a vehicle, a temporary travel home or a full time home."[3] Here, because "motor home type vehicles" are already included in the contract provision and separated from the term "recreational vehicles" with the conjunction "and," it is not unreasonable to suppose that the contract means recreational vehicles to mean something other than motor homes, but we find it far more likely that the provision means camping trailers commonly understood as recreational vehicles. Plaintiff seems to argue that the policy term should include any vehicle designed for recreation. We conclude that modified golf carts, while they may be driven recreationally, simply do not fall into the common understanding of the term recreational vehicle.

We do not find persuasive plaintiff's additional argument that the golf cart fell within the definition of a "private passenger automobile" because it also fell within the definition of a "motor vehicle" under MCL 500.3101(2)(e) of the no-fault act while it was being driven on the road. It is clear that the policy definition is narrower than the statutory one. For example, a truck with a load capacity of over 2,000 pounds would fit within the definition of a motor vehicle under MCL 500.3101, but would not be covered under the private passenger automobile provision.

Under the circumstances, we find that the trial court correctly granted summary disposition in defendant's favor.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Jessica R. Cooper

[3] http://en.wikipedia.org/wiki/Recreational_vehicle