

STATE OF MICHIGAN
COURT OF APPEALS

KEITH PALMER,

Plaintiff,

v

CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendant/Cross-Defendant/Third-
Party Plaintiff-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Cross-Plaintiff/Third-
Party Defendant-Appellant.

UNPUBLISHED

July 3, 2014

No. 314755

Genesee Circuit Court

LC No. 11-096593-NF

Before: JANSEN, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

In this personal injury protection (“PIP”) insurance dispute, State Farm Mutual Automobile Insurance Company (“State Farm”) appeals by right the trial court’s order denying its motion for summary disposition, granting summary disposition in favor of Citizens Insurance Company of America (“Citizens”), and entering judgment for Citizens in the amount of \$448,069.91. We affirm.

State Farm contends that the trial court erred by concluding that Citizens was not the automobile insurer of Sarah Reynolds (“Sarah”), the individual who was driving the Saturn automobile that struck plaintiff¹ while plaintiff was riding his motorcycle. We disagree.

¹ Plaintiff did not oppose either of the two motions for summary disposition below, nor is he a party on appeal.

State Farm moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). Citizens moved for summary disposition pursuant to MCR 2.116(C)(10).² The trial court denied State Farm’s motion for summary disposition and granted Citizens’s motion for summary disposition. We review de novo the trial court’s decision on a motion for summary disposition. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). Summary disposition is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when, after viewing the evidence in the light most favorable to the nonmoving party, the record leaves open an issue upon which reasonable minds may differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

Issues of statutory interpretation are questions of law that are reviewed de novo on appeal. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Similarly, the proper construction and interpretation of an insurance contract is a question of law that we review de novo. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

“The owner or registrant of a motor vehicle registered in this state” must have PIP insurance. MCL 500.3101(1). “Generally, under MCL 500.3101(1) and MCL 500.3114(1), an individual must seek no-fault benefits from his own insurer unless one of the exceptions enumerated in MCL 500.3114(2), (3), or (5) applies.” *Farmers Ins Exch v Farm Bureau Ins Co*, 272 Mich App 106, 111; 724 NW2d 485 (2006).

MCL 500.3114(5) provides:

A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

- (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
- (b) The insurer of the operator of the motor vehicle involved in the accident.
- (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

² Citizens did not actually identify the specific subrule under which it was requesting summary disposition. However, consistent with MCR 2.116(C)(10), Citizens argued that “there is no genuine issue of material fact in dispute that . . . State Farm is responsible for [plaintiff’s] first party no-fault PIP benefits[.]”

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

The term “insurer” is defined as “ ‘[o]ne who agrees, by contract, to assume the risk of another’s loss and to compensate for that loss.’ ” *Amerisure Ins Co v Coleman*, 274 Mich App 432, 435; 733 NW2d 93 (2007), quoting *Black’s Law Dictionary* (7th ed). This Court has held that whether the issuer of a no-fault insurance policy is the insurer of a family member for purposes of MCL 500.3114 depends on the specific language of the relevant insurance policy. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 532-533; 740 NW2d 503 (2007).³

When interpreting an insurance contract, this Court looks to the plain language of the policy. *Busch v Holmes*, 256 Mich App 4, 9; 662 NW2d 64 (2003). An insurance contract must be enforced in accordance with its terms and a court cannot hold an insurance company liable for a risk that it did not assume. *Henderson*, 460 Mich at 354. The relevant insurance policy in the instant dispute is the PIP coverage endorsement attached to the insurance contract of William and Deborah Reynolds, Sarah’s parents. This PIP endorsement provides the applicable definition of “insured”:

“Insured” as used in this endorsement means:

1. You or any “family member” injured in an “auto accident”;
2. Anyone else injured in an “auto accident”:

* * *

c. While not “occupying” any “auto” if the accident involves “your covered auto”.

Further, the PIP coverage endorsement defines “your covered auto” as an automobile:

1. For which you are required to maintain security under the Michigan Insurance Code; and
2. To which the bodily injury liability coverage of this policy applies.

The PIP coverage endorsement, in turn, defines “[y]ou” and “your” as “the ‘named insured’ shown in the declarations; and . . . [t]he spouse [of the named insured] if a resident of the same household.”

³ The *Dobbelaere* Court was interpreting MCL 500.3114(4), not MCL 500.3114(5). *Dobbelaere*, 275 Mich App at 532-533. However, nothing in the language of MCL 500.3114(5) states or implies that “insurer” should be interpreted differently than it is for purposes of MCL 500.3114(4).

Subsection 1 of the definition of “insured” in the endorsement has two qualifications if it is to extend beyond the “named insureds”: (1) the person claiming PIP benefits must be a “family member” of the “named insureds,” and (2) that “family member” must have been “injured in an ‘auto accident.’ ” The policy further defines “family member” as “a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.” Under this subsection, the insurance policy would provide PIP benefits for Sarah if she were living in her parents’ home and was injured in an automobile accident. However, because Sarah was not injured in the accident with plaintiff, this subsection does not apply. And even if it did, it would only provide no-fault benefits for Sarah, not a third party involved in the automobile-motorcycle collision.

Subsection 2 of the definition of “insured” applies to claims by third parties in which there was an accident involving “your covered auto.” As noted above, “your covered auto” is defined as a car on which the “named insureds” are required to maintain no-fault insurance, and to which the bodily injury liability insurance applies. Under MCL 500.3101(1), “the owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance.” Sarah testified that she was the sole owner and registrant of the Saturn that she was driving when she collided with plaintiff. Therefore, Sarah was the only person required to maintain no-fault PIP insurance on the Saturn. MCL 500.3101(1). Because William and Deborah, the “named insureds,” were not required to maintain no-fault PIP insurance on the Saturn, the Saturn did not meet the definition of “your covered auto” within the meaning of the PIP coverage endorsement. It does not matter that the Saturn may be covered under the bodily injury liability coverage portion of the Citizens insurance contract because the PIP endorsement additionally required that the vehicle be one that the “named insureds” were required to insure.

Although Sarah was listed as a “principal driver” on the declarations sheet of the insurance policy, “merely listing a person as a designated driver on a no-fault policy does not make the person a ‘named insured.’ ” *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 253; 535 NW2d 207 (1995). “To hold otherwise would expand the [insurer’s] risk of exposure beyond justifiable limits.” *Id.* The applicable no-fault laws required that Sarah, as the owner and registrant of the Saturn, maintain PIP insurance on her automobile. MCL 500.3101(1). The parties’ apparent decision to include Sarah on the insurance policy only as a principal driver, and not as a named insured, precluded the application of the PIP endorsement to the Saturn. We note that the policy’s coverage for general liability did cover the Saturn because it applied to “[a]ny vehicle shown in the Declarations,” wherein the Saturn was listed. Nonetheless, the narrower definition of “your auto” provided in the PIP endorsement prohibits the application of the policy’s PIP insurance coverage to the Saturn. We cannot hold an insurance company liable for a risk it did not assume. *Henderson*, 460 Mich at 354.

Citizens was not the insurer of the “owner or registrant” or the “operator” of the Saturn for purposes of no-fault PIP coverage. See MCL 500.3114(5)(a) and (b). Next in the order of priority was the “motor vehicle insurer of the operator of the motorcycle involved in the accident.” MCL 500.3114(5)(c). It is beyond question that plaintiff was operating the motorcycle at the time of the accident, and State Farm does not dispute that it was plaintiff’s motor vehicle insurer. Thus, the trial court properly found that Citizens was not Sarah’s “insurer” and that State Farm was the highest priority insurer under MCL 500.3114(5) for

purposes of this case. The trial court properly denied State Farm's motion for summary disposition and granted summary disposition in favor of Citizens.

Affirmed. As the prevailing party, Citizens may tax its costs pursuant to MCR 7.219.

/s/ Kathleen Jansen

/s/ Christopher M. Murray

/s/ Mark T. Boonstra