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STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM LOIACANO and PAMELA
LOIACANO,

Plaintiffs,

v

HOME-OWNERS INSURANCE COMPANY,

Defendant-Appellant,

and

UNIVERSAL UNDERWRITERS OF TEXAS
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 18, 2021

No. 351876
Saginaw Circuit Court
LC No. 16-031119-NI

Before: M. J. KELLY, P.J., and RONAYNE KRAUSE and REDFORD, JJ.

PER CURIAM.

In this action for uninsured motorist benefits, defendant Home-Owners Insurance Company (Home-Owners) appeals as of right the trial court’s stipulated order dismissing plaintiffs’ claims against Home-Owners. Home-Owners challenges the trial court’s prior opinion and order granting summary disposition in favor of defendant Universal Underwriters of Texas Insurance Company (Universal) under MCR 2.116(C)(10) (no genuine issue of material fact), and the trial court’s prior order denying Home-Owners’ motion for leave to file a cross-claim against Universal for common-law indemnity. We affirm.

I. BACKGROUND

This case arises from an automobile accident in which William Loiacano was injured while driving a rental vehicle owned by Schaefer & Bierlein, Inc. (SBI), as his vehicle was being repaired. The rental vehicle was insured under a policy issued by Universal. The policy declarations page provided that SBI (“01”) was the “named insured” and that Randall Bierlein

(“AA”), Kyle Bierlein (“BB”), Sue Bierlein (“CC”), and Craig Bierlein (“DD”)¹ were “other insureds.” Specifically, the policy stated:

THIS POLICY INSURES ONLY THOSE COVERAGES SHOWN IN THE DECLARATIONS. IN ITEM 2 BELOW, EACH NAMED INSURED, OTHER INSURED, SECURITY INTEREST AND LOCATION IS GIVEN A CORRESPONDING LETTER OR NUMBER DESIGNATION. INSURANCE PROVIDED IN ITEM 3 WILL NOT APPLY TO ANY NAMED INSURED, OTHER INSURED, SECURITY INTEREST OR LOCATION UNLESS ITS CORRESPONDING LETTER OR NUMBER APPEARS NEXT TO A SPECIFIC COVERAGE IN ITEM 3.

In Item 3, only “AA” and “DD” were listed for uninsured motorist coverage, referring to Randall Bierlein and Craig Bierlein.

The Universal policy included Endorsement Number 203, related to uninsured motorist coverage, which stated, in relevant part:

Uninsured motorist (including underinsured motorists) coverage applies only when Endorsement 203 is shown in the declarations. In Item 2 of the declarations, each Named Insured and Other Insured is given a corresponding letter or number designation. Insurance provided by Endorsement 203 will not apply to any Named Insured or Other Insured unless its corresponding letter or number appears next to a specific coverage in Item 3 of the declarations for Coverage Part 500 - Garage or Coverage Part 830 – Basic Auto.

* * *

The General Conditions apply except as amended or replaced in this endorsement. The terms and conditions of this endorsement are separate and distinct from those of Coverage Parts 500 – Garage and 830 – Basic Auto.

In addition to a number of other provisions not relevant to this appeal, under the section entitled “Who Is An Insured,” Endorsement 203 stated:

If YOU are designated in the declaration as:

1. an individual, then the following are INSUREDS:

a. YOU and any FAMILY MEMBER.

b. Anyone else OCCUPYING a covered AUTO or a temporary substitute for a covered AUTO. The covered AUTO must be out of service because of its breakdown, repair, servicing, loss or destruction.

¹ Although not stated outright, it appears that the Bierleins are the owners and principals of SBI.

c. Anyone for damages he or she is entitled to recover because of BODILY INJURY sustained by another INSURED.

2. a partnership, limited liability company, corporation or any other form of organization, then the following are INSUREDS:

a. Anyone OCCUPYING a covered AUTO or a temporary substitute for a covered AUTO. The covered AUTO must be out of service because of its breakdown, repair, servicing, loss or destruction.

b. Anyone for damages he or she is entitled to recover because of BODILY INJURY sustained by another INSURED.

The Universal policy also included Endorsement Number 92, related to the designated individuals who receive uninsured motorist coverage. Endorsement 92 provided:

Who Is An Insured

The following is added:

With respect to uninsured and underinsured motorists coverage:

1. the individual (and any “family member”) designated in the declarations as subject to this endorsement; and
2. any passengers in a COVERED AUTO driven by the Designated Individual under Part 1, above.

“Family member” means any person related to the individual designated in the declarations as subject to this endorsement, by marriage, blood or adoption, who is a resident of his or her household. “Family member” includes a ward or foster child.

Plaintiffs originally commenced suit against Home-Owners, but the trial court permitted plaintiffs to file an amended complaint also naming Universal as a defendant. In relevant part, plaintiffs alleged breach of contract on the ground that Universal had failed to pay uninsured motorist benefits to plaintiffs. Universal moved for summary disposition under MCR 2.116(C)(10), arguing that Mr. Loiacano was not an “insured” under Universal’s policy. The trial court agreed and granted Universal’s motion for summary disposition. Prior to the parties’ stipulation to dismiss plaintiffs’ claims against Home-Owners, Home-Owners filed a motion for leave to add a cross-claim against Universal for common-law indemnity,² which the trial court denied. This appeal followed.

² Home-Owners did not dispute that it owed uninsured motorist benefits to plaintiffs in excess of any benefits owed by Universal, but rather argued that its coverage was not primary.

II. STANDARDS OF REVIEW

We review a trial court's ruling on a motion for summary disposition de novo. *Pugno v Blue Harvest Farms LLC*, 326 Mich App 1, 11; 930 NW2d 393 (2018). Summary disposition under MCR 2.116(C)(10) is appropriate 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.” In reviewing the motion, this Court considers the “pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Piccione v Gillette*, 327 Mich App 16, 19; 932 NW2d 197 (2019) (quotation marks and citation omitted). “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 might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

We review a trial court's decision on a motion to amend the pleadings for an abuse of discretion. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 207-208; 920 NW2d 148 (2018). “An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes.” *Id.* at 208 (quotation omitted). “Ordinarily, a motion to amend a complaint should be granted, and should be denied only for the following particularized reasons: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, or (5) futility of the amendment.” *Lane v KinderCare Learning Ctrs, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998). “An amendment is futile if it merely restates the allegations already made or adds allegations that still fail to state a claim.” *Id.*

We also review de novo questions involving the proper interpretation of a contract or the legal effect of a contractual clause. *Shah*, 324 Mich App at 196. “Uninsured motorist coverage is optional” and therefore “the rights and limitations of such coverage are purely contractual and are construed without reference to the no-fault act.” *Rory v Continental Ins Co*, 473 Mich 457, 465-466; 703 NW2d 23 (2005). “We read the policy as a whole, giving meaning to each term and giving each term its plain and ordinary meaning.” *Wagner v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 251, 258; 908 NW2d 327 (2017). Words in a contract must be construed in context and in light of both the contract as a whole and any distinct provision within the contract where the word is used. See *Auto-Owners Ins Co v Seils*, 310 Mich App 132, 153; 871 NW2d 530 (2015). “An insurance policy that is clear and unambiguous must be enforced in accordance with its terms.” *Stoddard v Citizens Ins Co of America*, 249 Mich App 457, 460; 643 NW2d 265 (2002).

III. ANALYSIS

Home-Owners argues that the trial court erred by granting Universal's motion for summary disposition on the basis that Mr. Loiacano was not an “insured” under Universal's policy. Home-Owners also argues that because Universal was the primary insurer responsible for paying uninsured motorist benefits, the trial court abused its discretion by denying its motion to amend the pleadings to assert a cross-claim against Universal for common-law indemnity. Specifically, Home-Owners argues that Mr. Loiacano is entitled to uninsured motorist benefits because he was not subject to the “exclusion” within the declarations and that he was covered by the “Who Is An

Insured” language in Endorsement 203 because he was “occupying” a covered vehicle when he was injured. We disagree.

We agree with Home-Owners that the word “anyone” would, ordinarily, be all-inclusive. However, Endorsement 203 provided that uninsured motorist coverage applied only to a named insured or other insured if they were specified in the declarations. Only the “other insureds” designated as “AA” and “DD” were listed for uninsured motorist coverage in the declarations. Consequently, it is inescapable that SBI purchased uninsured motorist coverage for Randall and Craig Bierlein only. We cannot consider the word “anyone” out of its context. *Seils*, 310 Mich App at 153. Therefore, as the trial court concluded, Mr. Loiacano could not have been an “insured” under Endorsement 203, and he could not have been an “insured” under Endorsement 92 because he was not a family member of Randall and Craig Bierlein, and he was not a passenger. The policy unambiguously provided who was entitled to uninsured motorist benefits, and Mr. Loiacano did not fall within the scope of covered individuals. We must enforce the policy terms as written. *Stoddard*, 249 Mich App at 460.

Because Mr. Loiacano was not entitled to receive uninsured motorist benefits under Universal’s policy, any amendment to the pleadings to permit Home-Owners to assert a cross-claim against Universal for common-law indemnity would have been futile. Consequently, the trial court cannot have abused its discretion by denying Home-Owners’s motion to amend. See *Lane*, 231 Mich App at 697.

Affirmed.

/s/ Michael J. Kelly

/s/ Amy Ronayne Krause

/s/ James Robert Redford