

STATE OF MICHIGAN  
COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,  
Plaintiff-Appellant,

OCT 12 1987

v

No. 94603

MARY A. DELAGARZA,  
Defendant-Appellee.

BEFORE: R.J. Danhof, C.J., G.R. McDonald and E.M. Thomas\*, JJ.

PER CURIAM

Plaintiff Auto Club Insurance Association filed this action seeking a declaratory judgment on its duty to indemnify its insured, defendant Mary A. DeLaGarza. In September, 1984, DeLaGarza's spouse was struck and killed by an uninsured motorist while fixing his car beside the highway. From 1977 until his death, the decedent had not been a resident of the insured's household. DeLaGarza and the decedent lived in different towns and decedent was not driving DeLaGarza's car when the accident occurred.

Defendant filed for indemnification under the uninsured motorist provision of her insurance contract. Auto Club moved for summary disposition pursuant to MCR 2.116(C)(10), contending there was no genuine issue of material fact and that Auto Club was entitled to judgment as a matter of law. A hearing was held on June 3, 1986. The trial court ruled that the insurance policy did not exclude DeLaGarza's spouse from coverage, despite the fact that he was not a resident of her household. Plaintiff appeals as of right.

Two issues have been raised on appeal. Plaintiff first claims that the trial court erred in determining that plaintiff's insured motorist provision covered defendant's decedent spouse even though the decedent was not a resident of defendant's household.

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\*Recorder's court judge, sitting on the Court of Appeals by assignment.

Summary disposition pursuant to MCR 2.116(C)(10) is properly granted only if there is no genuine issue as to any material fact and the party in whose favor judgment is granted is entitled to judgment as a matter of law. A motion based on MCR 2.116(C)(10) is designed to test the factual support for a claim. Hamsphire v Ford Motor Co, 155 Mich App 143; 399 NW2d 36 (1986).

Exclusionary clauses in insurance policies are valid as long they are clear, unambiguous, and do not contravene public policy. Raska v Farm Bureau Mutual Ins Co of Mich, 412 Mich 355; 314 NW2d 440 (1982), Jones v Atkins Construction Co, 143 Mich App 150; 371 NW2d 508 (1985). An insurance company may limit the risks it assumes and adjust its premiums accordingly. Illinois Employers Ins v Dragovich, 139 Mich App 502; 362 NW2d 767 (1984). Insurance policies are contracts and are matters of personal agreement between the parties. Clear, unambiguous policy language will be enforced as written. Dragovich, supra.

Part IV, the provision for uninsured motorist insurance coverage, provides:

"We will pay damages for bodily injury which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle. Bodily injury must be caused by accident and arise out of the ownership, operation, maintenance or use of the uninsured motor vehicle." (Emphasis in original).

Part IV begins: "Insured Person(s) means: you, if an individual, and any relative, [or] any other person occupying YOUR CAR." (Emphasis in original).

In the beginning of the policy is a section entitled "Definitions Used Throughout this Policy." Relevant definitions are:

"You, Your(s), Names Insured means any person or organization named in Item 1 and (for the specific vehicle where named as the principal driver) Item 2 on the Declaration Certificate. It includes the spouse except in Part II--Michigan No-Fault Insurance Coverages.

"Spouse means your husband or wife if a resident of your household.

"Relative means a person who is a resident or your household related to you by blood, marriage or adoption, or is your foster child. Relative also includes your unmarried child

attending school away from home. In Part II--Michigan No-Fault Insurance Coverages, relative includes spouse.

"Insured Person(s) means those persons entitled to coverage under this policy. They are defined under each Part." (Emphasis in original).

Defendant argues that the policy does not exclude a nonresident spouse. We disagree. The policy language clearly does exclude a nonresident spouse. The definition of "spouse" makes residency in the insured's household a condition for being a "spouse" under the policy. We also reject defendant's contention that a different definition of "spouse," without that restriction, is contained in the provision defining "relative." The definitional section begins with the explanation "defined words are shown in bold type." Under the definition for "relative," "spouse" is in bold face type, indicating that the reader should refer to the definition of that term. The meaning of these definitions and the intention that they should be read together is not ambiguous or obscure. Furthermore, the definitional section states that these definitions are used throughout the policy. The clear meaning of that language is that the word "spouse" should always be read with regard to the definition provided in the definitional section. That section negates DeLaGarza's argument that each part of the contract is self-defining.

Under part IV, insured persons entitled to uninsured motorists insurance coverage include the named insured and any relative. That would include a spouse if a spouse was a resident of the insured's household. The decedent here was not a member of defendant's household and is, therefore, not covered by this provision. The trial court erred in finding that DeLaGarza's decedent spouse was covered by this provision.

Defendant raises an alternative ground for entitlement to benefits under the policy. The uninsured motorists provision of the contract provides:

"We will pay damages for bodily injury which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle. Bodily injury must be caused by

accident and arise out of the ownership, operation, maintenance or use of the **uninsured motor vehicle.**" (Emphasis in original)

Defendant argues that as the named insured she is an insured person who is entitled to recover for bodily injury to her spouse from the driver of the uninsured motor vehicle under the wrongful death act. Thus, defendant contends she is entitled to benefits under the policy. We agree.

Although when drafting this provision, plaintiff may have intended that the insured person seeking benefits under the policy be the one who sustained the bodily injury, plaintiff failed to include such limiting language. Thus, although plaintiff argues that the contract read as an entire instrument suggests that an insured may recover for only his or her own injuries, the language of the provision does not lend itself to such an interpretation. Thus, at best, there is an ambiguity within the contract. Ambiguities contained in insurance contracts are to be construed in favor of the insured. Raska, supra, Dragovich, supra. We therefore find that defendant is entitled to benefits as an insured under the uninsured motorist provision who is legally entitled to damages for the wrongful death of decedent.

Summary disposition in favor of defendant is affirmed for the reasons stated herein.

/s/ Robert J. Danhof  
/s/ Gary R. McDonald  
/s/ Edward M. Thomas