

STATE OF MICHIGAN
COURT OF APPEALS

JAMES HEIN,

Plaintiff-Appellant,

v

No. 100599

AUTO CLUB INSURANCE ASSOCIATION

Defendant-Appellee.

Before: Weaver, P.J., and Maher and C.W. Simon, Jr.,* JJ.

PER CURIAM

Plaintiff appeals as of right from an order of the Wayne Circuit Court which denied his motion for summary disposition and granted summary disposition in favor of the defendant insurer. We affirm.

I

Plaintiff, the owner of a 1974 motorcycle, was operating his motorcycle on September 14, 1985, when he was injured in a collision with an automobile operated by an uninsured motorist. Plaintiff's father, with whom plaintiff resided at the time of the accident, owned a 1985 Cadillac Seville which was insured by a no-fault automobile insurance policy containing uninsured motorist coverage. Although plaintiff's motorcycle was not insured by a policy providing uninsured motorist coverage, plaintiff sought derivative uninsured motorist benefits from the defendant insurer under his father's automobile insurance policy. The defendant insurer denied plaintiff's claim for uninsured motorist insurance coverage with regard to plaintiff's motorcycle.

Plaintiff then sought declaratory judgment in Wayne Circuit Court, seeking a determination that he was entitled to uninsured motorist coverage under the insurance policy issued for his father's Cadillac Seville. Following defendant's answer and

*Circuit judge, sitting on the Court of Appeals by assignment.

the parties' cross-motions for summary disposition alleging no genuine issue of material fact, the circuit court denied plaintiff's motion and granted defendant's motion on the basis that no uninsured motorist coverage existed under the policy for the accident in question. From entry of this order plaintiff appeals as of right.

II

Plaintiff argues that his motorcycle was not a "motor vehicle" for purposes of uninsured motorist coverage and that therefore the exclusion from uninsured motorist coverage contained in his father's insurance policy does not apply to his situation. We disagree with this contention.

Part IV of the father's insurance policy provided for uninsured motorist coverage as follows:

"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.

"BODILY INJURY NOT COVERED

"This coverage does not apply to bodily injury sustained by an insured person:

while occupying a motor vehicle which is owned by you or a relative unless that motor vehicle is YOUR CAR;"

"Motor vehicle" was defined by the policy as "a land motor vehicle or trailer, requiring vehicle registration" "YOUR CAR was defined by the policy as:

"the vehicle described on the declaration Certificate and identified by a specific Vehicle Reference Number, a replacement, a temporary substitute and a trailer owned by you . . ."

The purpose of the above exclusionary language, the so-called "household vehicle" or "other owned vehicle" exclusion, is to prevent an insured from purchasing an insurance policy or a particular type of insurance coverage with regard to only one vehicle, while leaving the rest of his vehicles uninsured, and

receiving coverage from multiple vehicles for the price of one policy. See, e.g., Garrison v Farm Bureau Mutual Ins Co, 84 Mich App 734, 738; 270 NW2d 678 (1978). Such clear and unambiguous exclusionary clauses have been upheld as valid by this Court. See, e.g., Auto Club Ins Ass'n v Page, 162 Mich App 664, 668; 413 NW2d 472 (1987); Ziegler v Goodrich, 163 Mich App 656, 659; 415 NW2d 4 (1987), lv den 430 Mich 867 (1988).

This Court has also recognized the Legislature's inconsistency in defining the term "motor vehicle." Auto-Owners Ins Co v Ellegood, 149 Mich App 673, 675-677; 386 NW2d 640 (1986). Although the no-fault act specifically defines a "motor vehicle" to exclude motorcycles, MCL 500.3101(2)(a); MSA 24.13101(2)(a), the Michigan Vehicle Code defines a "motor vehicle" to include motorcycles, MCL 257.33; MSA 9.1833.

Unlike no-fault coverage, uninsured motorist coverage is not mandated by statute but is voluntary. Bradley v Mid-Century Ins Co, 409 Mich 1, 59; 294 NW2d 141 (1980); Auto Club Ins Ass'n v Methner, 127 Mich App 683, 688; 339 NW2d 234 (1983), lv den 418 Mich 940 (1984). Because a motorcycle is considered a "motor vehicle" in its ordinary and popular sense as well as in its technical meaning, and because plaintiff here requests uninsured motorist benefits rather than no-fault benefits, we agree like the panel in Ellegood, supra, that an exclusion of motorcycles from the definition of "motor vehicle" would be inappropriate in this case. See also Ziegler, supra at 659. Therefore the circuit court properly considered plaintiff's motorcycle a "motor vehicle" within the meaning of the policy's unambiguous exclusionary clause and properly granted summary disposition in favor of the defendant insurer.

Affirmed.

/s/ Elizabeth A. Weaver
/s/ Richard M. Maher
/s/ Charles W. Simon, Jr.