

STATE OF MICHIGAN
COURT OF APPEALS

CLIFTON G. FOSTER,

MAR 22 1989

Plaintiff-Appellee,

v

No. 108565

FARMERS INSURANCE GROUP d/b/a
FARMERS INSURANCE EXCHANGE,

Defendant-Appellant,

and

STEPHEN E. DAUNT,

Defendant.

Before: Gillis, P.J., and Sullivan and Griffin, JJ.

PER CURIAM.

Defendant Farmers Insurance Group d/b/a Farmers Insurance Exchange appeals as of right from a lower court order denying its motion for summary disposition and granting summary disposition in favor of plaintiff Clifton G. Foster and on plaintiff's claim for uninsured motorist coverage. We reverse.

I

Plaintiff Clifton G. Foster sustained personal injuries on March 6, 1987, when the motorcycle he was riding was struck from the rear by an automobile. The automobile left the scene of the accident, and its driver never identified.

At the time of the accident, Foster was insured by Farmers Insurance Group d/b/a Farmers Insurance Exchange (Farmers) under a policy issued on the motorcycle. That policy did not contain an endorsement providing uninsured motorist coverage. However, Foster was also insured by Farmers under a policy issued on an automobile he owned which contained an endorsement providing \$50,000 of uninsured motorist coverage. Foster applied for uninsured motorist coverage under the policy issued on the automobile. Farmers denied Foster's claim on the

grounds that coverage was excluded by the terms of the automobile policy.

The exclusionary clause of the automobile policy relied upon by Farmers in denying coverage reads as follows:

"EXCLUSIONS

"This policy does not apply under Part II; to bodily injury to an insured while occupying an automobile or 2 wheel motor vehicle (other than an insured motor vehicle) owned by a named insured or any relative resident in the same household, or through being struck by such vehicles;"

Foster contends that because his motorcycle was an insured motor vehicle, albeit under a separate policy, he was entitled to uninsured motorist benefits. Both parties moved in circuit court for summary disposition under MCR 2.116(C)(8) and (10), Farmers arguing that the exclusionary clause specifically prohibited coverage under the circumstances, and Foster arguing that the exclusionary clause did not apply under the circumstances.

The trial court denied Farmers' motion, ruling that the meaning of the exclusionary clause was not sufficiently clear under the facts of the case. The trial court later granted Foster's motion and issued an order directing Farmers to arbitrate Foster's uninsured motorist claim. Foster's errors and omissions claim against codefendant Stephen E. Daunt for allegedly failing to properly advise Foster as to appropriate insurance coverages was dismissed with prejudice as moot.

On appeal Farmers argues that the trial court erred by granting Foster's motion for summary disposition on grounds that the exclusionary clause relied on by Farmers did not clearly and unambiguously exclude uninsured motorist coverage to Foster for bodily injury incurred while operating his motorcycle. We agree.

II

When construing insurance contracts, the contract language is to be given its ordinary and plain meaning, rather than a technical or strained construction. Insurance contracts

must be read as a whole when determining whether or not an ambiguity exists by a particular clause. Boyd v GMAC, 162 Mich App 446, 452; 413 NW2d 683 (1987). If an ambiguity exists in an insurance contract, it should be construed in favor of coverage for the insured. Western Casualty Surety Group v Coloma Township, 140 Mich App 516, 522; 364 NW2d 367 (1985). The issue of whether or not an insurance contract is ambiguous is a question of law for the court to decide. Auto Club Insurance Association v Page, 162 Mich App 664, 667; 413 NW2d 472 (1987).

We find the contract of insurance between Foster and Farmers to be unambiguous. Therefore, Farmers was entitled to summary disposition in its favor on plaintiff's claim for uninsured motorist benefits.

The relevant exclusionary clause of Foster's automobile insurance policy provides that the policy "does not apply . . . to bodily injury to an insured while occupying an automobile or a 2 wheel motor vehicle (other than an insured vehicle) owned by a named insured"

An "insured vehicle" is defined by the contract as follows:

"Insured Motor Vehicle means (1) the described automobile, provided the actual use thereof is by the named insured or a relative or by any other person with the permission of the named insured, or (2) a non-owned automobile while being operated by the named insured with the permission of the owner. An 'Insured Motor Vehicle' does not include an automobile while being used as a public or livery conveyance." (Emphasis supplied.)

In addition, the term "described automobile" is defined as follows:

"Described Automobile means the automobile described in the policy declarations for which Uninsured Motorists insurance is indicated as covered, including a newly acquired automobile or a substitute automobile."

When the contract of insurance is read as a whole and these definitions are applied, it is readily apparent that coverage does not apply in the instant case. Foster's motorcycle is not the vehicle described in the automobile policy

declarations; therefore it is not an "insured motor vehicle" as that term is clearly defined in the policy.

Accordingly, the trial court's grant of summary disposition in favor of Foster was in error and is therefore reversed. Summary disposition was appropriate for defendant Farmers.

Reversed and remanded to the trial court with instructions to enter judgment in favor of Defendant Farmers on plaintiff's claim for uninsured motorist benefits. We do not retain jurisdiction.

/s/ John H. Gillis
/s/ Joseph B. Sullivan
/s/ Richard Allen Griffin