STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee and Cross-Appellant,

v No. 107944

DAVID B. TIEDMAN, as Personal Representative of the Estate of JULIE M. TIEDMAN, deceased, and DAVID B. TIEDMAN and JUDITH TIEDMAN, Individually,

Defendants-Appellants and Cross-Appellees,

and

DANIEL J. McNERNEY and TERRY L. McNERNEY,

Defendants.

Before: Cynar, P.J., and Cavanagh and N.J. Kaufman,* JJ.

PER CURIAM.

Defendants appeal as of right from the opinion and judgment of the Clare Circuit Court which granted summary disposition to plaintiff in its declaratory judgment action. MCR 2.116(C)(10). The court ruled that an "anti-stacking" provision in a policy of no-fault automobile insurance issued by plaintiff was valid and, thus, defendants were precluded from receiving no-fault damages under a second insurance policy issued by plaintiff. Plaintiff cross-appeals from that same opinion and judgment, raising a claim that was asserted below but not fully decided by the court. We affirm.

This lawsuit arises out of the December 15, 1988, automobile accident between Daniel J. McNerney and Julie M. Tiedman which resulted in the death of Ms. Tiedman. At the time, Mr. McNerney was driving a 1985 Ford Bronco II owned by his wife, Terry L. McNerney. The Bronco II was insured under a policy of no-fault automobile insurance issued by plaintiff that listed both Mr. and

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

Mrs. McNerney as the named insureds. Mr. McNerney also owned a 1977 GMC pickup truck that was separately insured under a policy issued by plaintiff. Under that policy, he was listed as the sole named insured.

An action was thereafter filed against the McNerneys (Mr. McNerney for his alleged active negligence in causing the accident, Mrs. McNerney for her vicarious liability as owner of the Bronco II) by Mrs. Tiedman's family. A settlement agreement was eventually reached whereby the Tiedmans received the full insurance limits of the policy covering the Bronco II (i.e., $50,000) in exchange for releasing the McNerneys from all personal liability. Further, according to the settlement, the Tiedmans reserved any rights they might have to insurance benefits under the policy issued to the GMC pickup truck.

On April 27, 1987, plaintiff instituted this action for declaratory judgment against the Tiedmans and the McNerneys[1] to obtain a judicial determination of its rights and responsibilities under the insurance policies. Plaintiff later filed a motion for summary disposition, claiming that there was no genuine issue of material fact and that it was entitled to judgment as a matter of law. MCR 2.116(C)(10). As the basis for the motion, plaintiff asserted that (1) the insurance policies contained anti-stacking provisions which limited recovery under two applicable policies to the one with the highest limit, and (2) the GMC truck policy included a clause which excluded coverage for automobiles owned by one's spouse.

Defendants claimed that the stacking of insurance policies is allowed under Michigan no-fault laws, that the anti-stacking provisions and the spouse-owned vehicle clause were invalid, and that the exclusions were highly technical, hopelessly confusing, ambiguous, and contrary to public policy.

On March 16, 1988, the Clare Circuit Court issued a written opinion granting plaintiff's motion. The court held that the

anti-stacking provisions were clear and unambiguous. Pursuant to those provisions, since Mr. McNerney was a named insured on both the Bronco II policy and the GMC truck policy, defendants were entitled to benefits only from the one with the highest limit, not from both policies. Because of that ruling, the court found it unnecessary to determine the validity of the spouse-owned vehicle clause (although it implied that the clause was less clear than the anti-stacking provisions). On March 21, 1988, a judgment was entered incorporating the findings and conclusions of the trial court's written opinion.

Defendants appeal as of right from the trial court's finding that the anti-stacking provisions were valid. Plaintiff cross-appeals from the court's failure to fully decide the validity of the spouse-owned vehicle exclusion.

The anti-stacking provisions at issue appear in both the Bronco II policy and the GMC truck policy, and provide as follows:

> If There Is Other Liability Coverage
> 1. Policies Issued by Us to You.
>
> If two or more vehicle liability policies issued by us to you apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

As defined by the policies, the term "you" means "the named insured or named insureds shown on the declarations page." We agree with the trial court's conclusion that the above policy language is clear and unambiguous.

Defendants do not deny that Mr. McNerney is a named insured on both insurance policies. However, they argue that the anti-stacking provisions apply only if the named insureds on the two policies are identical. Because Mr. McNerney is the sole named insured on the GMC truck policy while he and Mrs. McNerney are named coinsureds on the Bronco II policy, defendants urge this Court to hold that the anti-stacking provisions are inapplicable since the named insureds are not identical. We decline to read the policy language in such an artificial manner.

The fact that Mr. McNerney is named as the sole insured on one policy and a coinsured on another policy does not make the anti-stacking provisions inapplicable. The exclusionary language is clear and unambiguous, and its effect is indisputable: if two insurance policies list the same insured and that person is involved in a traffic accident, coverage is available only under the policy with the highest limit, regardless of whether the policies are issued to separate vehicles and whether other persons are also listed as named insureds.

We also agree with the trial court's conclusion that, on the authority of Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1986), DeMaria v Auto Club Ins Ass'n (On Remand), 165 Mich App 251; 418 NW2d 398 (1987), and Citizen's Ins Co v Tunney, 91 Mich App 223; 283 NW2d 700 (1979), the anti-stacking provisions are valid and not in contravention of public policy since they are clear and unambiguous. See also, Auto Club Ins Ass'n v Lanyon, 142 Mich App 108; 369 NW2d 269 (1985); Inman v The Hartford Ins Group, 132 Mich App 29; 346 NW2d 885 (1984), lv den 419 Mich 937 (1984). Cf., Yahr v Garcia, ____ Mich App ____; ____ NW2d ____ (1989)(stacking allowed because the anti-stacking provision was deceptive and ambiguous). Other states are in accord. See, Wilson v Cotton States Mutual Ins Co, 183 Ga App 353; 358 SE2d 874 (1987); Thompson v Continental Ins Cos, 351 SE2d 904 (SC App, 1986). Cf., Goodman v Allstate Ins Co, 137 Misc 2d 963; 523 NYS2d 391 (1987) (court stated that stacking would not have been allowed had the policies contained anti-stacking provisions).

In light of our disposition of the above issue, we need not address plaintiff's issue on cross-appeal. See, Metropolitan Life Ins Co v Goolsby, 165 Mich App 126, 129; 418 NW2d 700 (1987).

Affirmed.

/s/ Walter P. Cynar
/s/ Mark J. Cavanagh
/s/ Nathan J. Kaufman

[1] The McNerneys did not answer plaintiff's complaint so defaults were consequently entered against them. They are not parties to this appeal. Any reference in this opinion to "defendants" is to the Tiedmans only, in their collective representative and individual capacities only.