STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM TRAYNOR, JANETH TRAYNOR, and TIMOTHY TRAYNOR,

Plaintiffs-Appellants,

v

Nos. 111500; 111660

MICHIGAN MUTUAL INSURANCE COMPANY,

Defendant-Appellee, Third-Party Plaintiff,

v

FRANK W. MUNN, Individually and as Personal Representative of the Estate of Martha E. Munn, Deceased,

Third-Party Defendant-Appellee.

Before: MacKenzie, P.J., and Marilyn Kelly and T.M. Burns,* JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order of August 23, 1988, denying their motion for summary disposition and granting defendant Michigan Mutual Insurance Company's counter-motion for summary disposition, both under MCR 2.116(C)(10). The trial court held that defendant had no duty to indemnify, provide coverage to or defend Timothy Traynor under an automobile insurance policy issued to his parents, William and Janeth Traynor. On September 2, 1988, the trial court signed an order of declaratory judgment consistent with its earlier opinion and order. Plaintiffs appeal as of right. We affirm.

On November 25, 1985, Timothy Traynor was driving his own uninsured automobile when he was involved in an accident which resulted in the death of Martha Munn. Traynor was living with his parents at the time. When Frank Munn, decedent's husband and personal representative of her estate, filed suit against Timothy, the Traynors asked Michigan Mutual to defend

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

their son based on their own automobile insurance policy with the company. Although Michigan Mutual conceded that Timothy Traynor was a "family member", it refused to defend him based on an exclusion in the policy. Plaintiffs sought a declaratory judgment in the instant case to resolve the issue of coverage.

Plaintiffs contend that the insurance policy expressly covered Timothy Traynor and that the exclusion relied upon by Michigan Mutual was ambiguous. Owned vehicle exclusion clauses which satisfy the requirements of clarity and unambiguity and employ easily-understood and plain language have been upheld as valid. Automobile Club Ins Ass'n v Page, 162 Mich App 664, 668; 413 NW2d 472 (1987). Such a clause is not ambiguous if the contract of insurance, when read as a whole, yields but one reasonable interpretation. Raska v Farm Bureau Mutual Ins Co of Michigan, 412 Mich 355, 362; 314 NW2d 440 (1982); Boyd v General Motors Acceptance Corp, 162 Mich App 446, 452, 456; 413 NW2d 683 (1987). An insurer's intent to exclude coverage under certain circumstances should be clearly stated in the section of the policy entitled "Exclusions." See Powers v DAIIE, 427 Mich 602, 632-633; 398 NW2d 411 (1986) (Williams, C.J.).

Here, the policy is clearly organized and easy to read. After a definitions section, the Liability Coverage section expresses the insuring agreement:

> We will pay damages for bodily injury or property damage for which any covered person becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted.

A "covered person" is defined as "you or any family member for the ownership, maintenance, or use of any auto or trailer." While plaintiffs argue that the language "any auto" includes Timothy Traynor's use of his own car, Michigan Mutual relies upon the following exclusions stated in the policy:

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

* * *

3. Any vehicle, other than your covered auto, which is:

a. owned by any family member; or

b. furnished or available for the regular use of any family member.

However, this exclusion does not apply to your maintenance or use of any vehicle which is:

a. owned by a family member; or

b. furnished or available for the regular use of a family member.

Plaintiffs argue that this exclusion creates an ambiguity in the policy by taking away that coverage which was afforded Timothy Traynor in the initially broad statement of coverage.

The inclusive statement of coverage does not make the policy ambiguous. The exclusion is clearly stated in the "Exclusions" section, which begins on the same page as the broad definition of "covered person". When read as a whole, the policy excludes Timothy Traynor's uninsured vehicle.

Our conclusion is not inconsistent with our Supreme Court's recent decision in Powers, supra. There, the exclusions were not listed in the exclusions section of the policies, but rather had to be gleaned from the definition of a "non-owned" vehicle, a term not flagged to highlight its special meaning. Id., at 612, 629. The insurers' method of excluding by definition was ambiguous, unclear, a technical construction and contrary to the reasonable expectation of the insured persons reading the insurance contracts. Id., at 611. While we are not bound by Powers because it was not a majority decision, this case is distinguished by its clear and unambiguous exclusion of coverage. See also Allen v Auto Club Ins Ass'n, 175 Mich App 206, 437 NW2d 263 (1988); Transamerica Ins Corp of America v Buckley, 169 Mich App 540; 426 NW2d 696 (1988); Ziegler

v Goodrich, 163 Mich App 656; 415 NW2d 4 (1987), lv den 430 Mich 868 (1988).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Marilyn Kelly
/s/ Thomas M. Burns