

S T A T E   O F   M I C H I G A N  
C O U R T   O F   A P P E A L S

MICHIGAN MILLERS MUTUAL  
INSURANCE COMPANY,

DEC 16 1986

Plaintiff-Appellee,

v

No. 90061

FARM BUREAU GENERAL  
INSURANCE COMPANY,

Defendant-Appellant.

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BEFORE: R. M. Maher, P.J., D. F. Walsh and C. Stell\*, JJ.

D. F. WALSH, J.

Defendant Farm Bureau General Insurance Company appeals the declaratory judgment that defendant is responsible for payment of no-fault benefits to or on behalf of Ricky Thompson for accidental bodily injuries suffered by him in an accident on September 11, 1984. The trial court directed defendant to reimburse plaintiff Michigan Millers Mutual Insurance Company for no-fault benefits it had paid as a result of Ricky Thompson's injuries.

The parties stipulated to the following facts:

"1. That on September 11, 1984, Ricky A. Thompson sustained bodily injuries arising out of a motor vehicle accident occurring at an intersection in Muskegon County, Michigan.

"2. That as a result of the injuries he sustained in said accident, Ricky A. Thompson became entitled to certain benefits under the Michigan No Fault Automobile Insurance Act.

"3. That the motor vehicle involved in said accident was a 1977 Dodge pickup truck which was owned, operated and lawfully registered in the state of Michigan by John Joseph Grega.

"4. That at the time of the accident, Ricky A. Thompson was operating a 1972 Kawasaki trail bike. . . .

"5. That the said trail bike was powered by a 175 cubic centimeter piston displacement motor, was designed to travel on two wheels in contact with the ground, was equipped with a saddle or seat for use of a rider, and is not a moped.

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

"6. That said trail bike was not registered as a motorcycle with the State of Michigan and did not have a headlight, tail light, turn signals, rear view mirror, speedometer, or other certain devices necessary to be permitted to be used upon a public highway. It was not designed to be used upon a public highway and it could not legally be operated upon a public highway.

"7. That said trail bike was designed to be used solely for off the road use and was an "Off-Road Recreational Vehicle" as defined by the Off-Road Recreational Vehicle Act, MCL 257.1601; MSA 9.3300(1), et seq.

"8. That at the time of the accident the 1977 Dodge pickup truck involved in the accident was insured under a no fault automobile insurance policy issued by Farm Bureau General Insurance Company to John Joseph Grega.

"9. That at the time of the accident Ricky A. Thompson was domiciled in the same household as his parents who were the named insureds under an automobile no fault insurance policy issued by Michigan Millers Insurance Company.

"10. That at the time of the accident, Ricky A. Thompson was not married and was not the named insured in any automobile no fault insurance policy.

"11. The parties hereto have each paid certain no fault benefits to Ricky A. Thompson and seek restitution of those benefits paid from the other."

The trial court ruled that defendant was responsible for payment of benefits under § 3114(5) of the no-fault act. MCL 500.3114(5); MSA 24.13114(5). We affirm.

MCL 500.3114(5), supra, provides:

"(5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

"(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

"(b) The insurer of the operator of the motor vehicle involved in the accident.

"(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

"(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident."

For purposes of the no-fault act, a "motorcycle" is defined as:

"a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the

ground. Motorcycle does not include a moped, as defined in section 32b of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws." MCL 500.3101(2)(a); MSA 24.13101(2)(a).

As described by the parties in this case, Ricky Thompson's trail bike was a "motorcycle" as defined in the no-fault act. See Stipulation No. 5, supra. The parties also agree that the trail bike is an off-road recreational vehicle, as defined in Public Act 1975, No. 319. MCL 257.1601 et seq.; MSA 9.3300(1) et seq. (the ORV Act):

"'ORV' or 'vehicle' means a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. It includes, but is not limited to a multitrack or multiwheel drive or low pressure tire vehicle, a motorcycle or related 2-wheel or 3-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. 'ORV' or 'vehicle' does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a construction or logging vehicle used in performance of its common function, or a registered aircraft." MCL 257.1601(j); MSA 9.3300(1)(j).

The ORV Act provides that, with limited exceptions, an ORV shall not be operated unless registered with the department of state. MCL 257.1604; MSA 9.3300(4). The act generally prohibits the operation of an ORV on public highways unless the vehicle is registered under Public Act 1949, No. 300, the motor vehicle code, MCL 257.1 to 257.923; MSA 9.1801 to 9.2623. MCL 257.1614; MSA 9.3300(14).

Section 3 of the ORV Act provides in pertinent part:

"An ORV is exempt . . . from the provisions of sections 3101 to 3179 of Act No. 218 of the Public Acts of 1956, as amended, being sections 500.3101 to 500.3179 of the Michigan Compiled Laws." MCL 257.1603; MSA 9.3300(3).

MCL 500.3101; MSA 24.13101 to MCL 500.3179; MSA 24.13179, are the provisions of the no-fault act.

Defendant argues that § 3 of the ORV Act precludes application of § 3114(5) of the no-fault act under the facts of this case. We are not so persuaded.

There is no question that Ricky Thompson's trail bike meets the no-fault definition of motorcycle and that, absent the prob-

lem allegedly posed by § 3 of the ORV Act, defendant, insurer of the owner of the motor vehicle involved in the accident, would be responsible for payment of no-fault benefits under MCL 500.3114(5)(a); MSA 24.13114(5)(a). We are persuaded that § 3 of the ORV Act has no bearing on the issue presented in this case.

The general rule is that "exemptions in a statute are carefully scrutinized and not extended beyond their plain meaning." Grand Rapids Motor Coach Company v Public Service Commission, 323 Mich 624, 634; 35 NW2d 299 (1949). In addition, "[w]here, by reasonable construction, two statutes can be reconciled, and the purpose of each can be served, it is the duty of the courts to reconcile and enforce them." Manville v WSU Board of Governors, 85 Mich App 628, 635; 272 NW2d 162 (1978), lv den 406 Mich 959 (1979). Ordinary words in a statute are to be given their plain and ordinary meaning. State Bar of Michigan v Galloway, 124 Mich App 271, 277; 335 NW2d 475 (1983), aff'd 422 Mich 188; 369 NW2d 839 (1985).

An ordinary and plain meaning of "exempt from" is "not subject to." Webster's Third New International Dictionary. See also Maine Water Company v City of Waterville, 93 Me 586; 45 A 830, 833 (1900): "The term 'exemption' implies a release from some burden, duty or obligation."

Application of § 3 of the ORV Act as urged by defendant in this case would extend the section's exemption beyond its plain meaning. Section 3 states that ORV's are exempt from the provisions of the no-fault act. The Legislature did not say that a person's status as operator of an ORV/motorcycle cannot be considered in determining priority of payment of no-fault benefits. Determination of no-fault payment priority under MCL 500.3114(5), supra, in this case neither subjects the trail bike (ORV) to the provisions of the no-fault act nor negates the vehicle's release from the duties imposed by the no-fault act.

The trial court's judgment in this case reflects a reasonable and reconciling construction of the pertinent provisions of the ORV Act and the no-fault act. Under MCL 500.3114(5), supra, defendant is responsible for payment of no-fault benefits to Ricky Thompson.

Affirmed.

/s/ Richard M. Maher  
/s/ Daniel F. Walsh  
/s/ Carolyn Stell