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STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,
a Michigan corporation,

Plaintiff-Appellee,

v

GARY J. CORNELLIER,

Defendant,

and

WILLIE MAE JEWELL and GERIAN STEPHENS,

Intervening Defendants-Appellants.

January 14, 1991

No. 122700

Before: Holbrook, Jr., P.J., and Wahls and T. G. Kavanagh*, JJ.

PER CURIAM.

Intervening defendants appeal as of right from an order of the Oakland Circuit Court granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) while simultaneously denying their cross-motion for summary disposition. On appeal, intervening defendants (defendants) argue that the 1969 AMC vehicle operated by Gary J. Cornellier at the time of the accident constitutes a temporary substitute vehicle as a matter of law and that the subject insurance clause is void. We affirm.

The underlying basis for this declaratory judgment action brought by plaintiff is a November 30, 1987, automobile accident involving Cornellier. At the time the accident occurred, Cornellier owned a 1979 Ford Bronco insured with plaintiff through the Cobb Insurance Agency. In a November 13, 1987, telephone application for insurance, Cornellier never asked to insure any vehicle other than the Bronco. Nor did he inquire if he might be insured under any other vehicles. Cornellier's policy on the Bronco was issued by plaintiff on December 17, 1987.

Following the accident, a law suit was brought against Cornellier and was turned over to plaintiff by his attorney. Plaintiff filed this declaratory judgment action based on the policy's provision concerning the temporary use of a substitute automobile. Briefly stated, the policy does not cover an insured while using another vehicle owned by the insured. The facts showed that Cornellier had been the title owner of the 1969 AMC since August 5, 1980.

Defendants first argue that the 1969 AMC automobile was a temporary substitute vehicle in light of the inoperability of the Ford Bronco at the time of the accident and therefore makes the insurance coverage applicable as a matter of law.

The subject insurance policy contained the following clause under "Temporary Use of Substitute Automobile":

> While the automobile is withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by this policy with respect to such automobile applies with respect to another automobile not owned by the named insured while temporarily used as a substitute. (Emphasis added.)

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

There is no question that the 1969 AMC vehicle involved in the accident was not the named vehicle on this or any other insurance policy. Nor is there any question about the inoperability of the insured vehicle, the 1979 Ford Bronco. The undisputed facts show that the Bronco was jacked-up on a hoist with its sway bar removed in preparation for the installation of a new sway bar. Without the sway bar, the Bronco was clearly inoperable.

Owned vehicle exclusion clauses have been found to be valid where they are clear and unambiguous, are not against public policy, and use easily understood terms and plain language. Allen v Auto Club Ins Ass'n, 175 Mich App 206, 209; 437 NW2d 263 (1988), lv den 432 Mich 926 (1989); Shank v Kurka, 174 Mich App 284, 288; 435 NW2d 453 (1988). The language in question here is quite plain and unambiguous, an automobile owned by the named insured does not qualify for coverage as a temporary substitute vehicle under the terms of the policy before us. No other interpretation of the language is possible.

Next, defendants argue plaintiff may not escape liability pursuant to the "temporary substitute vehicle" provision since the insured did not have an opportunity to read the policy and the exception was "deceptively placed within the body of the policy." Defendants rely upon Yahr v Garcia, 177 Mich App 705; 442 NW2d 749 (1989), for the proposition that an insurer cannot escape liability when the exceptions are deceptive and contrary to the reasonable expectations of the insured. However, for a policy holder to have a reasonable expectation of coverage of insurance, the insured must first have read the policy. Raska v Farm Bureau Mutual Ins Co of Michigan, 412 Mich 355, 362-363; 314 NW2d 440 (1982). It cannot be disputed that Cornellier had not read the policy prior to the accident since the policy was never mailed until December 17, 1987, some seventeen days following the accident. Having, by his own admission, never having coverage with plaintiff before, Cornellier can hardly said to have had a reasonable expectation of coverage.

Moreover, Mr. Cornellier's past practice clearly belies such an expectation. The facts below clearly show that when he drove the 1969 AMC in the past, he first secured insurance for it. The AMC vehicle was insured in the past. Deposition testimony of an agent with the Underwriters Agency showed that in February 1987, the AMC was removed from a Safeco Insurance Company policy and the 1979 Bronco added. In March 1987, the 1969 AMC was readded to the policy and a 1979 Chevette removed. The Safeco policy lapsed in June 1987 for nonpayment of premium. The agent testified that the pattern seemed to be that the AMC was driven only in good weather. During the summer months of 1987, Mr. Cornellier insured neither the AMC nor the Bronco, driving instead his motorcycle.

Cornellier's entire past practice indicates that he believed that to insure a car, it must be listed on the policy. It strains credibility to believe that he suddenly developed a reasonable expectation he would be insured to drive the AMC merely because the Ford Bronco was inoperable.

Having found the policy language to be clear and unambiguous and that there was no reasonable expectation of coverage, we hold that the trial court did not error in granting plaintiff summary disposition.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Myron H. Wahls
/s/ Thomas G. Kavanagh