STATE OF MICHIGAN

COURT OF APPEALS

TERRY ENGLUND,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

March 11, 1991

No. 129375

Before: McDonald, P.J., and Brennan and Jansen, JJ.

PER CURIAM.

Plaintiff sought to recover $350,000 from defendant insurance company for injuries sustained in a motorcycle-automobile collision. In the declaratory action to establish defendant's liability, the trial court granted plaintiff's motion for summary disposition finding that plaintiff could recover under residual liability coverages of three automobile policies issued by defendant. At the same time, the trial court denied defendant's cross-motion for summary disposition. Defendant appeals as of right from the trial court's grant of summary disposition alleging that the insurance policies involved in the present case precluded the stacking of coverage. We agree and reverse.

The present action stems from a collision between an automobile and motorcycle. Both vehicles were insured through defendant. In addition, the father of the driver of the automobile had two motor vehicle policies issued on two other automobiles through defendant. The motorcyclist had another policy on another automobile also issued through defendant. Plaintiff, a passenger on the motorcycle, sought recovery under all five policies. Defendant conceded liability under the policies written for the motorcycle and the car involved in the accident and, therefore, paid plaintiff the coverage limits on these two policies. The present action was instituted to determine the applicability of coverage for the three remaining automobiles. We hold that the policies on the three automobiles not involved in the accident do not provide for coverage.

Our review of a declaratory judgment is conducted de novo. Auto Club Ins Ass'n v Page, 162 Mich App 664, 666-667; 413 NW2d 472 (1987). In determining whether an insurance policy applies in a given case, this Court must first determine whether the policy is clear and unambiguous on its face. We look to the language of the policy and construe any ambiguity in favor of the insured. Allstate Ins Co v Freeman, 432 Mich 656, 665; 443 NW2d 734 (1989) (Riley, C.J.). If a reading of the entire contract of insurance fairly admits of but one interpretation, it may not be said that an exclusion is ambiguous or fatally unclear. Raska v Farm Bureau Mutual Ins Co, 412 Mich 355, 362; 314 NW2d 440 (1982); Allen v Auto Club Ins Ass'n, 175 Mich App 206, 209-210; 437 NW2d 263 (1988), lv den 432 Mich 928 (1989).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. VanDyke v League General Ins Co, 184 Mich App 271, 273; 457 NW2d 141 (1990). Summary disposition is appropriate if the court is satisfied that it is impossible for the non-moving party's claim to be supported at trial because of a deficiency which cannot be overcome. Id. If a non-moving party fails to establish that a material fact is at issue, the motion is properly granted. Id.

In the present case, the policy for insurance, under the heading "When coverages A and Y do not Apply", contains the following provision:

There is no coverage under A and Y:

* * *

* * *

* * *

4. For the operation, maintenance or use of any vehicle:

a. Owned by:
b. Registered in the name of: or
c. Furnished or available for the regular or frequent use of:

You, your spouse or any relatives. This does not apply to your car or a newly acquired car.

We hold that this provision is clear and unambiguous. Powers v DAIIE, 427 Mich 602, 623–624; 398 NW2d 882 (1986) (Williams, C.J.). The language establishes that coverage is excluded when the accident involves the use of a vehicle owned by you, your spouse or relatives unless the vehicle is your car which is described in the definitional section of the insurance policy as the vehicle described on the declaration's page. This section precludes recovery on the policies issued on the three automobiles not involved in the accident. Thus, we hold that the trial court erred in finding that this provision was ambiguous and erred in granting plaintiff's motion for summary disposition. Similarly, since plaintiff has failed to provide evidence of any material fact to contradict the evident meaning of this provision, we hold that the trial court should have granted summary disposition to defendants based on the language in the policy.

We reverse and remand the case for an entry of an order of summary disposition in favor of defendant under MCR 2.116(C)(10). We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Thomas J. Brennan
/s/ Kathleen Jansen