

STATE OF MICHIGAN

COURT OF APPEALS

RICHARD BIANCHI,

MAR 01 1989

Plaintiff-Appellee,

v

No. 93830

AUTOMOBILE CLUB OF MICHIGAN,

Defendant-Appellant.

Before: Gillis, P.J., and Holbrook, Jr. and S. N. Andrews,* JJ.
PER CURIAM.

In this action for declaratory judgment, defendant Automobile Club of Michigan appeals from an order of summary disposition in favor of plaintiff, which decided that plaintiff was entitled to uninsured motorists coverage under the provisions of an automobile insurance policy issued by defendant. We affirm.

This case arose from a vehicular accident in which plaintiff, the operator of a motorcycle, collided with an automobile that was uninsured. An insurance policy issued for the motorcycle did not provide for uninsured motorists coverage. However, plaintiff sought coverage from a policy issued by defendant for another vehicle owned by plaintiff's wife. Defendant denied coverage, relying on the following policy exclusion:

"This coverage does not apply to bodily injury sustained by an insured person:

"while occupying a motor vehicle which is owned by you or a relative unless that motor vehicle is YOUR CAR ..."

The policy includes the following pertinent definitions:

"Motor Vehicle means a land motor vehicle or trailer, requiring vehicle registration, but does not mean:

"a vehicle used as a residence or premises;

"a vehicle, whether the accident occurs on or off the highway, which is

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

"a snowmobile, or

"operated on rails or crawler treads, or

"a farm-type tractor, or

"equipment designed for use principally off the highway.

* * *
"Occupying . . . means in, getting into, or
out of."

Plaintiff's argument that the exclusion is inapplicable relies on the principle that an ambiguity in an insurance contract must be strictly construed against the insurer. Plaintiff would find an ambiguity in this case because the exclusion pertaining to an insured's use of a motor vehicle is not clearly made applicable to the use of a motorcycle, i.e., the term motor vehicle does not unambiguously encompass a motorcycle.

In Weston v Karwat, 157 Mich App 261; 403 NW2d 115 (1987), insurance coverage was sought for a collision between a pedestrian and a moped. The dispositive issue, similar to the instant case, was whether an exclusion for injuries "arising out of the ownership, maintenance, operation, use, loading or unloading of . . . any motor vehicle owned or operated by . . . any Insured" avoided coverage. Taking note that the policy defined a motor vehicle by reference to a list of different wheeled conveyances and then excluded from that definition another list of conveyances, this Court held that the failure to mention mopeds in either list or to describe physical characteristics of a motor vehicle rendered the policy ambiguous as to coverage of mopeds. Accordingly, this Court reversed declaratory judgment in favor of the insurance company, holding that the ambiguity rendered the exclusion inapplicable to the claim.

We find the reasoning and holding in Weston highly persuasive and deem it controlling in the instant case. Although

this Court has in previous decisions held that a motorcycle is unambiguously subject to an owned motor vehicle exclusion, see Auto-Owners Ins Co v Ellegood, 149 Mich App 673; 386 NW2d 640 (1986); Ziegler v Goodrich, 163 Mich App 656; 415 NW2d 4 (1987), lv den 430 Mich 868 (1988), these cases are distinguished. The opinion in Ziegler gives no indication that the term motor vehicle was defined, and in Ellegood, it is indicated that the term was completely undefined in the policy. In this case, the definition of a motor vehicle as a land motor vehicle or trailer, excluding five different categories of vehicles, created an ambiguity whether or not the motorcycle was intended to be subject to the exclusion. The omission of an explicit reference to motorcycles and the absence of a delineation of physical characteristics of a motor vehicle could have reinforced the insured's impression that a motorcycle lacks the status of a motor vehicle. When this ambiguity is read in conjunction with the requirement that the insured be occupying the vehicle at the time of the accident, suggesting that the operator be enclosed within the vehicle, the confusion to the reader of the policy becomes all the more apparent.

Affirmed.

/s/ John H. Gillis
/s/ Donald E. Holbrook, Jr.
/s/ Steven N. Andrews