

STATE OF MICHIGAN  
COURT OF APPEALS

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AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHAEL WAYNE WINTER, SUSAN BROWN and  
GERALD BROWN,  
as Personal Representatives of the Estate of  
JERROLD BROWN, THOMAS A. WINTER,  
DENISE TYNER, IONIA COUNTY,  
DOMINIC SPEDOSKE,  
as Personal Representative of the Estate of  
KEITH SPEDOSKE, Deceased, and  
RONALD SPECKIN,

Defendants-Appellees.

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April 1, 1991  
9:45 a.m.

No. 118264

Before: Gillis, P.J., and MacKenzie and Weaver, JJ.

WEAVER, JJ.

Plaintiff, Auto-Owners Insurance Company, appeals as of right the May 25, 1989, declaratory judgment in which it was found to have a duty to defend Michael Winter in proceedings following an auto accident. We reverse.

On March 11, 1985, Denise Tyner transferred ownership of a 1977 Monte Carlo to Michael Winter. On April 5, 1985, Michael attempted to transfer this vehicle to his brother, Thomas. On April 7, 1985, Thomas Winter, while driving this car, was involved in an automobile accident. Two wrongful death actions arose from this accident.

Michael Winter, a defendant in these suits, sought to have Auto Owners, who insures his other automobile, defend him in these actions. Auto Owners brought the instant motion for declaratory judgment. The trial judge found that the transfer of ownership of the car from Denise Tyner to Michael Winter complied with MCL 257.233; MSA 9.1933, but Michael Winter's attempted transfer to his brother Thomas Winter did not. Accordingly the judge ruled that Michael Winter was the owner of the car on the date of the accident. The trial judge further ruled that on that date the car was insured by Auto Owners under the "Automatic Insurance for Newly Acquired Automobiles" provision of the insurance policy.

Auto Owners urges that the Court erred in finding that the car was covered under the policy Michael Winter had on his pickup truck.

The relevant portion of that policy provides:

IV AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES

If the named insured, who is the owner or lessee of the automobile, or, if the named insured is an individual, his spouse if a resident of the same household, acquires ownership of or leases other equipment of the type described in the Declarations, such insurance as is afforded by this policy applies to such other equipment as of the date of its delivery to him, subject to the following additional conditions:

\* \* \*

E. This agreement does not apply:

\* \* \*

(3) unless the named insured or spouse notifies the company within 30 days following the acquisition of an additional automobile; and

(4) unless the named insured pays any additional premium required because of the application of this insurance to such other equipment.

It is not disputed that Michael Winter failed to comply with either the notice condition or the additional premium condition.

The issue before us is whether coverage is afforded an insured for an accident to his newly acquired vehicle occurring within the thirty day period as set forth in an "automatic coverage" clause of a policy, despite noncompliance with the conditions listed in the policy.

Though several other jurisdictions have ruled coverage is in effect in such a circumstance, we decline to follow their lead. See Republic Mutual Ins Co v State Farm Mutual Auto Ins Co, 527 F2d 1002 (CA 4, 1975), remanded on other grounds 414 F Supp 649 (1976) and Georgia Mutual Ins Co v Criterion Ins Co, 131 Ga App 339; 206 SE2d 88 (1974).

The plain reading of the insurance policy dictates against such a result. The policy before us clearly requires notice to be effective; no such notice was given, and therefore we cannot uphold a finding of coverage. We reverse the declaratory judgment below holding Auto-Owners liable to defend under the policy. We remand to the trial court to allow the proper order to be entered.

Our resolution of this issue makes it unnecessary to consider appellant's second issue, whether Michael Winter was in fact the owner of the car.

Reversed and remanded. We do not retain jurisdiction.

/s/ Elizabeth A. Weaver  
/s/ John H. Gillis  
/s/ Barbara B. MacKenzie