STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CHRISTOPHER J. CLEMENS, and ROBERT R. CLEMENS,

Plaintiffs-Appellants,

v

RODNEY ALLAN BURBANK, II, LARRY URBAIN, JR., SCOTT RICHARD NOTHELFER, KATHLEEN ANN CONKLIN, individually and as personal representative for JESSICA WILLIAMS, deceased, GARY WILLIAMS, deceased, KARI WILLIAMS, deceased, and BOYD CONKLIN, deceased, and KATHLEEN ANN CONKLIN, conservator of the estates of AMBER JO CONKLIN and HELEN WILLIAMS,

Defendants-Appellees.

June 18, 1991
9:55 a.m.
FOR PUBLICATION

No. 127799

Before: Sawyer, P.J., and Marilyn Kelly and Neff, JJ.

PER CURIAM.

The trial court granted summary disposition pursuant to MCR 2.116(C)(8) and (10) in favor of defendants on plaintiffs' complaint seeking declaratory judgment concerning their obligations under an insurance policy issued by State Farm naming Christopher Clemens as the insured. Plaintiffs now appeal and we affirm.

Plaintiff Christopher Clemens was involved in an automobile accident on January 1, 1988, when he failed to heed a stop sign and drove through the intersection at approximately sixty-five miles per hour, broadsiding a vehicle driven by defendant Kathleen Ann Conklin. Four occupants of the Conklin vehicle were killed, three others were seriously injured, and three passengers in the Clemens' vehicle were also injured. Plaintiff State Farm had also written the insurance policy covering the vehicle owned by Christopher Clemens' father, plaintiff Robert Clemens, which Christopher Clemens was driving at the time of the accident. Plaintiffs admitted liability and State Farm paid the policy limits on the policy issued to Robert Clemens into court and an interpleader action was commenced against defendants for distribution of the proceeds of the policy. Defendants, however, also sought recovery against the insurance policy issued by State Farm to Christopher Clemens on the vehicle owned by him. State Farm then sought a declaratory judgment concerning its liability on the Christopher Clemens policy.[1]

This case involves what is known as the "owned-vehicle exclusion" clause to an automobile insurance policy. Specifically, in general terms, the insurance policy at issue provides liability coverage when the named insured is driving the specific automobile named in the declarations of the insurance policy as well as any "non-owned automobile" as defined in the policy. Coverage is excluded, however, as to any "owned automobile," as defined in the insurance policy, and not named in the declaration pages. In the case at bar,

Christopher Clemens was driving an automobile owned by his father, which automobile was not listed on the declaration page of Christopher Clemens' own insurance policy. The question, therefore, becomes whether the automobile was "owned" or "non-owned" by Christopher Clemens as defined in his insurance policy. If the former, then there is no coverage, while coverage would be applicable if the vehicle is "non-owned."

Owned-vehicle exclusion clauses are valid so long as they are clear and unambiguous and employ easily understood terms and plain language. Shank v Kurka, 174 Mich App 284, 288; 435 NW2d 453 (1988); see also Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1986); Raska v Farm Bureau Mutual Ins Co of Michigan, 412 Mich 355; 314 NW2d 440 (1982). We agree with plaintiffs that the owned-vehicle exclusion clause in the policy at issue in this case is enforceable, but we also conclude that, under the terms of the insurance policy, plaintiff State Farm is liable on the policy.

As stated above, the insurance policy, in addition to specifically excluding coverage when the insured is operating a vehicle owned by or furnished or available for the regular or frequent use of the insured or any relatives of the insured, other than a car named on the declaration page, also explicitly provides coverage for an insured while operating a "non-owned car." The insurance policy defines the term "non-owned car" as follows:

> **Non-Owned Car**--means a **car** not
>
> 1. owned by,
>
> 2. registered in the name of, or
>
> 3. furnished or available for the regular or frequent use of
>
> **you, your spouse**, or any **relatives.**

Furthermore, the policy defines "relatives" as follows:

> **Relative**--means a **person** related to **you** or **your spouse** by blood, marriage or adoption who lives with **you.** It includes **your** unmarried and unemancipated child away at school.

Plaintiffs advance two separate arguments concerning why coverage is not available under the policy. First, plaintiffs argue that the automobile involved in the accident was a "non-owned car" with respect to Christopher Clemens because it was furnished or available for his regular or frequent use. Second, plaintiffs argue that the vehicle was owned by Christopher Clemens' father, Robert Clemens, who is a relative of Christopher Clemens as defined in the policy. We disagree with both these propositions.

Turning first to the question whether the automobile was furnished or available for the regular or frequent use of Christopher Clemens, we conclude that there is no evidence to support the conclusion that Christopher Clemens' use of the vehicle was either regular or frequent. The insurance policy does not define the terms "regular" or "frequent" and, therefore, we must assign them their plain and ordinary meaning. Lamotte v Millers Nat'l Ins Co, 180 Mich App 271, 275; 446 NW2d 632 (1989). The definitions for "regular" listed in the The Random House College Dictionary (rev ed), p 1111, include the following:

> 1. usual; normal; customary. . . . 4. recurring at fixed or uniform intervals. . . . 6. being consistently or habitually such: a regular customer.

Random House, p 529, defines "frequent" as follows:

> 1. happening or occurring at short intervals: to make frequent trips to a place.
> 2. constant, habitual, or regular: a frequent guest.

The only evidence in the record before us concerning Christopher Clemens' use of the automobile involved in the accident comes from his own deposition. Clemens was attending the New England Institute of Technology located in West Palm Beach, Florida. He attended school year round and had a motor vehicle with him in Florida, the vehicle named on the declaration page of his own policy. Clemens would return to Michigan during semester breaks. Those breaks would last no more than three weeks and he would return to Michigan approximately every three months. Clemens testified that each of these breaks differed in that they were never the same amount of time or at the same time and that they varied from year to year. When he returned to Michigan, he would fly and, while in Michigan, he would have access to two motor vehicles owned by his parents, the Mercury Marquis station wagon involved in the accident and a Pontiac Grand Am. Clemens' deposition does not indicate whether there was any greater frequency in use of the Marquis than in the use of the Grand Am. Under the facts of this case, we cannot conclude that the Marquis was available for Clemens' regular or frequent use as that clause is used in the insurance policy.

First, Christopher Clemens did not regularly use the automobile involved in the accident. Indeed, he regularly used his automobile in Florida, using his parents' automobiles in Michigan only a small portion of the time. Furthermore, Christopher Clemens did not frequently use the Mercury Marquis. He only used that automobile during the time he spent in Michigan, which was approximately four times a year and a maximum of three weeks during each visit. This is certainly not frequent use. Accordingly, we conclude that the automobile was not available for his regular or frequent use and, therefore, is not excluded from the definition of a "non-owned car" as used in the insurance policy.

However, the Mercury Marquis is also excluded from the definition of a "non-owned car" if its owner, Robert Clemens, is considered a "relative" of Christopher Clemens as the term "relative" is defined in the insurance policy. Although Robert Clemens, as Christopher Clemens' father, would certainly be considered a relative under the ordinary meaning of that word, the insurance policy draws a much narrower definition which, for the reasons to be discussed below, we conclude does not fit Robert Clemens. To be a relative within the meaning of the insurance policy, the person must be related to the insured by blood, marriage or adoption and must live with the insured. The facts of the case at bar do not support the conclusion that Robert Clemens lived with Christopher Clemens, or vice versa.

There is no dispute that Robert Clemens lived in St. Charles, Michigan. The parties do dispute, however, where Christopher Clemens lived. Plaintiffs take the position that Christopher Clemens lived in St. Charles with his parents, although he was physically present in the State of Florida most of the year attending school.[2] Defendants, on the other hand, maintain that Christopher Clemens lived in Florida and merely visited Michigan during school breaks. Again, the only evidence in the record concerning where Christopher Clemens lived is that contained in Christopher Clemens' deposition.

According to Clemens' testimony, he began his studies at the New England Institute of Technology in the fall of 1986, over one year prior to the accident. The first few months in Florida he stayed with his sister and brother-in-law, and thereafter moved into his own apartment. At the time of the accident, Christopher Clemens had a Florida driver's license and his vehicle was registered in Florida. He was not registered to vote in either Michigan or Florida.

The facts of this case do not support a conclusion that Christopher Clemens lived with his father. While there might be some argument that Christopher Clemens' legal residence remained in Michigan in light of the fact that he was at school, that conclusion is neither compelled by the facts nor, for that matter, relevant to the determination of this case. The insurance policy does not define relative in terms of a person's legal domicile or legal residence. Rather, it uses the phrase "live with" in defining a relative. Thus, in drafting its insurance contract, State Farm chose not to incorporate the legal concepts behind residence, including the possibility that one's legal residence is other than where he is physically located and owns or rents shelter.

We construe exclusionary clauses strictly against the insurer, as do we any ambiguous language in an insurance contract. Lamotte, supra at 275. In light of this rule of strict construction against the insurance

company, we conclude that the term "live with" as used in the State Farm policy refers to that location where the person principally "lives," that is, where the person receives his mail, eats and sleeps, and where he principally spends his time when not otherwise engaged with the activities of life. In the case at bar, Christopher Clemens lived in the State of Florida. He maintained an apartment there, spent most of his time there, received mail there, was licensed to drive there, and had registered his motor vehicle there. Accordingly, the facts support but one conclusion: that Robert Clemens lived in the State of Michigan and Christopher Clemens lived in the State of Florida and, more importantly, Robert Clemens did not live with Christopher Clemens. Therefore, Robert Clemens is not a "relative" of Christopher Clemens as that term is used in the State Farm policy.

For the above reasons, we conclude that, while State Farm's owned-vehicle exclusion is valid, it is inapplicable to the case at bar. The Mercury Marquis driven by Christopher Clemens at the time of the accident is, with respect to the insurance policy involved in the case at bar issued to Christopher Clemens, a "non-owned vehicle" and, therefore, the insurance policy provides liability coverage to Christopher Clemens for this accident.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer
/s/ Marilyn Kelly
/s/ Janet T. Neff

[1] For reasons not readily apparent to us, State Farm as well as the Clemenses are listed as plaintiffs in the trial court and collectively as appellants in this Court, suggesting a unity of interest. It would seem, however, that State Farm's interests are adverse to those of the Clemenses inasmuch as the outcome of the declaratory judgment action may affect the personal liability of the Clemenses to the various defendants. This, however, does not affect the outcome of this appeal.

[2] Plaintiffs' brief does not set forth any detailed argument to support the proposition that Christopher Clemens lived in Michigan with his father and, therefore, that his father was a "relative" as that term is used in the policy. Rather, plaintiff merely makes the affirmative assertion that Christopher Clemens was driving a relative's vehicle, without discussing whether Robert Clemens was a "relative" of Christopher Clemens as that term is used in the policy. In fact, plaintiffs' brief does not even discuss the definition of "relative" contained in the policy.