

61293 STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS KOZMA and VICKIE KOZMA,

July 26, 1991

Plaintiffs-Appellants,

v

No. 118208

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

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Before: Cavanagh, P.J., and Neff and W.R. Beasley, \* JJ.

PER CURIAM.

In this declaratory judgment action, plaintiffs sought a determination requiring defendant, Auto Owners Insurance Company, to pay plaintiffs uninsured motorist benefits arising out of an accident between plaintiff Thomas Kozma and an uninsured motorist. Plaintiffs carried insurance through defendant for their 1985 Jimmy truck, but did not have any insurance on the motorcycle which Thomas Kozma was riding when the accident occurred. The trial court granted partial summary disposition in favor of defendant pursuant to MCR 2.116(C)(10), finding that a motorcycle was a motor vehicle and, as such, it was excluded from coverage under the insurance policy. We reverse.

During the time period covered by the insurance policy purchased by plaintiffs on their 1985 Jimmy truck, plaintiff Thomas Kozma was involved in an accident with an uninsured motorist while riding his motorcycle to work. He suffered severe injuries in the accident. Plaintiffs brought suit against the uninsured motorist and received a jury award of over two and one-half million dollars. Plaintiffs then made claim against defendant for collection of this judgment. Defendant rejected plaintiffs' claim for uninsured motorist benefits on the basis of an alleged exclusion contained in the insurance policy. Plaintiffs filed the instant declaratory judgment action, and, as indicated, the trial court subsequently granted defendant partial summary disposition.

The sole issue before us involves the interpretation of the insurance policy contract between the parties. The policy provides for uninsured motorist coverage for plaintiffs with certain exceptions. The exclusionary provision at issue here reads:

This coverage shall not apply . . . (e) to bodily injury to an insured sustained while in, upon, entering or alighting from any motor vehicle owned by the named insured, spouse or a relative of either who is a resident of the same household unless a premium charge for this coverage is shown in the Declarations for such vehicle.

The trial court, relying on Auto-Owners Ins Co v Ellegood,<sup>1</sup> determined that a motorcycle was a motor vehicle for purposes of this exclusion, and consequently plaintiffs were not entitled to the uninsured motorist benefits arising out of plaintiff Thomas Kozma's motorcycle accident with the uninsured motorist. In Ellegood, the defendant was injured by an unknown hit-and-run driver while riding his uninsured motorcycle. The issue arose as to whether he was entitled to uninsured motorist benefits under his father's insurance policy, which contained an exclusion virtually identical to the one in the present case. The term "motor vehicle" was not defined in that policy. The Ellegood Court decided that, in the ordinary and popular sense, as well as the technical meaning and by dictionary definition, the term "motor vehicle" unambiguously included a motorcycle.

In Bianchi v Automobile Club of Michigan,<sup>2</sup> which involved an accident between a motorcycle without uninsured motorist coverage and an uninsured motorist, a motor vehicle was defined in the uninsured motorists' section of the plaintiff's wife's automobile insurance policy as meaning "a land motor vehicle or trailer, requiring vehicle registration," excluding certain specified vehicles. The Supreme Court found that, under this definition, a motorcycle is a motor vehicle in both the common sense and dictionary sense of the term, in that it is operated on land and is required to be registered. The Supreme Court noted that this definition contrasted with the separate definition of "motor vehicle" found in the no-fault coverage section of the policy, which limited its meaning to vehicles with more than two wheels, conforming to the definition found in the no-fault act, MCL 500.3101(2); MSA 24.13101(2). The broader definition in the uninsured motorists' section was closer to that used in the Motor Vehicle Code, which includes motorcycles, MCL 257.33; MSA 9.1833.<sup>3</sup> Id., pp 71-72.<sup>4</sup>

If a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear.<sup>5</sup> While the terms of an insurance policy must be construed according to their plain, ordinary, and popular sense of the language used,<sup>6</sup> in the present case, there is a definition of the term "motor vehicle" in the no-fault insurance endorsement, which provides:

The Company agrees with the named insured, subject to all of the provisions of this endorsement and to all of the provisions of the policy except as modified herein, as follows:

\* \* \*

### Section III

#### DEFINITIONS

When used in reference to this insurance:

\* \* \*

"motor vehicle" means a vehicle including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than two wheels[.]

This definition is consistent with the "motor vehicle" definition in the no-fault act.<sup>7</sup>

The situation here is different than in Ellegood, where the policy contained no definition of "motor vehicle," so that the "ordinary and popular sense" definition was applicable. Further, it is distinguishable from Bianchi, where, although the no-fault endorsement contained a definition of "motor vehicle" as a vehicle with more than two wheels, the uninsured motorist section contained a broader definition which the Supreme Court interpreted, in the "ordinary and popular sense," to include motorcycles. Here, the only definition of "motor vehicle" in the policy is that provided by the no-fault insurance endorsement, which unambiguously excludes two-wheeled motorcycles from being included within the meaning of the term. Endorsements to insurance policies are to be given effect,<sup>8</sup> and the insurer has a duty to clearly express the limitations in the policy.<sup>9</sup> Thus, we find that the unambiguous definition of "motor vehicle" in the policy excludes motorcycles, and the uninsured motorist exclusionary clause does not preclude plaintiffs from receiving uninsured motorist coverage on that basis.

Consequently, we find that the trial court erred in granting summary disposition to defendants, although we would note that the definition in the policy was not brought to the trial court's attention at the hearing below.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Janet T. Neff  
/s/ William R. Beasley

<sup>1</sup> 149 Mich App 673; 386 NW2d 640 (1986).

<sup>2</sup> 437 Mich 65; \_\_\_ NW2d \_\_\_ (1991).

<sup>3</sup> MCL 257.33; MSA 9.1833 provides:

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from over-head trolley wires, but not operated upon rails.

<sup>4</sup> Accord Farm Bureau Mutual Ins Co of Michigan v Stark, 437 Mich 175 \_\_\_; \_\_\_ NW2d \_\_\_ (1991) (the term "motor vehicle," defined as "a land motor vehicle, trailer or semi-trailer designed for travel on public roads . . ., included a moped for purposes of a homeowners insurance policy motor vehicle exclusion. "A 'land motor vehicle,' simplistically described, is a vehicle with a motor that travels on land." *Id.*, p 182). See also Ziegler v Goodrich, 163 Mich App 656, 659; 415 NW2d 4 (1987), lv den 430 Mich 868 (1988) (motorcycle was an "automobile" for purposes of an owned-vehicle exclusion).

<sup>5</sup> Bianchi, *supra*, p 70; Stark, *supra*, p 182.

<sup>6</sup> Bianchi, *supra*, p 71 n 1; Ellegood, *supra*, p 676; Hawkeye-Security Ins Co v Vector Construction Co, 185 Mich App 369, 380-381; 460 NW2d 329 (1990).

<sup>7</sup> MCL 500.3101(2)(e); MSA 24.13101(2)(e) provides:

"Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws. Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code pursuant to section 216 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.216 of the Michigan Compiled Laws.

<sup>8</sup> Peterson v Zurich Ins Co, 57 Mich App 385, 392; 225 NW2d 776 (1975).

<sup>9</sup> Ellegood, *supra*. See also Norgan v American Way Life Ins Co, 188 Mich App 158, 162; \_\_\_ NW2d \_\_\_ (1991).