# STATE OF MICHIGAN

# COURT OF APPEALS

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CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellee,

v

HEATHER BOWRON,

Defendant,

and

GERALD LEE STILES,
as Conservator of the Estate of Heather Stiles,

Defendant-Appellant.

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August 21, 1991

No. 122202

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

PER CURIAM.

Defendant Gerald Stiles appeals as of right from a decision of the Genesee Circuit Court granting plaintiff's motion for summary disposition. MCR 2.116(C)(10). The court concluded that Stiles was not entitled to coverage under the uninsured motorist provision of his automobile insurance policy. We affirm.

Heather Bowron and defendant's daughter, Heather Stiles, were involved in an accident while riding a three-wheeled all terrain cycle (ATC). The ATC was owned by Bowron's parents. It collided with a pickup truck on a traveled portion of the roadway. There is a dispute as to who was operating it at the time of the accident.

Plaintiff, Citizens Insurance Company, insured both Stiles and the Bowrons. Stiles claimed benefits under the uninsured motorist provision of his policy. Citizens denied coverage, and this declaratory action followed.

At issue is whether the ATC is an automobile for purposes of the policy. The lower court found that the ATC was not an automobile within the ordinary meaning of the term. It entered judgment in favor of plaintiff.

On appeal, defendant Stiles argues that the court erred in concluding that the ATC was not an automobile under the terms of the policy. He also contends that his daughter is insured, because the insurance policy covers an "uninsured motorist" implying coverage for the person who drives or travels in a motor vehicle. Stiles claims the language creates an ambiguity which must be construed against the insurer.

We construe contracts according to the meaning of the terms which the parties have used. If the terms are clear and unambiguous, we interpret them in their plain, ordinary and popular sense. Farm Bureau v Stark, 437 Mich 175, 181; 468 NW2d 498 (1991). A corollary of this rule is that an insurer, using words with well-understood meanings, need not further define them. Fireman's Fund Ins Co v Ex-Cell-O Corp, 702 F Supp 1317, 1323, n 7 (ED Mich, 1988).

The uninsured motorist provision in this case stated:

The Company will pay all sums which the Assured, or his legal representative, shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile, . . .

* * *

2. "Uninsured Automobile" means:

(a) an automobile with respect to the ownership maintenance or use of which there is no bodily injury and property damage insurance policy or bond applicable at the time of the accident; or

(b) an automobile used without the permission of the owner thereof if there is no bodily injury or property damage insurance or bond applicable at the time of accident with respect to the operator thereof;

(c) a "hit-and-run automobile" as defined;

(d) an automobile with respect to which there is a Bodily Injury and Property Damage Liability Insurance Policy applicable at the time of the accident but the insurance company writing such insurance is or becomes insolvent;

provided however,

an "uninsured automobile" shall not include:

(1) an automobile owned by the named Assured or any resident of his household, or self-insured within the meaning of any motor vehicle financial responsibility law or of similar law; or which is owned either by the United States, Canada, any political subdivision thereof or any agency of any of the foregoing;

(2) a land motor vehicle or trailer, if operated on rails or crawler treads or while it is located for use as a residence or premises and not as a vehicle; or

(3) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

The trial judge noted that the ATC had three wheels, no roof, doors or windshield and had handlebars instead of a steering wheel. It is not designed to carry passengers. In some respects it is like a motorcycle, which is not an automobile in the ordinary or technical meaning of that term. Trainor v Horace Mann Ins Co, 137 Mich App 690, 693; 359 NW2d 2 (1984), rev'd on other grounds 425 Mich 43 (1986).

Defendant Stiles points to the policy exceptions language which defines "uninsured automobile," arguing that that language so broadens the definition of "automobile" that it renders its meaning ambiguous.

The exclusion of certain types of motor vehicles from the definition of "uninsured automobile" does not imply the inclusion of all other types of motor vehicles within that definition. Trainor, 693. It is also illogical to conclude that the specific inclusion of one type of vehicle not commonly known as an automobile in the definition includes all others. The meaning of the term "automobile" remains unambiguous. Using the ordinary sense of the word, the ATC is not an automobile.

In addition Stiles argues that, since the ATC is also designed to be used as farm equipment, it becomes an uninsured automobile when operated on a public road.

In this case the ATC was being used for recreational purposes. It was not farm equipment. The trial court did not err.

Lastly, Stiles argues that the use of the heading "PROTECTION AGAINST DAMAGES CAUSED BY AN UNINSURED MOTORIST" created an ambiguity. A motorist is one who drives a motor vehicle. Thus, he claims, there is an ambiguity in whether the coverage applies only to automobiles or whether it includes motor vehicles in general.

The text of the provision consistently uses the term "automobile". When read in context, the reference in the heading to an uninsured motorist is clearly a popular way of referring to coverage for uninsured automobiles. A fair reading of the section reveals no ambiguity. Raska v Farm Bureau Mutual Ins Co of Michigan, 412 Mich 355, 362; 314 NW2d 440 (1982).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Marilyn Kelly