STATE OF MICHIGAN

COURT OF APPEALS

HENRY C. DOBBS,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

May 27, 1992

No. 134674

UNPUBLISHED

Before: Hood, P.J., and Connor and Richard Kaufman*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment entered in favor of defendant following a bench trial in this action alleging breach of duty to defend and bad faith refusal to settle a claim. We affirm.

In August 1984, plaintiff was involved in a collision in which the driver of a motorcycle was struck and killed. At the time, plaintiff was driving one of his employer's trucks which was not insured. Plaintiff, however, did have an automobile insurance policy issued by defendant which covered his two personal vehicles. The estate of the decedent filed a tort action against plaintiff. After eventually being notified of the accident, defendant determined that there was no coverage because plaintiff was, in the course of employment, driving a delivery truck owned by his employer. Defendant therefore refused to defend or indemnify plaintiff.

Plaintiff failed to defend the tort action and a default judgment in the amount of $1,255,000 was entered against him. Following entry of the default judgment, plaintiff instituted this action seeking recovery from defendant, contending that his policy provided coverage. Both parties moved for summary disposition.[1] After the trial court conducted a three day bench trial, it found that the exclusionary language was not ambiguous, that coverage was not provided, and that nothing in the contract could have led plaintiff to believe otherwise.

The exclusion provision at issue provides in relevant part:

> 4. DRIVE OTHER CARS.
>
> * * *
>
> (b) Coverage does not apply:
>
> * * *
>
> (3) to any automobile not of the private passenger type which is used in a business or occupation of the named insured, spouse, or relative, or to any private passenger automobile used in the business or occupation if operated by a person other than the named insured or spouse or the chauffeur or servant of such named person or spouse unless the named insured or spouse is present in such automobile;...[Emphasis added.]

Plaintiff argues on appeal that subsection (3) does not exclude coverage for the accident involving his employer's uninsured truck, or at the very least the provision is ambiguous and thus must be construed against defendant as drafter of the language. Specifically, plaintiff contends that the conditional language "if operated by a person other than the named insured or spouse or the chauffeur or servant of such named person or spouse unless the named insured or spouse is present in such automobile" modifies the two passages which describes the types of vehicles that are not covered under the policy. Plaintiff urges us to interpret the policy language accordingly:

(1) coverage does not apply to any automobile not of the private passenger type while used in a business or occupation of the named insured, spouse or relative, if operated by a person other than the named insured or spouse or the chauffeur or servant of such named insured or spouse unless the named insured or spouse is present in such automobile, and

(2) coverage does not apply to any private passenger automobile while used in such business or occupation if operated by a person other than the named insured or spouse or the chauffeur or servant of such named insured or spouse unless the named insured or spouse is present in such automobile.

An insurance contract is ambiguous when its provisions are susceptible to conflicting interpretations. Auto Club Ins Ass'n v DeLaGarza, 433 Mich 208, 213; 444 NW2d 803 (1989). An ambiguity arises when the words in the contract may reasonably be understood in different ways. Thus, if a fair reading of the entire insurance contract leads to the understanding that there is coverage under particular circumstances while another fair reading leads to the understanding that there is no coverage under the same circumstances, then the contract is ambiguous and should be construed against the drafter and in favor of coverage. Bianchi v Auto Club of Michigan, 437 Mich 65, 70; 467 NW2d 17 (1991); Raska v Farm Bureau Ins Co, 412 Mich 355, 362; 314 NW2d 440 (1982). However, if the contract, no matter how inartfully drafted, fairly admits to but one interpretation, it may not be held to be ambiguous or fatally unclear. Bianchi, supra.

We agree with plaintiff that the wording of the exclusionary provision at issue could have been drafted in other ways to make it more clear. Nevertheless, we cannot conclude that the policy language fairly admits itself to more than one interpretation. While the interpretation urged by plaintiff would not exclude coverage for the accident, the interpretation is a strained one at best. Contrary to plaintiff's suggestion, the operative marker is the word "or", rather than the final conditional passage beginning with the word "if". Moreover, we note, as the trial court found, that plaintiff himself had no reasonable expectation that his personal insurance policies would provide coverage for an accident which occurred while he was operating his employer's truck. Accordingly, we find no error in the trial court's grant of judgment to defendant on this ground.

Plaintiff also argues that judgment should have been granted in his favor as opposed to defendant's because portable residual liability coverage is required under the no fault act when the insured drives an uninsured vehicle. This issue, however, was not raised in plaintiff's original motion for summary disposition, but rather first appeared in a supplemental motion filed several months after the beginning of trial. We recognize that the bench trial in this case was conducted over a nine month period. Nonetheless, we conclude that the supplemental issues were untimely and, more importantly, were never ruled on by the trial court. Accordingly, this argument has not been properly preserved for appeal. Swickard v Wayne County Medical Examiner, 438 Mich 536, 562; ___ NW2d ___ (1991); Joe Dwyer, Inc v Jaguar Cars, Inc, 167 Mich App 672, 685; 423 NW2d 311 (1988). Plaintiff is reminded that appellate review is limited to those issues actually decided by the trial court. Lowman v Karp, 190 Mich App 448, 454; ___ NW2d ___ (1991).

Affirmed.

/s/ Harold Hood
/s/ Michael J. Connor
/s/ Richard C. Kaufman

[1] Although both parties' briefs indicated that summary disposition was granted, the record shows that the case was tried to the court on July 20, 1989, December 19, 1989 and April 6, 1990, upon which the court rendered its findings of fact and conclusion of law, and entered judgment accordingly.