STATE OF MICHIGAN

COURT OF APPEALS

AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

November 4, 1992

No. 130715

ROSS KAY McFARLAND, TONI McFARLAND and ANDREW McFARLAND,

Defendants-Appellants.

UNPUBLISHED

Before: Hood, P.J., and Wahls and McDonald, JJ.

PER CURIAM.

This is a declaratory judgment action to determine the meaning of certain terms in a no-fault insurance policy. Defendants appeal as of right from the trial court's grant of summary disposition to plaintiff under MCR 2.116(C)(9). We affirm.

Defendants Ross and Toni McFarland are the parents of Andrew McFarland and are insured by plaintiff. Andrew sustained very severe closed head injuries when his mother's car, in which he was a passenger, ran or skidded through a stop sign and was struck by another vehicle.

Defendants collected basic personal protection no-fault benefits from plaintiff. Plaintiff also paid the policy limits on defendants' liability coverage which was triggered by Mrs. McFarland's fault or partial fault in the accident.

Defendants then tried to collect on their underinsured motorist liability coverage for the difference between the amount paid by the insurer of the vehicle which struck them ($25,000) and their policy limits ($100,000). Plaintiff denied the claim, relying on certain set-off language on defendants' policy. Plaintiff then sued for declaratory relief.

The relevant portions of the policy provide that, in consideration for an additional premium, plaintiff would pay the difference between the other driver's liability coverage policy limit and defendants' liability coverage policy limit. The policy also provides that "[a]ll terms and conditions applicable to Uninsured Motorist Coverage are applicable to this extension. Uninsured coverage is referred to in the policy as Coverage D; liability coverage is referred to as Coverage A. Thus, any terms that apply to Coverage D also apply to the disputed underinsured motorist coverage.

In the Conditions section of the policy, under the heading "Limits of Liability", is the following provision:

> If claim is made under Coverage D and claim is also made against any person who is an insured under the Bodily Injury Liability of the policy because of bodily injury sustained in an accident by a person who is an insured under Coverage D:
>
> (a) any payment made under Coverage D to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person who is an insured under the Bodily Injury Liability; and

(b) any payment made under the Bodily Injury Liability to or for any such person shall be applied in reduction of any amount which he may be entitled to recover under Coverage D.

Defendants contend that the provision quoted above is ambiguous, misleading, unconscionable and should not be enforced. Plaintiff asserts that the clause is susceptible to only one interpretation and therefore must be enforced. We agree with plaintiff.

It is well settled that "[a]ny clause in an insurance policy is valid as long as it is clear, unambiguous and not in contravention of public policy." Raska v Farm Bureau Mutual Ins Co, 412 Mich 355, 361-362; 314 NW2d 440 (1982); see also Farm Bureau Mutual Ins Co v Stark, 437 Mich 175, 181; 468 NW2d 498 (1991). A contract is ambiguous "when its words may reasonably be understood in different ways." Raska, 412 Mich at 362; see also Stark, 437 Mich at 181; Bianchi v Auto Club of Michigan, 437 Mich 65, 70; 467 NW2d 17 (1991). Thus, "[i]f a fair reading of the entire contract of insurance leads one to understand that there is coverage under particular circumstances and another fair reading leads one to understand there is no coverage under the same circumstances[, then] the contract is ambiguous and should be construed against its drafter and in favor of coverage." Raska, 412 Mich at 362; see also Stark, 437 Mich at 181-182; Bianchi, 437 Mich at 70. "Yet, if a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not be said to be ambiguous or, indeed, fatally unclear." Raska, 412 Mich at 362 (emphasis added); see also Stark, 437 Mich at 182; Bianchi, 437 Mich at 70.

We agree with defendants that the set-off provision in question is, at best, inartfully worded and clumsily arranged. However, if one remembers that Coverage A is the liability coverage, that Coverage D is the uninsured coverage, and that all provisions that apply to uninsured coverage also apply to underinsured coverage, then the set-off language admits to only one interpretation. Regardless of which benefits are sought or paid first, liability coverage and underinsured motorist coverage will always be set off from each other.

Defendants argue that, even if we can decipher the meaning of the set-off provision, they did not understand it. This is no defense.

"If a person signs a contract without reading all of it or without understanding it, under some circumstances that person can avoid its obligations on the theory that there was no contract at all for there was no meeting of the minds." Raska, 412 Mich at 362-363. However, "to allow such a person to bind another to an obligation not covered by the contract as written [merely] because the first person thought the other was bound to such an obligation is neither reasonable nor just." Raska, 412 Mich at 363. That is the case here.

It is not impermissible or unconscionable to set off payments made for the same type of loss, in this case, payments made for non-economic and excess economic losses. Auto-Owners Ins Co v Lydon, 149 Mich App 643, 649-651; 384 NW2d 830 (1986), lv den 428 Mich 887 (1987). The fact that separate premiums have been collected for the two coverages being set off -- in this case, underinsured coverage and liability coverage -- does not change this result. Auto-Owners Ins Co v Boissonneault, 439 Mich 126, 129-130; 479 NW2d 348 (1992); see also Lydon, 149 Mich App at 651.

In the circumstances of this case, for example, if Mrs. McFarland had not been at fault, coverage would have been provided under the underinsured portion of the policy only. However, coverage would not have been provided at all if defendants had not bought underinsured coverage. Similarly, coverage would have been provided under the liability portion only if the other driver had not been at fault. Each premium therefore in fact insures against a different risk. However, the extra premium of $3.20 does not convert the $100,000 total liability coverage into a $200,000 liability policy. See Boissonneault, 439 Mich at 129-130.

Although we are sympathetic to defendants' plight, we are not persuaded that the set-off clause at issue here is ambiguous, misleading or unconscionable. See Lydon, 149 Mich App at 652.

We find defendants remaining arguments lacking in merit.

Affirmed.

/s/ Harold Hood
/s/ Myron H. Wahls
/s/ Gary R. McDonald