STATE OF MICHIGAN

COURT OF APPEALS

BRENDA WALKER, Personal Representative of the Estate of CHARLES WALKER, Deceased,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

December 15, 1992

No. 133560

UNPUBLISHED

Before: Doctoroff, C.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals from the order of the circuit court granting plaintiff declaratory judgment against defendant. We reverse.

On July 27, 1986, Randall Johnson was driving a 1986 Dodge Omni when he struck and killed Charles Walker. The Dodge Omni was owned by Mr. Johnson and Victoria Brinker jointly, and was insured under a policy issued by defendant in which Ms. Brinker was the named insured. Mr. Johnson, although not related to Ms. Brinker, was a permanent resident of her household. Ms. Brinker was also the named insured on a policy issued by defendant for a 1969 Plymouth owned by her.

Plaintiff, as the personal representative for the estate of Mr. Walker, filed a wrongful death action against Mr. Johnson and Ms. Brinker. A consent judgment was ultimately entered against Mr. Johnson and Ms. Brinker in the amount of $60,000. Defendant paid the $20,000 liability limits of the policy on the Dodge Omni, the vehicle involved in the accident. Plaintiff subsequently filed this action, seeking recovery under Ms. Brinker's policy covering the Plymouth. The parties filed cross-motions for declaratory judgment. Plaintiff contended that the terms of the policy covering the Plymouth were ambiguous and misleading as to its liability provisions, specifically its owned-vehicle exclusion. The circuit court granted plaintiff's motion for declaratory judgment, holding that pursuant to Powers V DAIIE, 427 Mich 602; 398 NW2d 411 (1986) (Williams, C.J.), defendant could not limit its coverage under these circumstances without a specific exclusion.

Defendant contends that the trial court erred in granting declaratory judgment for plaintiff because, for purposes of the insurance on the Plymouth, the language of the policy unambiguously includes only the Plymouth and any car not owned by Ms. Brinker. We agree.

Our review of a declaratory judgment is de novo. Englund v State Farm Automobile Ins Co, 190 Mich App 120, 121; 475 NW2d 369 (1991). When determining whether an insurance policy provides coverage in a particular case, we must first determine whether the policy language is clear and unambiguous on its face. Any ambiguity in the language of the policy is construed in favor of the insured. Group Ins Co of Michigan v Czopek, 440 Mich 590, 595; ___ NW2d ___ (1992); Englund, supra, 122.

An owned-vehicle exclusion clause of an automobile insurance policy generally provides liability coverage when a named insured is driving either the specific car listed in the declaration section of the policy or any other car that is not owned by the named insured, as defined in the policy. State Farm Mutual Automobile Ins Co v Burbank, 190 Mich App 93, 95; 475 NW2d 399 (1991). The clause excludes coverage, however, for any owned automobile, as defined in the policy, which is not listed on the declaration page of the policy. Id. Owned-vehicle exclusion clauses are valid if clear and unambiguous and if stated in easily

understood terms. Burbank, supra, 95. See also State Farm Mutual Automobile Ins Co v Koutz, 189 Mich App 535, 539; 473 NW2d 709 (1991).

In this case, under the liability section of the policy, the following language appears:

> We will pay damages for which any **insured person** is legally liable because of **bodily injury** or **property damage** arising out of the ownership, maintenance or use including the loading or unloading of an **INSURED CAR**.

The term "insured car" is defined under the section entitled "Definitions Used Throughout This Policy," appearing on page three of the policy:

> **INSURED CAR** means:
>
> **YOUR CAR**, which is the vehicle described on the Declaration Certificate and identified by a specific Vehicle Reference Number, a **replacement**, a **temporary substitute** and a **trailer** owned by **you**; and
>
> **OTHER CAR**, which is any **car** or **trailer** that **you** or any resident of **your** household does not own, lease for 31 days or more, or have furnished or available for frequent or regular use.

Part I of the policy located on the next page contains the section entitled "Liability Insurance Coverages," which provides in part:

> **Insured Person(s)** means:
>
> For **YOUR CAR**,
>
> **you** and any **relative**, any other person using it with **your** permission;
>
> For **OTHER CARS**, used with the permission of a person having the right to grant it and if **YOUR CAR** is a **private passenger car** or **utility car**;
>
> **you**, if an individual, any relative who does not own a **private passenger car** or **utility car**;
>
> Any other person who does not own or hire, but is legally responsible for the use of, any **INSURED CAR** operated by an **insured person**.

The terms of the owned-vehicle exclusion in the policy are not themselves ambiguous. Plaintiff, however, contends that the ambiguity arises from the location of the terms in the policy. Plaintiff argues that, because the wording is found in the definitional section of the policy as opposed to the exclusions section, the entire policy is ambiguous. Plaintiff relies upon the opinion of Justice Williams in Powers, supra.

Initially, we note that Powers is a plurality decision and therefore not binding. Koutz, supra, 537; Van Dyke v League General Ins Co, 184 Mich App 271, 274; 457 NW2d 141 (1990). Moreover, an insurance policy is not ambiguous simply because analysis of the policy may take time. Koutz, supra, 539. In this case, the policy clearly provides coverage only to either the car listed on the declaration page of the policy or "other cars," defined in the policy as other vehicles not owned by the named insured. Throughout the policy, whenever the term "other car" is used, it appears in capital letters and bold print, thereby giving notice to the insured that whenever this term is used its meaning as contained in the definitions section controls. "Insured Car," as defined under the definition section of the Plymouth policy, clearly includes only the car listed in the declaration section or a non-owned vehicle. Ms. Brinker was a co-owner of the Dodge Omni, and, therefore, the car was not an "other car" as defined in the policy and thus not an "insured car" as defined in the policy. Reading the policy, Ms. Brinker could not reasonably have expected that the Dodge Omni was covered under the Plymouth policy. See Koutz, supra, 539. Further, under the section of the policy entitled "Additional Car Option," plaintiff was again put on notice that the policy as issued applied only to the Plymouth.

Neither the owned-vehicle exclusion clause nor the policy is ambiguous and the wording of the definition section was sufficient to notify the insured as to exactly which type of cars were covered. The trial court therefore erred in granting plaintiff declaratory judgment. As we resolve this issue in favor of defendant, we find it unnecessary to reach the additional issues raised by defendant.

Reversed and remanded for entry of an order in favor of defendant. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Mark J. Cavanagh