

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN STATES INSURANCE COMPANY,
Plaintiff-Appellee,

December 11, 1992

v

No. 137352

MARK MASKELL and SCOTT DUNDAS,
Defendants-Appellants.

UNPUBLISHED

Before: Hood, P.J., and Sawyer and Jansen, JJ.

PER CURIAM.

This is a no-fault insurance case. Defendants appeal as of right from the trial court's grant of summary disposition under MCR 2.116(C)(9) against defendant Maskell and its entry of default judgment against defendant Dundas. Defendants initially appealed from a non-final order and this Court dismissed for want of jurisdiction. Upon the entry of a final judgment by the trial court, they perfected their appeal. We affirm.

Defendant Maskell was injured when defendant Dundas lost control of the motorcycle on which both were riding. Defendant Maskell sued defendant Dundas. A consent judgment was entered resolving the suit. Pursuant to a settlement agreement, defendant Dundas apparently assigned all his insurance proceeds to defendant Maskell.

The applicable motorcycle no-fault insurance policy had apparently been exhausted. However, because defendant Dundas resided with his parents at the time of the accident, defendant Maskell sought benefits under their policy. Plaintiff, the parents' insurer, brought this declaratory action to determine whether benefits were due under the "Executive/Professional Umbrella Policy" issued to defendant Dundas' father.

The father's policy is essentially a business policy. It covers "any person while using an automobile . . . owned by, loaned to or hired for use in (sic) behalf of the named insured . . ." (emphasis original). However, the policy excludes "residents of [the named insured's] household . . . as respects the ownership, maintenance or use . . . automobiles . . . while away from the premises owned by, rented or controlled by the named insured or the ways immediately adjoining . . ." (emphasis omitted).

There is no claim that the motorcycle involved in defendants' accident was owned, loaned or rented by defendant Dundas' father.¹ There is also no allegation that the accident occurred on the father's premises or "the ways immediately adjoining." Instead, defendants claim that the vehicle involved was a motorcycle and not an "automobile." Therefore, defendants argue, the exclusion does not apply and coverage should be provided.

The father's policy in this case defines "automobile" as "a land motor vehicle, trailer or semi-trailer designed for travel on public roads." A motorcycle clearly is a "land motor vehicle . . . designed for travel on public roads," thus, under the clear and unambiguous terms of the policy, it is included in the definition of automobile. Bianchi v Auto Club of Michigan, 437 Mich 65, 71-72; 467 NW2d 17 (1991); Ziegler v Goodrich, 163 Mich App 656, 659; 415 NW2d 4 (1987), lv den 430 Mich 868 (1988); Auto-Owners Ins Co v Ellegood, 149 Mich App 673, 677; 386 NW2d 640 (1986); see also Powers v Detroit Automobile Inter Insurance Exchange, 427 Mich 602, 623-624; 398 NW2d 411 (1986)(rules of construction for ambiguous

insurance policies). Because of the policy's definition, we reject defendant's contention that, as in Powers, there is an ambiguity between the everyday meaning of the word "automobile" and the construction placed upon it by plaintiff. Defendants are not entitled to benefits under the clear terms of defendant Dundas' father's policy.

Because of our disposition of the first issue, we believe that the question of defendant Dundas' default is moot.² Further, we note that defendant Dundas did not oppose the motion to enter a default judgment and, once it was entered, did not move to set it aside. See MCR 2.603(D). Thus, even if the issue were not moot, we could not say that the trial court abused its discretion in not setting aside the default.

Affirmed.

/s/ Harold Hood
/s/ David H. Sawyer
/s/ Kathleen Jansen

¹ Defendants therefore in essence admit that Defendant Dundas is not within the class of persons entitled to benefits in the first instance.

² Although counsel represents both defendants, an answer was filed only on behalf of defendant Maskell. This was allegedly the result of an error. All other pleadings were filed on behalf of both defendants.