STATE OF MICHIGAN

COURT OF APPEALS

DOROTHY NANKERVIS,

Plaintiff-Appellant,

v

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellee.

February 16, 1993
9:40 a.m.
FOR PUBLICATION

No. 138245

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

PER CURIAM.

This is an action for declaratory and injunctive relief involving a no fault insurance policy. Plaintiff appeals from the trial court's grant of summary disposition to defendant under MCR 2.116(C)(10). We affirm.

Plaintiff is defendant's insured. She was injured when the car in which she was riding was struck by a vehicle that apparently ignored a stop sign. Her husband was driving.

Plaintiff collected $20,000 from the insurer of the person who hit her. She then attempted to collect the $25,000 policy limit on her underinsured motorist coverage with defendant. Defendant refused to pay more than $5,000 claiming that it was entitled to set-off the amounts paid by the other motorist's insurer.

Plaintiff argues that defendant's policy is ambiguous and should be construed against defendant. We disagree and further note that the only case relied upon by plaintiff has been reversed. See Auto Owners Ins Co v Boissonneault, 182 Mich App 368 (1990), rev'd 439 Mich 126 (1992).[1] No supplemental briefs were filed.

The underinsured motorist extension of plaintiff's policy provides that, in exchange for an additional premium, defendant will provide bodily injury coverage in situations where "a bodily injury liability bond or insurance policy is applicable at the time of the accident but which provides lower limits of liability than those specified in the declarations hereof." The policy further states that "the company's liability [for such coverage] shall be limited to (1) the amount by which the limits stated in the Declarations hereof exceed the total limits of all bodily injury bonds or insurance policies applicable to the person or persons responsible of the damages, and (2) such damages are in excess of the total limits of all such bodily injury bonds or insurance policies."

Plaintiff argues that the language quoted above can be interpreted as requiring defendant to pay, up to policy limits, the difference between her actual damages and the amount paid by the other drivers' liability insurer. We cannot agree. The first clause clearly states that defendant's liability is limited to the difference between plaintiff's coverage and the other motorist's coverage.

Plaintiff's reading of the rider further ignores its last sentence: "All terms and conditions applicable to Uninsured Motorist Coverage are applicable to this extension." Uninsured coverage is referred to in the body of the policy as Coverage D. Thus, all terms and conditions 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:

> Any loss payable under the terms of Coverage D to or for any person shall be reduced by
>
> * * *
>
> (d) all sums paid to him by or on behalf of the owner or operator of the uninsured motor vehicle and any other person or organization jointly or severally liable together with such owner or operator.

Thus, because this clause also applies to underinsured coverage, any loss payable for underinsured coverage shall be similarly reduced by all sums paid by or on behalf of the driver of the underinsured vehicle. This confirms our reading of clause (1).

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 plaintiff that the set-off provisions in question are, at best, inartfully worded and clumsily arranged. However, their language admits to only one interpretation. Defendant's maximum liability for underinsured coverage is limited to the difference between its insured's coverage and the other motorist's coverage, provided that its insured's damages exceed the amount of the other motorist's coverage. That is, any benefits due shall be reduced by all amounts paid by the other driver's insurer.

Although we are sympathetic to plaintiff's plight, "to allow [her] to bind another to an obligation not covered by the contract as written [merely] because [she] thought the other was bound to such an obligation is neither reasonable nor just." Raska, 412 Mich at 363. We are not persuaded that the provisions at issue here are ambiguous, misleading or unconscionable. See Lydon, 149 Mich App at 652.

Affirmed.

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

[1] Further, Boissonneault dealt with whether there were separate policy limits for uninsured and underinsured motorist coverages where the accident involved both kinds of vehicles. The case did not address the set-off issue presented here.