STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,
a foreign corporation,

Plaintiff–Appellant,

v

MARY CLARISE HOWARD, as
conservator of the estate of
Steven Howard, a minor, HAROLD
FLORENCE and JUDITH FLORENCE,

Defendants–Appellees.

August 23, 1993

No. 139254
LC No. 90020905 CZ

Before: Marilyn Kelly, P.J., and Shepherd and Connor, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the Wayne Circuit Court declaring that insurance coverage exists for defendants Harold and Judith Florence. On appeal, plaintiff argues that the trial court erred in denying its motion for summary disposition, because the language of Judith's insurance policy precludes coverage to defendants. We reverse.

Defendant Harold Florence struck and injured a child, Steven Howard, while driving a 1977 Chrysler owned by defendant Judith Florence, his estranged wife. Harold was driving the car with Judith's permission. The vehicle was uninsured at the time of the accident. However, Judith owned a second vehicle, a 1973 Chrysler, which plaintiff insured.

The conservator of the estate of Steven Howard, a minor, filed a tort action in Wayne Circuit Court against the Florences. Plaintiff filed this declaratory action to determine whether it had a duty to defend or indemnify Judith and Harold Florence in the underlying tort action. Plaintiff filed a motion for summary disposition. The trial court denied the motion, determining that insurance coverage did exist for Harold and Judith Florence.

I

Plaintiff argues that Judith's insurance policy clearly and unambiguously precludes coverage to Judith and Harold. We review the trial court's declaratory action de novo. Englund v State Farm Mutual Automobile Ins Co, 190 Mich App 120, 121; 475 NW2d 369 (1991).

A clause in an insurance contract is valid so long as it is clear, unambiguous and not in contravention of public policy. Auto–Owners Ins Co v Churchman, 440 Mich 560, 566; 489 NW2d 431 (1992), citing Raska v Farm Bureau Mut Ins Co of Michigan, 412 Mich 355, 361–362; 314 NW2d 440 (1982). We cannot create ambiguity where none exists. Id., 567. An insurance contract is unambiguous if it fairly admits of but one interpretation. State Farm Mutual Auto Ins v Snappy Car Rental, 196 Mich App 143, 151; 492 NW2d 500 (1992). An insurance contract is ambiguous if, after reading the entire contract, we could interpret the language in different ways. Id. Ambiguities are construed against the drafter of the contract. Id.

Judith Florence's insurance contract issued on her 1973 Chrysler contained the following language:

PART 1.

(f) "non-owned automobile" means any automobile, including a trailer, not owned by, or furnished or available for the regular use of, the named insured or any resident of his household other than a temporary substitute automobile, provided the use thereof is with the permission of the owner.

II

Defendants argue that a decision of the Michigan Supreme Court mandates that we conclude that coverage extends to the Florences. See Powers v DAIIE, 427 Mich 602; 398 NW2d 411 (1986). However, Powers was a plurality opinion and is not binding precedent. State Farm Mutual Automobile Ins Co v Koutz, 189 Mich App 535, 537; 473 NW2d 709 (1991). Moreover, none of the cases decided in Powers involved a situation where an owner of an uninsured vehicle sought coverage under his insurance policy issued on another vehicle. Therefore, we hold that the reasoning in Powers does not control this case. See Koutz, supra, citing VanDyke v League General Ins Co, 184 Mich App 271, 274; 457 NW2d 141 (1990).

We conclude that the automobile in question could not be considered a non-owned automobile; it was owned by Judith Florence, the named insured. In addition, it could not be considered an owned vehicle, because no premium was charged for coverage of it. The insurance contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation. See Raska, 362. The automobile involved in the accident was neither an owned nor a non-owned automobile as defined in the policy of insurance. Therefore, plaintiff has no obligation to provide coverage for or to defend Judith or Harold Florence; the injuries to Steven Howard did not arise out of the ownership, maintenance or use of either an owned or a non-owned automobile.

Since the language of the insurance policy is clear and unambiguous, we conclude that it could not defeat the reasonable expectations of the insured. VanDyke, 276. Therefore, we hold that coverage to defendants is precluded. We reverse the decision of the trial court and order the court to enter judgment in favor of plaintiff.

Reversed.

/s/ Marilyn Kelly
/s/ John H. Shepherd
/s/ Michael J. Connor