STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff-Appellee,

v

ENTERPRISE LEASING COMPANY,

Defendant-Appellant.

September 30, 1993

No. 150077
LC No. 90-17042-CZ

Before: Weaver, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Ladonna Teasley rented a car from defendant Enterprise Leasing Company (Enterprise) to use while her car was being repaired. While driving the rental car, Teasley was involved in an accident. The resulting personal injury claims were settled and the claims paid by Teasley's automobile insurer and Enterprise. Now State Farm Mutual Automobile Insurance Company (State Farm) has brought suit against Enterprise to determine who is responsible for the damages. Both State Farm and Enterprise moved for summary disposition, each arguing that the other was the primary insurer responsible for providing residual liability insurance for the accident. The trial court granted summary disposition in favor of State Farm. Enterprise now appeals. We reverse and remand.

In the rental agreement Teasley signed, she warranted that she had insurance through State Farm and agreed to provide insurance for the rental vehicle and hold Enterprise harmless.

State Farm's policy provided residual liability coverage only if there was no other coverage available and excluded coverage if the insured was driving a car owned by a car business if there was other insurance to cover the vehicle. State Farm also argued that Enterpriser's rental agreement was void because it violated certain statutory provisions: MCL 257.520(b)(2); MSA 9.2220(b)(2); MCL 500.3101; MSA 24.13101, MCL 500.3131; MSA 24.131341 and MCL 500.3135; MSA 24.13135.

I

Enterprise first asserts that the requirements of the Michigan Financial responsibility act are not violated by the provision in its rental agreement. Enterprise points out that the renter agreed to provide her own insurance coverage for the vehicle, and Enterprise still assumed financial responsibility for the rental vehicle on an excess basis to the primary personal liability insurance coverage of the renter.

This case involves the requirements of the no-fault act and the financial responsibility law relating to vehicle ownership. Section 3101(1) of the no-fault act provides as follows:

> The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall be in effect continuously during the period of registration of the motor vehicle. [MCL 500.3101(1); MSA 24.13101(1).]

The financial responsibility portion of motor vehicle code, section 520(b)(2) states that an owner's automobile liability insurance policy

> Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle... [MCL 257.520(b)(2); MSA 9.2220(b)(2).]

The question is whether the owner of a vehicle must always be primarily responsible for insuring against liability resulting from vehicle accidents, or whether the owner of a vehicle may contract or agree that the driver of the vehicle will be primarily responsible for liability insurance.

We are bound by Administrative Order 1990-6 to follow the recent case of State Farm Mutual Automobile Ins Co v Snappy Car Rental, Inc, 196 Mich App 143; 492 NW2d 500 (1992). Snappy held that a person signing a short term rental agreement for a vehicle can agree that his personal automobile insurance contract will provide primary liability coverage for accidents which occur while he has the rented vehicle and that such an agreement was not void.

We disagree with Snappy and if not bound to follow it, would hold that an owner's policy of liability insurance is required to provide primary residual liability insurance for any permissive user. MCL 500.3101(1); MSA 24.13101(a) and MCL 257.520(b)(2); MSA 9.2220(b)(2).

II

The next issue is whether the State Farm policy provides coverage for the accident. State Farm argues that both State Farm and Enterprise are primary insurers with conflicting "excess" or "escape" clauses, and therefore each is required to pay a pro rata share. Enterprise argues that Teasley signed an agreement stating that her personal automobile insurance contract would provide coverage for the rented vehicle.

State Farm's policy contains an "other insurance" clause[1] which provides that if a temporary substitute car has other vehicle liability coverage on it, the State's Farm coverage is excess. As we have seen, Enterprise's rental agreement also provides that is coverage is excess.

When there are two competing policies, each containing an excess clause, each of which would have provided coverage had the other policy not existed, liability should be prorated according to the policies' limits. Nat'l Indemnity Co v Budget Rent A Car Systems, Inc, 195 Mich App 186; 489 NW2d 175 (1992).

Accordingly, we reverse the court's order of summary disposition in favor of State Farm. We remand for calculation of the proper pro rata liability of each party and entry of an order consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth A. Weaver
/s/ Kathleen Jansen

[1] Temporary Substitute Car: Non-Owned Car, Trailer.

> If a temporary substitute car, a non-owned car or a trailer designed for use with private passenger car or utility vehicle has other similar vehicle liability coverage on it, then these coverages are excess.

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MURPHY, J. (concurring).

I concur in the result reached by the majority. I write separately as I do not share the majority's disagreement with State Farm Mutual Automobile Ins Co v Snappy Car Rental, Inc, 196 Mich App 143; 492 NW2d 500 (1992).

In Snappy Car Rental, the defendant car rental company was self-insured. A provision in the defendant's car rental agreement permitted the person renting the car to opt to provide his or her own primary residual liability insurance. The plaintiff in that case contended that the provision in the defendant's car rental contract was void because the effect of the provision was to shift the responsibility of providing primary residual liability insurance to the permitted user. The plaintiff further argued that the provision was void because it is not specifically permitted by the no-fault act. This Court held that the provision of the rental agreement was not void as violative of the no-fault act because the provision simply stated the priority of coverage as contracted for by the person renting the car. Although the defendant was not permitted to contract away its statutory obligation to provide residual liability insurance as the owner of the car, nor the defendant's obligation to provide insurance coverage for permitted users, this Court was constrained to acknowledge that neither the no-fault act nor the financial responsibility act specifically require an owner to provide primary residual liability insurance for permitted users. Rather, these coverage requirements may be met by the policies of more that one insurer. Snappy Car Rental, supra, 150; State Farm Mutual Automobile Ins Co v Auto-Owners Ins Co, 173 Mich App 51, 54-55; 433 NW2d 323 (1988).

The majority expresses disagreement with this Court's decision in Snappy Car Rental, and Snappy Car Rental has on at least one other occasion raised concerns by this Court. See Citizens Ins Co of America v Federated Mutual Ins Co, 199 Mich App 345; 500 NW2d 756 (1993). I believe that this arises from confusion as to the holding in Snappy Car Rental. The majority in this case states that "Snappy held that a person signing a short term rental agreement for a vehicle can agree that his personal automobile insurance contract will provide primary liability coverage for accidents which occur while he has the rented vehicle and that such an agreement was not void." The majority adds that absent the decision in Snappy Car Rental, the majority would hold that an owner's policy is required to provide primary residual liability insurance for a permissive user, relying upon MCL 500.3101(1); MSA 24.13101(a) and MCL 257.520(b)(2); MSA 9.2220(b)(2).

Actually, Snappy Car Rental held merely that if a car rental company includes in its car rental contract an optional provision whereby the renter may provide his or her own primary residual liability, this provision is not void as violative of the no-fault act. A review of the statutory authority relied upon by the majority demonstrates that such a provision is not precluded. Section 3101(1) of the no-fault act, MCL 500.3101(1); MSA 24.13101(1) requires the owner of a motor vehicle to provide residual liability insurance.

Section 520(b) of the Vehicle Code (the financial responsibility act), MCL 257.520(b); MSA 9.2220(b) requires the owner of a motor vehicle to provide insurance coverage for permitted users of the vehicle. While an exclusionary clause of an insurance policy that conflicts with the liability coverage required by the no-fault act is invalid, State Farm Mutual Automobile Ins Co v Ruuska, 412 Mich 321, 336; 314 NW2d 184 (1982), there is no indication that the provision in question in the car rental agreement conflicts with the coverage required by the no-fault act. The owner is still obligated to provide all the coverage required by the no-fault act. Again, the car rental agreement only dictates the priority of coverage. If the lessee or permissive user fails to abide by the terms of the rental agreement by neglecting to obtain adequate insurance coverage, or any insurance at all, the car rental company would remain liable to an injured party to provide residual liability coverage as required by MCL 500.3101(1); MSA 24.13101(A) and MCL 257.520(b); MSA 9.2220(B)(2).

Our goal when interpreting a statute is to discern and give effect to the intent of the Legislature. Great Lakes Sales, Inc v State Tax Comm, 194 Mich App 271, 275; 486 NW2d 367 (1992). If the meaning of statutory language is clear, then judicial construction of the language is neither necessary nor permitted. Lorencz v Ford Motor Co, 439 Mich 370, 376; 483 NW2d 844 (1992). Because neither the no-fault act nor the financial responsibility act specifically require an owner to provide primary residual liability insurance for permitted users, I do not believe that this requirement may be imposed upon defendant.

/s/ William B. Murphy