STATE OF MICHIGAN

COURT OF APPEALS

TAYLOR GROOMS and DARLENE GROOMS,
his wife,

Plaintiffs-Appellees,

v

MIC GENERAL INSURANCE CORPORATION,

Defendant-Appellant.

December 14, 1993

No. 138337
LC No. 90003315 CK

Before: Neff, P.J., and Marilyn Kelly and White, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment entered in favor of plaintiffs. On appeal, defendant argues that the trial court erred in ruling that plaintiffs are entitled to recover underinsured motorist benefits. We reverse.

Defendant is plaintiffs' no-fault insurance carrier. Plaintiff Darlene Grooms was a passenger in her sister's vehicle when they were involved in a collision with a vehicle operated by Anna Visser and owned by Minard Visser. Darlene claimed damages in excess of $70,000. The Vissers were insured under a no-fault policy with liability limits of $50,000 per person. Plaintiffs settled their claim against the Vissers for $47,500. Plaintiffs then filed a claim against defendant seeking $20,000, the limit of their underinsured motorist coverage. Defendant argued that it had no obligation to plaintiffs under the underinsured motorist endorsement, because the endorsement contains a setoff clause. The clause provides:

> However, the limit of liability shall be reduced by all sums paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A of this policy.

The trial court denied defendant's motion for summary disposition and eventually entered judgment for plaintiffs. The court ruled that the setoff clause was illusory and defeated the reasonable expectations of the insured.

This case is controlled by Nankervis v Auto-Owners Ins, 198 Mich App 262; 497 NW2d 573 (1993). In Nankervis, we determined that a setoff provision similar to the one contained here is unambiguous and enforceable. We are unpersuaded by plaintiffs' attempts to distinguish Nankervis from this case. Since the language of the insurance policy here is clear and unambiguous, we conclude that it could not defeat the reasonable expectations of the insured. See VanDyke v League General Ins Co, 184 Mich App 271, 276; 457 NW2d 141 (1990).

We reverse the judgment for plaintiffs and the court's refusal to grant summary disposition to defendant. We order judgment to be entered for defendant.

/s/ Marilyn Kelly
/s/ Helen N. White

I concur in result only.

/s/ Janet T. Neff