

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff-Appellee,

January 24, 1994

v

No. 142222
LC No. 90-24250-CZ

MATTHEW ROBERT CRENSHAW,
ROBERT D. CRENSHAW, and
CHERYL CRENSHAW,

Defendants,

MABEL SANDRA RAMSEY,

Intervening Defendant-
Appellant.

Before: Shepherd, P.J., and MacKenzie and White, JJ.

PER CURIAM.

Defendant appeals an amended order granting plaintiff's motion for summary disposition in this action for declaratory relief. The issue is whether two policies of auto insurance covering a Ford and a Honda owned and insured by Matthew Crenshaw's parents provided liability coverage for an accident which occurred when Matthew was driving a GMC, also owned and insured by his parents. We affirm.

On April 24, 1989, Matthew Crenshaw, son of Robert and Cheryl Crenshaw, was driving his parents' 1983 GMC vehicle when he collided with Mabel Ramsey's vehicle, causing her a serious closed head injury.

At the time of the accident, Matthew's parents owned three vehicles, the GMC, a Honda and a Ford, all insured with State Farm under three separate policies. Matthew fit the definition of an insured under each policy. The GMC and the Honda had \$50,000 per person/\$100,000 per accident coverage; the Ford had \$100,000/\$300,000 coverage.

Mabel Ramsey brought a negligence action against the Crenshaws. The case was resolved by consent judgment awarding Ramsey \$50,000 from the GMC policy, releasing the Crenshaws from personal liability and leaving open the possibility of collecting additional sums under the policies issued on the other two vehicles in the Crenshaw household.

State Farm commenced this action to determine whether coverage was extended under the policies on the Ford and the Honda. If the separate policies afford coverage, the anti-stacking provisions of the policies must also be considered.

Appellant contends that the trial court erred in granting summary disposition since the language of the insurance contracts covering the Honda and the Ford is ambiguous and because the Crenshaws reasonably expected coverage under those policies. We disagree.

The Ford and Honda policies contain identical language:

DEFINED WORDS

You, your - means the named insured or named insureds shown on the declarations page.

Your car - means the car or the vehicle described on the declarations page.

[From 6025U Amendatory Endorsement]

Non-Owned Car - means a car not owned by or registered or leased in the name of:

1. you, your spouse,
2. any relative unless at the time of the accident or loss;
 - a. the car is or has been described on the declarations page of a liability policy within the preceding 30 days; and
 - b. you, your spouse or a relative who does not own or lease such car is the driver.
3. any such person residing in the same household as you, your spouse or any relative; or
4. any employer of you, your spouse or any relative.

Non-owned car does not include a car:

1. which is not in the lawful possession of the person operating it; or
2. which has been operated by, rented by or in the possession of an insured during any part of each of the preceding 21 days; or
3. operated by an insured who has operated or rented any car otherwise qualifying as a non-owned car during any part of more than 45 days in the 365 days preceding the date of the accident or loss.

* * *

LIABILITY - COVERAGE A

We will pay damages which an insured becomes legally liable to pay because of:

a. bodily injury to others, ...

caused by accident resulting from the ownership, maintenance or use of your car.

* * *

Coverage for the Use of Other Cars

The liability coverages extend to the use, by an insured, of a newly acquired car, a temporary substitute car or a non-owned car.

Who Is An Insured - Coverages A and Y

When we refer to your car, a newly acquired car or a temporary substitute car, insured means:

1. you;

2. your spouse;
3. the relatives of the first person named in the declarations;
4. any other person while using such a car if its use is within the scope of consent of you or your spouse; and
5. any other person or organization liable for the use of such a car by one of the above insureds.

When we refer to a non-owned car, insured means:

1. the first person named in the declarations;
2. his or her spouse;
3. their relatives; and
4. any person or organization which does not own or hire the car but is liable for its use by one of the above persons.

* * *

THERE IS NO COVERAGE UNDER COVERAGES A AND Y:

...

[From 6025 U Amendatory Endorsement]

4. FOR THE OPERATION, MAINTENANCE OR USE OF ANY VEHICLE:

a. OWNED BY OR REGISTERED OR LEASED IN THE NAME OF:

- (1) YOU, YOUR SPOUSE;
- (2) ANY RELATIVE unless at the time of the accident:
 - (a) the car is or has been described on the declarations page of a liability policy within the preceding 30 days; and
 - (b) you, your spouse or a relative who does not own or lease such is the driver.
- (3) ANY OTHER PERSON RESIDING IN THE SAME HOUSEHOLD AS YOU, YOUR SPOUSE OR ANY RELATIVE; OR
- (4) AN EMPLOYER OF YOU, YOUR SPOUSE OR ANY RELATIVE.

OR

- b. WHICH IS NOT IN THE LAWFUL POSSESSION OF THE PERSON OPERATING IT; OR
- c. WHICH HAS BEEN OPERATED BY, RENTED BY OR IN THE POSSESSION OF AN INSURED DURING ANY PART OF EACH OF THE PRECEDING 21 DAYS; OR

d. OPERATED BY AN INSURED WHO HAS OPERATED OR RENTED ANY CAR
OTHERWISE QUALIFYING AS A NON-OWNED CAR DURING
ANY PART OF MORE THAN 45 DAYS IN THE 365 DAYS
PRECEDING THE DATE OF THE ACCIDENT

This does not apply to **your car, newly acquired car, or temporary substitute car**

Appellant's argument is directed to section 4 of the amendatory endorsement to the section entitled "There is no coverage under coverages A and Y." Appellant asserts that the language is ambiguous, and would have the Court construe the policy so that the language in section 4a(2)(a) and (b) modifies section 4a(1) as well as 4a(2). We note that this language of exclusion, describing when Coverage A does not apply, is identical to the language defining a non-owned car for which Coverage A does apply. In other words, the definition of a non-owned car for which there is coverage also excludes a car owned by "you, your spouse." Therefore, though not stated in those terms, plaintiff's argument must be addressed to the construction of both the exclusion and definition provisions, otherwise there is no coverage for the non-owned car in the first instance.

If the policy is construed as appellant desires, coverage would not be excluded because the GMC was described on the declarations page of a liability policy and was being driven by a relative who did not own the vehicle. Appellant asserts that the exclusion should be so construed because it is ambiguous. It is ambiguous because if section 4a(1) is read alone it denies coverage for the very vehicle insured under the policy since it denies coverage for any car owned by the named insured. We disagree. Appellant's argument overlooks the final language of the exclusion, which provides: "This does not apply to **your car, newly acquired car or temporary substitute car.**"

We believe the policy language is clear. It provides liability coverage for the car described on the declarations page and additionally for the operation of a non-owned car. The definition of non-owned car excludes a car owned by the named insured or his or her spouse. Additionally, the policy language unambiguously provides that there is no liability coverage under Coverage A for the operation of any car owned by the person who is the named insured on the declarations page, or his or her spouse [YOU, YOUR SPOUSE], unless that car is the car listed on the declarations page or a newly acquired car or temporary substitute car.

Cheryl Crenshaw was the named insured in the Honda policy and Robert Crenshaw was the named insured in the policy on the Ford. The GMC was jointly owned by both of them. Therefore, the provision of each policy excluding coverage for a car owned by the named insured or his or her spouse clearly excludes coverage for the operation of the GMC. And, as stated above, the exclusion provisions simply reaffirm the lack of coverage under the non-owned car provision of the policies.

In State Farm v Koutz, 189 Mich App 535, 538-39; 473 NW2d 709 (1991), this Court considered an insurance policy containing similar language and concluded that the policy was unambiguous in excluding coverage for the operation of a vehicle not included on the declarations page of the policy which vehicle was being operated by a relative. The Court said:

If the term "your car" were not in bold face italics or otherwise highlighted, and if it were not prominently defined as the car listed on the declarations page, then defendants' argument might have merit. That, however, is not the case here. The definitions are at the beginning of the policy, the defined terms are highlighted, and this exclusion does nothing more than restate in another way the terms of what person and what vehicles are covered by the liability coverage.

We believe this reasoning is applicable to the instant case as well.

Appellants next argue that the Crenshaws reasonably expected the coverage under the Ford and Honda policies to extend to the collision involving the GMC. Relying on Powers v DAIE, 427 Mich 602, 631-633; 398 NW2d 411 (1986), appellant asks this Court to ascertain and enforce the meaning of the policy provisions as reasonably expected by the Crenshaws. Appellant recognizes that the Court must presume that the insured actually read the language of the insurance contract.

This issue was also addressed in Koutz:

The trial judge acknowledged that "for someone sitting down at the kitchen table looking at their insurance policy," this analysis "takes a little time." This is not to say, however, that the language is obscure, ambiguous, or defeats the reasonable expectations of the insured. [Koutz, supra at 539.]

Because there are no misleading provisions in the policies on the Ford and Honda, the Crenshaws could not reasonably expect coverage under the policies where the language specifically denies such coverage.

Because we find no coverage, we need not address appellant's argument addressed to the anti-stacking provisions of the policies.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ John H. Shepherd
/s/ Helene N. White