

STATE OF MICHIGAN
COURT OF APPEALS

JAQUELINE L. WILSON, Personal Representative
of the Estate of ROBERT GORDON WILSON,
Deceased,

Plaintiff-Appellant,

v

HENRY JOE GILDE and LEONARD WILLIAM
GILDE,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

March 21, 1994
9:40 a.m.

No. 152021
LC No. 88-60342 NI

Before: Michael J. Kelly, P.J., and Connor and A.A. Monton,* JJ.

CONNOR, J.

Plaintiff appeals as of right the summary disposition of the trial court. We affirm.

Robert Wilson was killed when the car he was driving collided with a truck owned by Leonard Gilde. Leonard's brother Henry Gilde was driving the truck at the time, taking apples from Leonard's apple farm to a cider mill.

At issue is whether State Farm Mutual Insurance Company insured Henry Gilde for the liability he incurred as a result of the accident. Henry had two automobile insurance policies with State Farm that provided him with liability coverage in some situations. Both policies state:

The liability coverages extend to the use, by an insured, of a . . . non-owned car.

The parties agree that Henry is an insured under both policies and that Leonard's truck was a non-owned car.

Both policies also state:

THERE IS NO COVERAGE FOR NON-OWNED CARS:

2. WHILE:

- a. BEING REPAIRED, SERVICED OR USED BY ANY PERSON WHILE THAT PERSON IS WORKING IN ANY CAR BUSINESS; OR
- b. USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a private passenger car driven or occupied by the first person named in the declarations, his or her spouse or their relatives.

Henry was the first person named in the policies' declarations. However, there is no question but that Leonard's truck was not a private passenger car as defined by the policies. There is also no question but that, at the time of the accident, Leonard's truck was not being used in any car business as defined in the policies.

*Circuit judge, sitting on the Court of Appeals by assignment.

The trial court found that the language unambiguously excluded Henry from liability coverage under the policies. Plaintiff argues that this ruling is contrary to the decision reached in Rossman v State Farm Ins Co, 184 Mich App 618; 459 NW2d 7 (1990). In Rossman, a case dealing with identical policy language, this Court found ambiguity in the words "business or occupation," and construed that ambiguity against the insurance company to find that the policy at issue extended liability coverage to a volunteer firefighter driving a fire truck. Plaintiff argues that, since Henry was volunteering to help with Leonard's apple farm, and since apple farming was not Leonard's primary business or occupation, under Rossman, the policy must provide coverage.¹

We find the analysis in Rossman to be flawed and decline to follow it. We agree with the trial court that the language of the policy unambiguously precludes coverage in this case.

The policy states that there is no coverage for a non-owned car while used in any other business or occupation. At first glance, there appears to be ambiguity in the use of the word "other": what is the "primary" business that is being distinguished from all other businesses and occupations? By following the punctuation of the policy, this ambiguity is easily eliminated. The primary business being distinguished from all others is the "car business" that is mentioned in the clause immediately preceding.

The policy distinguishes between the car business and all other businesses and occupations for reasons not relevant to this appeal. Because we are not dealing with a private passenger car or the car business, the applicable policy language in this case is, "There is no coverage for non-owned cars while used in any business or occupation."

This policy language does not focus inquiry on how Henry or Leonard earn a living, but on how the non-owned car is being used. At the time of the accident, Leonard's truck was being used to take apples to a cider mill. Plaintiff does not dispute that the apples were going to be sold at the cider mill, not processed for Leonard's personal consumption.

Insurance policy language is to be given its ordinary and plain meaning, but ambiguities are to be construed against the insurance company to provide coverage. See Farm Bureau Mutual Ins Co v Stark, 437 Mich 175, 181-182; 468 NW2d 498 (1991). An insurance policy is ambiguous if its words may be understood in different ways: that is, if a fair reading of the entire policy leads one to understand that there is coverage in a particular situation, and another fair reading of it leads one to understand there is no coverage in the same situation. Id.

Words are by nature flexible things, with meanings that can vary significantly; but however amorphous the meaning of words may be, there is no fair reading of these policies which would lead someone to conclude that either policy provides coverage in this case. Selling apples by the truckload is a business. Because the policies unambiguously exclude coverage for non-owned cars used for business, the trial court properly granted State Farm summary disposition.

Affirmed.

/s/ Michael J. Connor
/s/ Michael J. Kelly
/s/ Anthony A. Minton

¹ Judge Michael J. Kelly dissented from the decision in Rossman, supra at 624, finding that the exclusion should apply to a part-time volunteer fire fighter driving a fire truck.