STATE OF MICHIGAN

COURT OF APPEALS

MILDRED MURPHY, as Guardian for
JOHN WILSON,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

Before: Jansen, P.J., and Connor and R.L. Ziolkowski,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the Wayne Circuit Court granting defendant summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Patricia Cox and John Wilson were involved in a car accident on April 28, 1989. Cox was the driver of the car and her car was insured with defendant. Cox died as a result of the accident and Wilson suffered a closed head injury. Mildred Murphy, Wilson's mother, settled a claim against Cox's estate under Cox's insurance policy.

At the time of the accident, Cox lived with her daughter Sandra Rugala. Rugala had a separate insurance policy covering her car also with defendant. On January 30, 1990, plaintiff filed a complaint seeking to recover under Rugala's policy as well. Defendant filed a motion for summary disposition which the trial court granted in an order dated September 20, 1990. The trial court specifically found that the exclusionary provision and the anti-stacking provision in Rugala's policy were clear and unambiguous and excluded coverage. We agree with the trial court.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual basis of the claim. Summary disposition under MCR 2.116(C)(10) may be granted when, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The court reviewing the motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion and grant the benefit of any reasonable doubt to the opposing party. Radtke v Everett, 442 Mich 368, 374; 501 NW2d 151 (1993).

When determining whether the insurance policy applies, we must first determine whether the policy is clear and unambiguous on its face. If an ambiguity exists, the policy must be construed in favor of the insured. Group Ins Co of Michigan v Czopek, 440 Mich 590, 595; 489 NW2d 444 (1992). Further, the exclusions to general liability in the policy are to be strictly construed against the insurer. However, clear and specific exclusions must be enforced because an insurance company cannot be found liable for a risk it did not assume. Id. at 597.

We agree with the trial court that the following exclusionary clause in Rugala's policy clearly and unambiguously excludes coverage:

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*Recorder's court judge, sitting on the Court of Appeals by assignment.

PERSONS AND VEHICLES NOT COVERED

The Liability Coverage does not cover:

The United States of America and any of its agencies;

a person covered by any contract of nuclear energy liability insurance;

a person covered by the Federal Tort Claims Act;

the use of any vehicle which is:

owned;
leased for 31 days or more; or
furnished or available for the frequent or regular use

by **you** or any resident of **your** household unless it is: the vehicle described on the Declaration Certificate and identified by a specific Vehicle Reference Number, a **replacement**, a **temporary substitute** or **trailer** owned by **you**.

There is no dispute that Cox's car is not a trailer. "Replacement" and "Temporary Substitute" are defined in the policy as follows:

Replacement means a **car**, ownership of which is acquired by the **Named Insured** after the effective date of this Policy when it replaces the described **car.** We must be told about it within 30 days after the acquisition.

Temporary substitute means a **car** or **trailer** not owned by **you** or any resident of **your** household used when **YOUR CAR** is out of use because of its breakdown, repair, servicing, **loss** or destruction.

In the instant case, to be covered under the plain terms of the policy, Cox's car must either be designated in the declaration certificate or be classified a replacement, a temporary substitute, or a trailer owned by Rugala. It is clear that Cox's car was neither a replacement, temporary substitute, nor a trailer and was not designated in the declaration certificate. Thus the trial court properly ruled that the policy clearly and unambiguously excluded coverage under this exclusion provision.

Further, Rugala's policy also contains the following anti-stacking provision:

4. NO DUPLICATION OR PYRAMIDING

Under no circumstances will **we** be required to pyramid or duplicate any types, amount or limits of motor vehicle coverages available from **us** or any other insurance company. This Condition does not apply to Death Indemnity Coverage.

A nearly identical provision was approved by this Court in DeMaria v ACIA (On Remand), 165 Mich App 251, 254; 418 NW2d 398 (1987).

Accordingly, the clear and unambiguous terms of Rugala's policy exclude coverage in this case.

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Connor
/s/ Robert L. Ziolkowski