STATE OF MICHIGAN

COURT OF APPEALS

HERTZ CORPORATION,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant,

and

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

October 5, 1994

No. 160070
LC No. 91-126737-CZ

HERTZ CORPORATION,

Garnishor Plaintiff-Appellee,

v

BERNICE SMITH and TERRANCE ROBERT EDWARDS,

Defendants,

and

AUTO CLUB INSURANCE ASSOCIATION,

Third-Party Defendant,

and

AUTO OWNERS INSURANCE COMPANY,

Garnishee Defendant-Appellant.

No. 162898
LC No. 92-208276-NI

Before: Murphy, P.J., and McDonald and F.D. Brouillette,* JJ.

PER CURIAM.

Defendant, Auto Owners Insurance Company, appeals as of right from trial court orders dated December 8, 1992, and March 4, 1993, granting plaintiff's request for declaratory relief on a policy of insurance issued by Auto Owners and granting summary disposition in plaintiff's favor in the garnishment action on the policy. We affirm.

Contrary to defendant's intimation, a party need not have third party beneficiary status to seek a declaration of coverage concerning an insurance contract. Allstate Ins Co v Hayes, 442 Mich 56; 499

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

NW2d 743 (1993). Defendant has failed to challenge plaintiff's standing on any other grounds. We therefore affirm the trial court's determination that plaintiff has standing to request declaratory relief.

We also find no error in the court's grant of a declaratory judgment in favor of plaintiff. Defendant's policy of insurance defines an "insured" in part as "any person or organization legally responsible for its (the automobile's) use". It is undisputed the driver of the vehicle involved in the accident was the titled owner of the insured vehicle. Pursuant to the Owners Liability Act, MCL 257.401; MSA 2.2101, he was "legally responsible for its use" and therefore clearly qualifies as an insured under the policy. Additionally, we reject defendant's contention that the vehicle involved in the accident does not qualify as an insured vehicle under the policy. Plaintiff does not contest that the vehicle at issue was not a scheduled vehicle listed on the policy declaration. Rather, plaintiff argues the vehicle qualifies as a replacement vehicle under the policy. The relevant provision of the policy indicates coverage applies to a vehicle "not owned by the named insured while temporarily used as a substitute" for the insured vehicle withdrawn from normal use because of breakdown, repair, etcetera. The provision does not specify whether the named insured must be the individual using the substitute vehicle in order for coverage to apply or whether coverage is afforded to anyone qualifying as an insured. Ambiguity in an insurance contract must be construed in favor of the insured. Taylor v Blue Cross and Blue Shield of Mich, 205 Mich App 644; ___ NW2d ___ (1994). The trial court did not clearly error in finding the vehicle qualified as a substitute vehicle under the policy. Kramer v City of Dearborn Heights, 197 Mich App 723; 496 NW2d 301 (1993). Nor do we believe MCL 257.520; MSA 9.220 in any manner prevents plaintiff's suit. We find no error in the court's determination that both the driver and the vehicle were covered under the policy.

We also find no error in the court's grant of summary disposition with regard to the garnishment action. Defendant's claim that the "other insurance" provision of its policy requires it provide only "excess coverage" is without merit. The provision by its own terms applies only to the "named insured". The driver involved here was not the named insured.

We decline to address defendant's remaining arguments either because they were improperly briefed, Price v Long Realty Inc, 199 Mich App 461; 502 NW2d 337 (1993), or improperly raised on appeal. Berry v J & D Auto Dismantlers Inc, 195 Mich App 476; 491 NW2d 585 (1992).

Affirmed.

/s/William B. Murphy
/s/Gary R. McDonald
/s/Francis D. Brouillette