STATE OF MICHIGAN

COURT OF APPEALS

SALLY MARIE GROAT,

Plaintiff-Appellant,

v

AAA of MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

November 29, 1994

No. 157967
LC No. 90-19423

Before: Neff, P.J., and Wahls and R.D. Kuhn*, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

The parties stipulated to the following facts. On November 20, 1989, plaintiff purchased a 1977 Ford Granada, but did not obtain insurance for the vehicle. At the time, plaintiff was separated from her husband, Charles Groat. On December 20, 1989, plaintiff was in the process of moving into her husband's home after a reconciliation when she was involved in an accident. She sustained injuries and was hospitalized for two weeks.

At the time of the accident, Charles Groat was insured by a no-fault insurance policy issued by defendant. Plaintiff was listed as an insured on the policy.[1] Under the policy, the principal named insured had an option to purchase insurance for an additional car[2] effective on the date of its acquisition. The option provision, however, further required:

> Exercise of this option must be made within 30 days of the acquisition of the additional car.

The policy defined "principal named insured" as:

> the person or organization named first in Item 1 on the Declaration Certificate. It includes the spouse except in Part II -- Michigan No-Fault Insurance Coverages.

Additionally, the policy defined "spouse" as "your husband or wife if a resident of your household." Sometime after the accident, Charles Groat requested defendant to add the Granada to the policy pursuant to the option provision. On January 11, 1990, defendant issued an endorsement adding the vehicle to his policy. The dispute between the parties involves the effective date of this addition.

Plaintiff subsequently requested benefits under her husband's policy, but defendant denied coverage. She then filed an action against defendant seeking no-fault benefits. Defendant eventually moved for summary disposition, claiming that it was not responsible for benefits because the vehicle was not insured at the time of the accident and that the option under the policy had not been exercised within

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

30 days after plaintiff purchased the vehicle. Plaintiff responded that Charles Grout could not have exercised the option until she became a resident of his household because he did not have an insurable interest in the vehicle. Therefore, plaintiff argued, the date of acquisition should be interpreted as the date she became a resident of his household, December 20, 1989.

The trial court ruled that the plain and explicit language of the insurance policy provided that plaintiff was a principal named insured under the policy and that she was required to exercise the option within 30 days from the November 20, 1989, purchase of the vehicle. Because neither she nor Charles Grout exercised the option within 30 days, the trial court held that the addition of plaintiff's vehicle after the accident was not effective until January 11, 1990. On appeal, plaintiff contends that the court's interpretation of the insurance policy was erroneous. We agree in part, but find that summary disposition was appropriate.

The general rule of construction applicable to insurance policies is that an ambiguous provision in an insurance contract must be construed against the drafting insurer and in favor of the insured. Clevenger v Allstate Ins Co, 443 Mich 646, 654; 505 NW2d 553 (1993). If the provision is clear and unambiguous, the terms are to be taken and understood in their plain, ordinary, and popular sense. Id. If a fair reading of the entire contract leads one to understand that there is coverage under particular circumstances and another fair reading of the contract leads one to understand that there is no coverage under the same circumstances, the contract is ambiguous. Id. (quoting Raksa v Farm Bureau Mutual Ins Co of Michigan, 412 Mich 355, 362; 314 NW2d 440 (1982)).

First, we disagree with the trial court that plaintiff was a principal named insured under the policy at the time she purchased the vehicle. The policy clearly defines "spouse" as the named insured's wife if a resident of his household. Because plaintiff was not a resident of Charles Groat's household, she was not his spouse under the terms of the policy. Therefore, she could not have elected to purchase insurance for the Granada effective on the date of its acquisition under the additional car option provision. Accordingly, we find that the trial court erred in holding that plaintiff was a principal named insured under the policy.

We note that the trial court's reliance on Citizens Mutual Ins v Community Services Ins, 65 Mich App 731; 238 NW2d 182 (1975) is misplaced. Citizens involved the interpretation of a statutory provision under the no-fault act, specifically MCL 500.3114; MSA 24.13114.[3] This Court held that PIP benefits extended to the estranged wife of a named insured who was not domiciled in his household at the time of the accident. However, the issue of whether the addition of the Granada was retroactive to the date of its acquisition involves the interpretation of the insurance policy. Thus, our duty is to determine, from the language used, the apparent intention of the contracting parties, and then to construe doubtful or ambiguous terms favorably to the insured and against the insurer as the contract drafter. See Royal Globe Ins Co v Frankenmuth Mutual Ins Co, 419 Mich 565, 573; 357 NW2d 652 (1984). For this issue, the policy's definition prevails over this Court's statutory interpretation.

After reviewing the policy, we decline to follow plaintiff's interpretation that Charles Groat "acquired" the vehicle when plaintiff attempted to move into his home. Instead, the insurer agreed to provide insurance for an additional car retroactive to the date of its purchase by the insured or by transfer of ownership to the insured. By providing this option, defendant exposes itself to liability for thirty days after the acquisition of an uninsured vehicle. We are certain that the insurer would not extend its exposure beyond the thirty-day period. Therefore, we hold that Charles Groat could not elect to purchase insurance for the vehicle retroactive to the date of plaintiff's purchase under the option provision. The potential for abuse would be significant were we to hold otherwise.

Because plaintiff was the owner of an uninsured vehicle involved in the accident, she is not entitled to no-fault personal protection insurance benefits for her injuries. MCL 500.3113(b); MSA

24.13113(b); Auto-Owners Ins Co v Hoadley, 201 Mich App 555, 557; 506 NW2d 595 (1993). Accordingly, summary disposition was appropriate in this case.

Affirmed.

/s/ Janet T. Neff
/s/ Myron H. Wahls
/s/ Richard D. Kuhn

[1] Plaintiff alleges in her brief that Charles Groat had removed her from his insurance policy at the time of their separation. This assertion was not contained in the stipulated facts and is not supported by the record.

[2] "Additional Car" was defined under the policy as a car, other than a replacement, acquired by the named insured after the effective date of the policy if the defendant insured all cars owned by the named insured.

[3] The provision provides:

> Except as provided in subsections (2) and (3), a personal protection insurance policy applies to accidental bodily injury to the person named in the policy, his spouse and any relative of either domiciled in the same household.

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NEFF, P.J. (dissenting).

I respectfully dissent. I agree with the majority opinion that the trial court erred in finding that plaintiff was a principal named insured under the policy. As pointed out by the majority, until December 20, plaintiff was not a resident of Charles Groat's household and was not his spouse at that time as that term was defined in the policy. Therefore, she could not have elected to purchase insurance for the Granada effective on the date she purchased it under the additional car option provision. Because of that, she could not be a principal named insured under the policy.

However, I believe that under the policy Mr. Groat "acquired" the car for purposes of the additional car option provision when his wife moved back into the marital residence. Thus, the operative date with regard to coverage is not the date plaintiff purchased the vehicle, November 20, but the date she moved in with him. Under that scenario, the exercise of the option before January 11 was within thirty days of the "acquisition".

The majority opinion states that the insurer would not extend its exposure beyond the thirty-day period under this provision. But this is not the relevant inquiry. The question is whether plaintiff's husband, the principal named insured, exercised the option within thirty days after he acquired the car, i.e., within thirty days after his wife moved into the marital home. There is no dispute that he did so and, accordingly, the coverage on the vehicle attached pursuant to his exercise of the option.

The additional car option in the policy provides for coverage effective on the date of acquisition. Plaintiff testified in her deposition that on December 20, the date of the accident, she was living with her husband and their two sons. This testimony is not rebutted.

The unescapable conclusion is that Charles Groat acquired the car on December 20, exercised the additional car option within thirty days, and the coverage on the car was effective on the date of acquisition, December 20. Plaintiff is entitled to coverage. Accordingly, it was error to grant defendant's motion for summary disposition. I would reverse and remand to the trial court.

/s/ Janet T. Neff

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