STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY,

Plaintiff-Appellant,

v

ROBERT J. GILBREATH, MAXIMILIAN CAUSIN, SONYA CAUSIN PASTOR CAUSIN, and MITCHELL CAUSIN,

Defendants-Appellees.

UNPUBLISHED
February 15, 1995

No. 158313
LC No. 90-004123-CK

Before: Doctoroff, C.J., and Murphy, and W.P. Cynar,* JJ.

PER CURIAM.

Plaintiff appeals by right the decision of the Genesee Circuit Court, granting defendants' motion for summary disposition. We have decided the case without oral argument pursuant to MCR 7.214(E). The issue presented concerns the scope of coverage under a no-fault policy issued by plaintiff to defendant Sonya Causin.

The Citizens Insurance policy provides, in relevant part, under the heading "PERSONS INSURED UNDER SECTION TWO," that "if the named assured is an individual" the coverage of the policy extends to "(c) any relative with respect to a nonowned private passenger automobile not regularly furnished for the use of such relative." Citizens claims that because Mitchell Causin had general permission from his father to use the Dodge van, and had been supplied a key for that purpose, he could not be insured under this provision, because as to him the van was "regularly furnished" for his use. That interpretation of the policy is open to question, given that Pastor Causin was not the custodial parent of Mitchell Causin. Arguably, the most that could be said here is that, as to Mitchell Causin, on his regular but infrequent visits to his father he was regularly permitted to use the van, which may not satisfy the condition, necessary to exclude him from coverage, that the van be "regularly furnished" for his use.

Under "EXCLUSIONS", the policy provides that coverage is not extended to nonowned automobiles "(c) unless the person using the automobile has received permission of its owner." Citizens asserts that because Maximilian Causin was specifically denied permission to use the vehicle, which was nonowned, the accident is excluded from coverage.

Although for purposes of any insurance policy provision which is directed by the No-Fault Act and intended to be consistent with that Act, Rohlman v Hawkeye-Security Ins Co, 442 Mich 520, 530; 502 NW2d 310 (1993), the phraseology of the policy should be construed in accordance with the statutory requirements, so that "permission" would have the meaning attributable to that term under the Owner's Liability Act, §401 of the Vehicle Code, if coverage were otherwise mandated by statute, Osner v Boughner, 180 Mich App 248, 267; 446 NW2d 873 (1989), with respect to Sonya Causin and the Citizens' insurance policy at issue in this matter, the vehicle in question was not owned by the insured and therefore the Owner's Liability Act has no application. No other statutory provision having

*Former Court of Appeals judge sitting on the Court of Appeals by assignment.

been cited which mandates coverage for domiciled relatives of the insured permissively driving vehicles owned by third parties, the coverage provided by the Citizens' policy here is contractual in origin, not statutory, and the contract must be construed in accordance with the usual principles applicable to insurance contracts and in light of the facts, whether or not disputed, of the present case. Rohlman, supra, 442 Mich at 534; Auto Owners Ins Co v Leefers, 203 Mich App 5, 10-11; 512 NW2d 324 (1993).

Hence, the trial court erred in imposing a statutory construction on the policy term involving permissive use; on remand, a construction of the relevant terms as contractual rather than statutory terms must be imposed, unless Illinois law mandates a different result. McLean v Wolverine Moving & Storage Co, 187 Mich App 393, 396; 468 NW2d 230 (1991); Gentry v Allstate Ins Co, ____ Mich App ____; ____ NW2d ____ (No. 162917, rel'd 12/19/94). The exclusionary clause in the present case, which contains an exception where "the person using the automobile has received permission of its owner," on one version of the facts would require a finding of coverage, because Mitchell Causin had permission of the owner of the Dodge van, and although he was not "operating" the van, at the time of the accident he was "using" the van for the purpose for which permission had been given. Aetna Life & Casualty Co v Western Fidelity Ins Co, 570 SW2d 691, 692-693 (Mo App, 1978); cf. Rocky Moutain Fire & Casualty Co v Goetz, 30 Wash App 185, 633 P2d 109 (1981) (extended journey not within letter or spirit of permission); Kneeland v Bernardi, 317 Mass 517, 58 NE2d 823 (1945) (practice driving by unlicensed novice not a "use" contemplated within "permission of the named insured"); Baesler v Globe Indemnity Co, 57 NJ Super 386, 154 A2d 833 (1959) (original permittee's lack of presence in the vehicle meant its use was not within permission of the named insured).

Triable issues of fact exist as to whether Mitchell Causin had Pastor Causin's permission to use the Dodge van, and, if so, whether Mitchell is excluded from coverage under Citizens' policy because the Dodge van was "regularly furnished" for Mitchell's use. Accordingly, summary disposition was inappropriately granted because questions of fact remain unresolved.

Vacated and remanded for further proceedings consistent with this opinion. This Court retains no further jurisdiction.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Walter P. Cynar