STATE OF MICHIGAN

COURT OF APPEALS

EMMA BURTON,

Plaintiff-Appellant,

v No. 85727

DAIIE (AAA),

Defendant-Appellee.

BEFORE: R.M. Maher, P.J, and J.H. Shepherd and Allen*, JJ.

PER CURIAM

Plaintiff appeals of right from the June 10, 1985 order of the Wayne County circuit court granting summary disposition to the defendant on plaintiff's claim for first party no-fault medical benefits. We affirm the trial court's order of summary disposition.

There are no material issues of fact. Plaintiff was injured in an automobile accident on January 28, 1984, while a passenger in a non-household vehicle. Plaintiff had medical insurance through her employer which provided coverage for her injuries.

Also in force at the time of the accident was a policy of no-fault automobile insurance issued by defendant to plaintiff's husband, George L. Burton. George L. Burton was the principal named insured on the policy. Two cars, for which two separate premiums were charged, were insured under the policy. Each automobile was the subject of a declaration certificate, indicating the principal driver of the vehicle and the specific coverage provided.

The first vehicle insured under the policy was a 1982 Buick. Plaintiff was designated by the declaration certificate as the principal driver of that vehicle. The declaration

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*Retired Court of Appeals Judge, sitting on the Court of Appeals by assignment.

certificate for the 1982 Buick provided for "coordinated" medical benefits.

The second vehicle under the policy was a 1975 AMC Gremlin. Plaintiff's husband was designated as the principal driver under that vehicle. The declaration certificate for the 1975 Gremlin did not designate coordinated benefits.

After plaintiff's medical expenses were paid under her policy of insurance through her employment, she claimed benefits under the 1975 Gremlin. Defendant denied the claim and plaintiff instituted suit on November 29, 1984. Plaintiff alleged that she was entitled to choose either coordinated benefits under the 1982 Buick or uncoordinated benefits under the 1975 Gremlin. Defendant maintained that plaintiff, as principal driver of the 1982 Buick, was entitled only to "coordinated" benefits under the 1975 Gremlin. As noted supra, the trial court held for the defendant, ruling that plaintiff's claim was limited to "coordinated" benefits under the 1982 Buick.

The trial court's order of summary disposition was granted under MCL 2.116(C)(10), which allows the court to grant judgment when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Here it is not the operative facts of the case which are at issue, but the proper construction to be applied to the policy of insurance. It is well-settled that, where the language of an agreement is unambiguous, the meaning of the language is a question of law. Moore v Campbell, Wyant & Cannon Foundry, 142 Mich App 363, 367; 369 NW2d 904 (1985), lv den 424 Mich 890 (1986). If, on the other hand, the agreement is thought to be ambiguous or unclear, and therefore not susceptible to interpretation as a matter of law, the intent of the parties is to be determined by the trier of fact. Chrysler Corp v Brencal Contractors, Inc, 146 Mich App 766, 775; 381 NW2d 819 (1985). We will therefore affirm the order of

summary judgment only if our analysis of the pertinent policy provisions leads us to the conclusion that the plaintiff is unambiguously entitled to only coordinated benefits under the 1975 Gremlin.

Part III of the policy covering the 1975 Gremlin, under which the plaintiff seeks uncoordinated medical benefits[1], provides as follows:

> "PERSONAL PROTECTION INSURANCE COVERAGE
> "We agree to pay in accordance with Code the following benefits to or for an insured person (or, in case of his/her death, to or for the benefit of his/her dependent survivor(s),) who suffers accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.
> "MEDICAL BENEFITS (ALLOWABLE EXPENSES)
> "All reasonable charges incurred for reasonably necessary products, services and accommodations for an insured person's care, recovery or rehabilitation."

We agree with plaintiff's assertion that she is an "insured person" within the meaning of this provision. "Insured person" is defined in Part III of the policy to include "any relative." It is undisputed that plaintiff is a relative and therefore an "insured person."

A more difficult problem arises, however, when the exceptions to bodily injury coverage are also considered. Thus, the policy provides:

> "BODILY INJURY AND PROPERTY DAMAGE NOT COVERED
> "This insurance does not apply to bodily injury.
> ". . .
> "any relative entitled to Personal Protection Insurance Benefits as a person named under the terms of any other policy."

Plaintiff argues that she was not entitled to benefits under any other policy, since there was only one policy of insurance covering both the 1982 Buick and the 1975 Gremlin. Thus, plaintiff would have us hold that she is either entitled to uncoordinated coverage under the policy or that the policy is ambiguous and thereby subject to resolution as a matter of fact. We decline to do so.

We first acknowledge that there is, in this case, only one master policy and that the declaration certificates for the

two cars are printed on the same page. However, the policy specifies under "GENERAL POLICY CONDITIONS APPLYING TO ALL PARTS OF THIS POLICY," as follows:

> "TWO OR MORE CARS
> "If more than one car is insured under this policy, the terms apply separately to each."

The same language in a policy has been previously construed by this Court to establish two policies, although only one policy number and one "master" policy is issued. Citizens Mutual Ins Co v Turner, 53 Mich App 616, 618; 220 NW2d 203 (1974), lv den 392 Mich 788 (1974), Fletcher v Aetna Casualty Co, 80 Mich App 439, 443; 264 NW2d 19 (1978), aff'd 409 Mich 1; 294 NW2d 141 (1980). Plaintiff apprises us of no reason to depart from these decisions.

We believe that a fair reading of the policy provisions leads to the conclusion that these two policies of insurance were issued by the defendant - one on the 1975 Gremlin and one on the 1982 Buick. The policy on the Buick, to which plaintiff must initially turn as the principal driver, provides only coordinated benefits. The policy of insurance of the Gremlin, under which the plaintiff has certain rights as a "relative", provides uncoordinated coverage with an exception for relatives who are entitled to benefits as a named insured under any other policy. We therefore find no ambiguity in these provisions. Raska v Farm Bureau Ins Co, 412 Mich 355, 362; 314 NW2d 440 (1982). Moreover, we observe no violation of public policy or statute in the exclusion provided under the Buick policy and therefore conclude that coverage under the policy was lost.[2] Fresard v Michigan Millers Mutual Ins Co, 414 Mich 686, 694-95; 327 NW2d 286 (1982).

Affirmed.

/s/ Richard M. Maher
/s/ John H. Shepherd
/s/ Glenn S. Allen, Jr.

[1] Under MCL 500.3114(1); MSA 24.13114(1), plaintiff was required to look first to her own policy of insurance and second to the policy of her spouse.

[2] Indeed, the exclusion appears to be fully in accord with the purposes underlying Michigan's no-fault automobile insurance statute. Federal Kemper Ins Co, Inc v Health Ins Administration, Inc, 424 Mich 537; 383 NW2d 590 (1986).