STATE OF MICHIGAN

COURT OF APPEALS

USAA INSURANCE COMPANY,

Plaintiff-Appellee,

v

HOUSTON GENERAL INSURANCE,

Defendant-Appellant,

and

CHARLES W. MILLER and DONNA MILLER,

Defendants-Appellees.

FOR PUBLICATION
December 10, 1996
9:05 a.m.

No. 186999
LC No. 94-420923 CZ

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,* JJ.

CAVANAGH, P.J.

Defendant appeals as of right the trial court order granting plaintiff's motion for summary disposition and denying defendant's motion for summary disposition. We affirm.

In 1986, Commuter Transportation Company (Commuter) entered into an agreement with Wayne County to provide ground transportation services at Detroit Metropolitan Airport. On February 25, 1994, Donna Miller, who was employed as a flight attendant with Northwest Airlines, was injured when the shuttle bus on which she was traveling collided with a snowplow. At the time of the accident, plaintiff, USAA Insurance Company, was the no-fault insurance carrier for Donna Miller and her husband, Charles Miller. Defendant, Houston General Insurance Company, had issued a policy to Commuter.

Donna Miller submitted claims to both plaintiff and defendant. On July 11, 1994, plaintiff filed a complaint for declaratory relief to determine the priority for payment of the no-fault insurance benefits. Plaintiff claimed that the shuttle was in the business of transporting passengers under MCL 500.3114(2); MSA 24.13114(2) and therefore defendant had priority to pay the no-

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

fault insurance benefits. Plaintiff requested the trial court to enter an order declaring that defendant was primarily liable for payment of insurance benefits.

On May 2, 1995, plaintiff brought a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that defendant was primarily liable for the payment of no-fault benefits. On May 10, 1995, defendant filed a cross-motion for summary disposition and declaratory relief. Defendant asserted that because the airport was a non-profit organization, under MCL 500.3114(1); MSA 13114(1) defendant did not have priority for the payment of no-fault benefits. On May 19, 1995, the trial court held a hearing on the motions for summary disposition, at which time it indicated that it would take the matter under advisement. On June 13, 1995, the trial court entered an order granting plaintiff's motion for summary disposition and denying defendant's motion. Defendant appeals.

MCL 500.3114(2); MSA 24.13114(2) provides in pertinent part:

> A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection shall not apply to a passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy.
>
> * * *
>
> (c) A bus operating under a government sponsored transportation program.
>
> (d) A bus operated by or providing service to a nonprofit organization.

Defendant argues that Commuter does not have priority because it is both a government-sponsored transport program and it provides service to the Wayne County Metropolitan Airport Authority, a nonprofit organization. Thus, defendant asserts, under MCL 500.3114(2); MSA 24.13114(2), it is not primarily liable for Donna Miller's injuries.

Statutory interpretation is a question of law subject to de novo review on appeal. *Golf Concepts v Rochester Hills*, 217 Mich App 21, 26; 550 NW2d 803 (1996). The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). Statutory language should be construed reasonably, keeping in mind the purpose of the statute. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written. *Barr v Mount Brighton Inc*, 215 Mich App 512, 516-517; 546 NW2d 273 (1996). However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate. *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 620-621; ___ NW2d ___ (1996).

We first address defendant's contention that Commuter's operation at the airport constitutes a "government sponsored transportation program." Under the agreement between Commuter and Wayne County, Commuter is given the exclusive right to operate the employee shuttle bus. Commuter is to be paid a management fee of $12,500 per month. The contract contains a provision entitled "Insurance and Indemnification" wherein Commuter agreed to indemnify and hold the County harmless from liability for personal injury. This section also requires Commuter to provide a comprehensive automobile insurance policy to cover injuries sustained in the course of Commuter's operations. In addition, the agreement specifically states that the contract did not render Commuter an agent or representative of the county for any purpose, and that Commuter provided all services as an independent contractor.

We conclude that the transportation service provided by Commuter does not constitute a "government sponsored transportation program." The contract does not place the county in the position of a sponsor. In fact, the agreement specifically states that Commuter was not thereby made an agent of the county. Rather, the county merely hired commuter to perform a service. The county did not undertake responsibility for the operation of the shuttle service. In fact, the contract requires that Commuter indemnify the county for any potential liability, and that Commuter retain its own liability insurance. We conclude that payment for a service by a government agency is not enough to render the service a government-sponsored activity. Were that the case, any contract entered into by a government entity to obtain a service would constitute a government-sponsored program.

Defendant also argues that Commuter was providing a service to a nonprofit organization. Defendant, citing the affidavit of Richard Noelke, the manager of tenant relations at Metropolitan Airport, contends that the airport is not operated for the purpose of providing a profit. Defendant further argues that the airport is a subdivision of Wayne County, which defendant asserts is clearly a nonprofit organization.

The statute does not define the term "nonprofit organization." If a statute fails to define a term, the term will be interpreted in accordance with the Legislature's intent and the term's common and approved usage. *Pendzsu v Beazer East, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (Docket Nos. 181268, 181271, issued 10/11/96), slip op p 6.

The operation of Detroit Metropolitan Airport by Wayne County constitutes a governmental function. *Codd v Wayne Co*, 210 Mich App 133, 135; 537 NW2d 453 (1995); see MCL 691.1401(f); MSA 3.996(101)(f), MCL 259.126; MSA 10.226. Thus, the question presented is whether the Legislature intended that government entities be considered "nonprofit organizations" under the statute.

Courts may examine the legislative history of an act to ascertain the reason for the act and the meaning of its provisions. *In re Brzezinski*, 214 Mich App 652, 665; 542 NW2d 871 (1995). MCL 500.3114; MSA 24.13114 was amended in 1976 for the purpose of easing the financial burden on the operators of vehicles used in government-sponsored transportation programs or providing service to nonprofit organizations. The legislative analysis states:

> The bus operations which would be exempted under the bill are all under a severe financial burden. Common carriers, including inner-city bus companies, must pay enormous insurance premiums at a time when many of them are under a serious competitive strain. Government-sponsored programs, such as the Southeastern Michigan Transportation Authority (SEMTA) and the Capital Area Transportation Authority (CATA) are already receiving public subsidies and are subject to the same large insurance premium costs. Non-profit organizations of all kinds are traditionally short of funds and would benefit greatly from being relieved of the cost of large insurance premiums. [House Legislative Analysis, HB 6448, September 27, 1976.]

After carefully considering the issue, we conclude that the Legislature did not intend that government entities be considered "nonprofit organizations" under the statute. First, we do not believe that, in its common and approved usage, the term "nonprofit organization" refers to government entities. While government entities do not exist to make a profit, they are nevertheless not in the normal course of things referred to as "nonprofit organizations."

We draw additional support for this conclusion from the fact that the Legislature used separate subsections to provide the exemptions to buses operating under government sponsored programs and buses providing service to nonprofit organizations. We therefore infer that the Legislature did not intend "government" and "nonprofit organization" to be synonymous.

Moreover, a court must look to the object of the statute and the harm that it was designed to remedy and apply a reasonable construction in order to accomplish the statute's purpose. *ABC Supply Co v River Rouge*, 216 Mich App 396, 398; 549 NW2d 73 (1996). The statute was designed to spare government-sponsored programs and nonprofit organizations the cost of high insurance premiums. See House Legislative Analysis, *supra*. The purpose of the statute is simply not implicated in this case. Here the cost of the insurance was borne not by the airport or Wayne County, but by Commuter, which defendant concedes is a for-profit corporation.

In sum, we find that the shuttle bus in which Donna Miller was riding when she was injured was neither operating under a government sponsored transportation program nor providing a service to a nonprofit organization. Accordingly, the trial court properly granted plaintiff's motion for summary disposition.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Charles W. Simon, Jr.

STATE OF MICHIGAN

COURT OF APPEALS

USAA INSURANCE COMPANY

Plaintiff-Appellee,

v

HOUSTON GENERAL INSURANCE,

Defendant-Appellant,

and

CHARLES W. MILLER and DONNA MILLER,

Defendants-Appellees.

FOR PUBLICATION

No. 186999
Wayne County
LC No. 94-420923 CZ

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr., JJ.

MURPHY, J. (dissenting).

I respectfully dissent.

Defendant Houston will not have priority, and plaintiff USAA will be primarily liable, if Donna Miller was injured while she was a passenger in a bus "providing service to a nonprofit organization." See MCL 500.3114(2)(d); MSA 24.13114(2)(d).

When construing statutory language, first and foremost, we must give effect to the Legislature's intent. *Reardon v Mental Health Dep't*, 430 Mich 398, 407; 424 NW2d 248 (1988). If the language of the statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent, and judicial construction is not permitted. *Tryc v Michigan Veteran's Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). In such cases, we must simply apply the statute as written. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).

---

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

In my opinion, the language of MCL 500.3114(2)(d); MSA 24.13114(2)(d) is clear and unambiguous, and therefore must be applied as written. In plain simple terms, a "nonprofit organization" is an organization that does not, and is not intended to, produce a profit. In this case, there was evidence that Metropolitan Airport is not operated for the purpose of producing a profit, and that no surplus of funds from the airport is ever distributed as profit. Therefore, in my opinion, the Metropolitan Airport Authority is a nonprofit organization, and Donna Miller was injured in a bus that provides service to that nonprofit organization.

The majority concludes that because the airport is government related, it was not intended to be covered by the statute. However, because the language of the statute is clear and unambiguous, this Court must not, as the majority does, delve into the legislative history, in an attempt to ascertain the reason for the act and the meaning of its provisions. We must ascertain the legislative intent from the plain language of the statute, and that language indicates an intent on the Legislature's part not to hold the insurer of a bus primarily responsible for injuries to passengers in the bus if that bus provides a service to a nonprofit organization. The Metropolitan Airport Authority is a nonprofit organization, and I see nothing in the language of the statute to give me reason to believe that a nonprofit organization, which happens to be government related, should not be included in the term "nonprofit organization." Any other result is the product of unnecessary and inappropriate judicial construction in the face of clear, statutory language.

I would reverse the trial court's grant of summary disposition in favor of plaintiff and remand to the trial court for entry of judgment in favor of defendant.

/s/ William B. Murphy