STATE OF MICHIGAN

COURT OF APPEALS

GEORGIA ADAMS, as Next Friend for MARY HANNA, a Minor, LINDA HANNA, JOAN CRAIGHEAD and SANDRA K. BLEHM,

Plaintiffs-Appellants,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 2, 1998

Nos. 201049;201050;201051
Oakland Circuit Court
LC Nos. 95-501100 CK;
95-503268 CK;
95-504627 CK

Before: Whitbeck, P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

These consolidated cases arose from an automobile accident in which plaintiffs were injured when the car they occupied was involved in a collision with a truck driven by an individual, not a party to this action, who plaintiffs claim was an uninsured motorist. Plaintiffs had purchased insurance through defendant that specifically provided for uninsured motorist benefits. Defendant, however, denied plaintiffs' claims for uninsured motorist benefits, claiming that the driver of the other vehicle involved in the accident had insurance coverage under a separate policy that also, coincidentally, was issued by defendant. Plaintiffs then filed suit against defendant, claiming that defendant wrongly denied their claims for uninsured motorist benefits because the driver of the other vehicle was not insured by defendant at the time of the accident.

Plaintiffs moved for summary disposition pursuant to MCR 2.116(C)(10), which the trial court denied. On reconsideration of plaintiffs' motion for summary disposition, the trial court held that plaintiffs did not have standing to challenge defendant's decision to provide insurance coverage to a third party and dismissed the action. Plaintiffs appeal as of right from the dismissal. We reverse and remand for further proceedings in accordance with this opinion.

Plaintiffs argue that the trial court erred in holding that they did not have standing to question the existence of liability coverage on the other vehicle involved in the accident. We agree. Previous Michigan decisions have allowed third parties standing to challenge an insurance contract where they possessed some legal or equitable right, title, or interest in the subject matter

of the controversy. In *Michigan Nat'l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997), this Court held that an insurance company could properly challenge the enforceability of a contract between the bank it insured and the bank's customer. The bank paid out $173,323 to a customer when her safety deposit box was lost during a branch relocation. *Id.* at 20. The bank's insurance company refused to pay more than $10,000 because it claimed that the customer's contract with the bank limited the bank's liability to $10,000. *Id.* This Court held that, because the insurance company had a legally protected interest in limiting its own liability to the bank, it had standing to challenge the bank's decision not to enforce its limit of liability to its customer. *Id.* at 21. We find that the present case is similar because plaintiffs had a legally protected interest under their own policies with defendant and they had standing to challenge the insurance company's decision not to enforce its absolute defense of liability against its insured.

Similarly, in *McKenney v Crum & Forster*, 218 Mich App 619, 622-623; 554 NW2d 600 (1996), this Court held that an insurance company had standing to challenge another insurance carrier's decision to provide coverage to its insured. In *McKenney*, the plaintiff had been injured while at work in an accident that involved an automobile. *Id.* at 620-621. The no-fault carrier paid no-fault benefits and the worker's compensation carrier paid worker's compensation benefits for the same injury. *Id.* at 621. The plaintiff had settled claims of negligence and medical malpractice in connection with the accident and the worker's compensation insurer sought to intervene and assert a worker's compensation lien against these settlements. *Id.* The worker's compensation insurer claimed that the plaintiff was not entitled to no-fault benefits and that consequently, it was entitled to reimbursement. *Id.* at 621-622. This Court held that the worker's compensation carrier had standing to challenge the no-fault carrier's decision to provide coverage. *Id.* Similarly, we find that defendant's determination that there was liability coverage on its insured's truck at the time of the accident does not bar plaintiffs as a matter of law from claiming that the driver of the other vehicle was an uninsured motorist at the time of the accident. As in *McKenney*, it is conceivable that defendant paid liability benefits to the other driver "because of a misapprehension of the law or facts or some other reason." *Id.* at 622.

We further believe that plaintiffs also have standing as injured parties. This Court has recently held that an injured party may bring an action against an insurance agent on a third-party beneficiary theory. *Auto-Owners Ins Co v Mich Mutual Ins Co*, 223 Mich App 205, 211-212; 565 NW2d 907 (1997). Because the insurance coverage was for the direct benefit of third parties who may be injured through the insured's negligence, plaintiffs, as injured third parties, were intended beneficiaries of the insurance contract. *Id.*

Accordingly, in the case at bar, while plaintiffs were in the unusual position of challenging the existence of liability coverage under an insurance policy to which they were not parties, they nevertheless had standing to challenge the scope of the coverage under the policy. Therefore, we find that the trial court erred in holding that plaintiffs did not have standing to question the existence of liability coverage on the other vehicle involved in the accident.

Next, plaintiffs ask us to consider whether an insurer can create liability coverage retroactively for an at-fault vehicle and thereby defeat a claim for uninsured motorist benefits. This was essentially the issue before the trial court on plaintiffs' motion for summary disposition. Our review of the record indicates that no retroactive liability coverage was created under the

terms of the insurance policy and that the trial court incorrectly determined that the driver of the at-fault vehicle was insured through the terms of his spouse's insurance contract.

Uninsured motorist coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded. *Berry v State Farm Mutual Automobile Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996). Giving the language of the uninsured motorist policy its ordinary and plain meaning, *Hosking v State Farm Mutual Automobile Ins Co*, 198 Mich App 632, 633-634; 499 NW2d 436 (1993), in order for plaintiffs to be entitled to uninsured motorist coverage under their own policies, there had to be no applicable insurance on the truck that the at-fault driver was driving at the time of the accident. Therefore, the sole issue was whether the driver of the other vehicle was an uninsured motorist at the time of the accident. The analysis employed to answer this question necessarily implicates the provisions of the at-fault driver's spouse's insurance policy.

According to the definitions listed in the insurance policy, as the named insured's spouse and a resident of the same household, the at-fault driver was himself a named insured. He would have been covered with respect to any owned vehicle or any non-owned vehicle, provided the use of the non-owned vehicle was with the permission of the owner. However, the truck he was driving at the time of the accident was not a "non-owned automobile" as defined under the terms of the insurance policy because the truck was owned by a named insured and furnished for the regular use of a resident of her household. Nor was the truck an "owned automobile" under the definition stated in the policy. While the truck was acquired by the named insured during the policy period, it is clear that she did not notify defendant of the acquisition within the sixty-day grace period as required by the terms of the insurance contract. In fact, insurance was not created for the truck until four months after the accident occurred.

Although defendant argues that it made coverage retroactive to the date of acquisition in order to comply with its internal policy of providing coverage for vehicles that are acquired by and titled in the name of a named insured and involved in an accident during the sixty-day grace period applicable to newly acquired cars, this entirely voluntary commitment to indemnify the at-fault driver does not convert the truck to an insured vehicle under the terms of the policy. If a contract is clear and unambiguous, its construction is a question of law for the court to decide, and the contract must be enforced as written. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 1 (1991); *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). Thus, we find that under the clear and unambiguous terms of his spouse's policy, the at-fault driver was not insured at the time of the accident, and consequently, based on plaintiffs' original motion for summary disposition and reconsideration, and defendant's responses thereto, plaintiffs have proven a right to judgment. Accordingly, the trial court erred as a matter of law in denying plaintiffs' motions for summary disposition.

Reversed and remanded for entry of judgment in favor of plaintiffs. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Barbara B. MacKenzie
/s/ William B. Murphy