STATE OF MICHIGAN

COURT OF APPEALS

BRUCE THOMPSON, Personal Representative of the Estate of BRENDA THOMPSON, Deceased,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
June 11, 1999

No. 208272
Muskegon Circuit Court
LC No. 97-337073 CK

Before: Hoekstra, P.J., and Saad and R. B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's grant of defendant's motion for summary disposition. We affirm.

The parties agree on the facts in this case. Plaintiff's wife died when a stolen truck struck the automobile in which she was a passenger. The truck's owner, Michigan Consolidated Gas Company ("MichCon"), was self-insured. The truck's driver had no liability coverage. Plaintiff filed a wrongful death suit against both the driver and MichCon. According to plaintiff, the former is judgment proof, and the latter settled its potential liability. Plaintiff and his wife had uninsured motorist coverage through defendant. Because defendant denied plaintiff's claim, plaintiff filed a declaratory judgment action against defendant. The trial court granted defendant's motion for summary disposition, finding that plaintiff is not entitled to uninsured motorist coverage under his policy because the truck was self-insured.

We review a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Defendant did not argue separately the standards for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10), nor did the trial court specifically state which standard it applied in granting defendant's motion. We conclude, however, that summary disposition was proper under MCR 2.116(C)(8), because the relevant portion of the

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

insurance contract was part of the pleadings. MCR 2.113(F). Pursuant to MCR 2.116(C)(8), summary disposition may be granted where the opposing party has failed to state a claim on which relief can be granted. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.*

The sole issue on appeal is whether a stolen truck covered by a self-insurance certificate is "uninsured" for purposes of uninsured motorist coverage. Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because the self-insurance certificate did not cover MichCon's liability. Specifically, MichCon's liability did not arise out of its "ownership, maintenance or use" of the truck. Furthermore, the self-insurance certificate did not cover the driver's liability because the law does not require MichCon to provide insurance for a car thief. For these reasons, plaintiff argues, the truck was an "uninsured motor vehicle" under the policy. We disagree.

Plaintiff provides no law supporting his argument that uninsured motorist insurance should apply where a self-insurance certificate does not cover the specific liability incurred. Our Supreme Court has held that an insurance policy is a contract between the insurer and the insured. *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 525; 502 NW2d 310 (1993). As such, the policy controls the interpretation of those provisions governing benefits that are not required by statute. *Id.* "[B]ecause uninsured motorist benefits are not required by statute, interpretation of the policy dictates under what circumstances those benefits will be awarded." *Id.* In such cases, "the policy definitions control." *Berry v State Farm Mutual Auto Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996). To determine if an ambiguity exists, an insurance policy should be read as a whole. *Hafner v DAIIE*, 176 Mich App 151, 155; 438 NW2d 891 (1989). We have stated previously that "this Court's duty is to determine from the language of the policy the parties' apparent intention. Doubtful or ambiguous terms must be construed in favor of the insured and against the insurer, the drafter of the policy." *Berry, supra*, 346-347. A certificate of self-insurance is the functional equivalent of a commercial insurance policy. *Allstate Ins Co v Elassal*, 203 Mich App 548, 554; 512 NW2d 856 (1994).

Here, section IV of the personal auto policy provides in part:

> **INSURING AGREEMENT**
>
> We will pay compensatory damages which an "insured" or the "insured's" legal representative is legally entitled to recover from the owner or operator of an uninsured motor vehicle" because of "bodily injury":
>
> 1. Sustained by an "insured"; and
>
> 2. Caused by an accident.

> The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle". Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

The policy defines the phrase "uninsured motor vehicle" as "a land motor vehicle or trailer of any type . . . [w]hich is used without the permission of the owner and to which no bodily injury liability bond or policy applies at the time of the accident." The policy also defines particular classes of uninsured vehicles:

> However, "uninsured motor vehicle" does not include any vehicle, trailer or equipment:
>
> . . . 2. Self-insured under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.

The policy's terms are not ambiguous. They clearly provide that any vehicle "[s]elf-insured under any applicable motor vehicle law" is not an uninsured motor vehicle for purposes of the policy. Plaintiff argues that we should construe the policy's provision for uninsured motorist protection to apply when the actual liability falls outside the scope of the self-insurance certificate; to construe the policy otherwise, he maintains, would violate the rule that ambiguities found in insurance contracts are to be construed against the insurer. However, the trial court's "broader construction" of the policy, which we adopt here, does not rest on the resolution of an ambiguity. Rather, the policy language clearly states that those vehicles "self insured under any applicable motor vehicle law" shall not be treated as uninsured. Here, it is undisputed that MichCon's truck was insured, albeit self-insured, under Michigan motor vehicle law. See MCL 257.531; MSA 9.2231.

The trial court's grant of defendant's motion for summary disposition was proper where the unambiguous terms of the insurance policy did not provide uninsured motorist coverage for a stolen, self-insured truck.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Henry W. Saad
/s/ Robert B. Burns