S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

RANDY VIAU, Personal Representative of the Estate of GERALD VIAU, Deceased,	UNPUBLISHED September 10, 1999
Plaintiff-Appellant,	
v	No. 208700 Delta Circuit Court LC No. 97-013915 NI
HASTINGS MUTUAL INSURANCE COMPANY,	
Defendant-Appellee.	

Before: Whitbeck, P.J., and Markman and O'Connell, JJ.

PER CURIAM.

Plaintiff Randy Viau, the personal representative of the estate of Gerald Viau (Viau), appeals as of right an order granting defendant Hastings Mutual Insurance Company's motion for summary disposition and denying plaintiff's cross-motion for summary disposition. We affirm.

This breach of insurance contract suit arose after defendant refused to pay uninsured/underinsured motorist's (UM)[1] benefits when Viau was killed while riding a motorcycle that was not explicitly covered by his business automobile insurance policy issued by defendant. Defendant insured four vehicles that Viau used in his business as a building contractor. On June 17, 1996, Viau purchased a motorcycle from Terrance W. Teal. Teal signed and handed over the certificate of title, but the form on the back was not fully completed, nor was any application made to the Secretary of State to transfer title. Viau paid the $3,400 purchase price listed on the back of the certificate of title and took possession of the motorcycle.

Some time on or before July 26, 1996, Viau's 1983 Chevrolet Blazer, which was explicitly covered under the Hastings policy and which Viau used for work, broke down. On July 26, 1996, all the other covered cars were in use; as a result, Viau used the motorcycle to travel between job sites. On that day, Nancy Beck, a motorist insured by State Farm Mutual Insurance Company, ran through a stop sign, colliding with Viau and killing him. Beck's insurer, State Farm, provided her with insurance coverage that had an upper limit of $50,000 in liability coverage. Plaintiff settled with State Farm for the $50,000 maximum, but the estate's expenses exceeded $50,000. Consequently, plaintiff pursued supplemental coverage under Viau's business automobile policy's UM endorsement. Plaintiff sued

defendant for a declaration of coverage when defendant refused to pay the claim voluntarily because decedent's business auto policy did not explicitly cover the motorcycle that he was driving at the time of his fatal accident.

The trial court determined that that there was no factual question that the decedent owned the motorcycle at the time of the accident, despite a failure to apply for transfer of title, and that the motorcycle was not specifically listed in the policy. The court found that the UM exclusion specifically excluded compensation for injuries sustained while operating a vehicle owned by the decedent that was not explicitly covered under the policy. The court declined to rule on whether the motorcycle was a temporary substitute for a vehicle listed in the policy, and clarified that had the policy specifically stated that had it covered substitutes for listed automobiles, the court's ruling may well have been different.

This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing),* 206 Mich App 83, 85; 520 NW2d 633 (1994).

> MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to [judgment] as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Id.*]

In this case, the trial court had to determine whether there was any factual issue in question regarding whether the motorcycle that Viau was riding at the time of the accident came within the purview of Viau's UM coverage. The principles of construction governing other contracts apply also to insurance policies. *Arco Industries Corp v American Motorists Ins Co,* 448 Mich 395, 402; 531 NW2d 168 (1995). Where no ambiguity exists, this Court enforces the contract as written. *Morley v Automobile Club of Michigan,* 458 Mich 459, 465; 581 NW2d 237 (1998). An insurance contract expresses the intent of the parties to be bound to specific terms and in that way is not different from any other contract. *Waldan General Contractors, Inc v Michigan Mutual Ins Co*, 227 Mich App 683, 686; 577 NW2d 139 (1998). Consequently, we must determine what the parties intended by their writing, and apply that intention to resolve the issues in dispute. *Id*.

Accordingly, we must begin by looking to the words of the insurance contract to determine their meaning. In this case, plaintiff applied for benefits from defendant specifically under the UM coverage. Nancy Beck's insurance company had already paid the policy limit for her liability in the accident, yet the estate's expenses exceeded that $50,000 limit. With regard to the estate's expenses, Beck was underinsured, so plaintiff next applied to Viau's own insurance company for the remainder of the money from the UM coverage. Thus, we must look first to the UM coverage language. UM coverage is provided through an endorsement to the general policy provisions, and specifically states:

A. COVERAGE

> 1. We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle". The damages must result from "bodily injury" sustained by the "insured" caused by an "accident". The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle".

The general coverage of the UM section, under section (A)(1), appears to be very broad. From the plain language of the general coverage statement, this coverage applies to the insured when he suffers bodily injury from an underinsured motorist at any time, irrespective of the vehicle he was in, or whether he was in a vehicle at all. Relying only upon the general coverage language, plaintiff should be able to recover under the UM coverage.

However, the exclusions in the UM coverage specifically exempt certain situations from UM coverage. In pertinent part, these exclusions state:

C. EXCLUSIONS

> This insurance does not apply to any of the following:
>
> * * *
>
> [3.] "Bodily injury" sustained by:
>
> a. You while "occupying" or when struck by any vehicle owned by you that is not a covered "auto" for Uninsured Motorists Coverage under this Coverage Form;

It appears clear that coverage of the motorcycle in this case will be governed by the language in section (C)(3)(a) of the UM exclusions. Owned vehicle exclusion clauses are valid and enforceable so long as they are clear and unambiguous. *Auto-Owners Ins Co v Estate of Johnson,* 184 Mich App 686, 688; 459 NW2d 7 (1990); *Automobile Club Ins Assoc v Page,* 162 Mich App 664, 668; 413 NW2d 472 (1987). It is clear that if we find the clause to be unambiguous and Viau's motorcycle was owned by him and was not a "covered 'auto,'" then the exclusion applies and plaintiff cannot receive UM coverage.

Plaintiff first argues that Viau did not own the motorcycle at the time of his death because there was no application to transfer title, and the certificate of title was not properly executed. A sale of a vehicle is void where the sale violates the Michigan Vehicle Code. *Holtzlander v Brownell*, 182 Mich App 716, 719; 453 NW2d 295 (1990). MCL 257.233; MSA 9.1933 states, in pertinent part:

> (8) The owner shall indorse on the back of the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of

> all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.
>
> (9) Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer or interest in the vehicle shall be the date of execution of either the application for title or the certificate of title.

Thus, "[t]he statute only requires an owner to 1) endorse the certificate of title and 2) deliver the certificate to the transferee."[2] *Karibian v Paletta,* 122 Mich App 353, 358; 332 NW2d 484 (1983) (citation omitted). Title passes when this properly executed certificate of title is given to the transferee, even if there is a delay in applying to the Secretary of State for an official transfer of the title. *Shank v Kurka*, 174 Mich App 284, 287; 435 NW2d 392 (1988). In *Shank, supra* at 287, the seller failed to fill in the entire certificate of title, even leaving off the name of the buyer, yet the seller's signature and delivery of the certificate to the buyer effectively transferred the car to the buyer. In this case, Teal did sign the motorcycle over to Viau on June 17, 1996 and deliver it to Viau's possession, approximately five weeks before the accident. Thus, based on the language in this statute, which sets the date of transfer *alternatively* at "the date of execution of either the application for title or the certificate of title," and the case law cited above, the trial court correctly held that Viau owned the motorcycle as a matter of law at the time of the accident. Consequently, Viau's ownership did trigger the plain exclusion in section (C)(3)(a) of the UM coverage endorsement allowing the exclusion to operate if the motorcycle was not a covered automobile.

Accordingly, we look to plaintiff's second argument on appeal. Plaintiff argues that, even if Viau owned the motorcycle, it was a "covered 'auto'" under the policy. To determine what a "covered 'auto'" is, we look to the general Business Auto Policy Declarations, which state in relevant part:

> ITEM TWO- SCHEDULE OF COVERAGES AND COVERED AUTOS
>
> EACH OF THESE COVERAGES WILL APPLY *ONLY* TO THOSE "AUTOS" SHOWN AS COVERED "AUTOS". "AUTOS" ARE SHOWN AS COVERED "AUTOS" FOR A PARTICULAR COVERAGE BY THE ENTRY OF ONE OR MORE OF THE SYMBOLS FROM THE COVERED AUTO SECTION OF THE BUSINESS AUTO COVERAGE FORM NEXT TO THE NAME OF THE COVERAGE. [Emphasis added.]

Under the coverage section, Uninsured Motorists coverage is listed, followed by a number "07."[3] The covered auto section of the Business Auto Coverage Form states:

> **ITEM TWO** of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be

covered "autos". *The symbols entered next to a coverage on the Declarations designate the only " autos" that are covered "autos"*. [Emphasis added.]

* * *

7 = SPECIFICALLY DESCRIBED "AUTOS". Only those "autos" described in ITEM THREE of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in ITEM THREE).

Item three is entitled, "SCHEDULE OF COVERED AUTOS YOU OWN" and specifically lists four vehicles, including the 1983 Chevy Blazer, none of which is a motorcycle. To summarize, the UM exclusion states clearly that UM coverage does not apply to owned autos that are not "covered 'autos,'" which are designated by the definition corresponding with the number "07"-- *only* specifically described autos, which list did not include the motorcycle. There are no other policy sections that enlarge the definition of a "covered 'auto.'" In addition, we find no difficulty in ascertaining the meaning of the exclusionary language or the definition of a "covered 'auto.'" There is simply only one interpretation that can be reasonably gleaned from the clear language, and such interpretation clearly excludes Viau's motorcycle from UM coverage.[4]

Nevertheless, plaintiff contends that the UM coverage provides benefits when an insured is operating a temporary substitute vehicle for a vehicle listed in the policy, and that the motorcycle the decedent was riding was just such a substitute. Plaintiff bases this argument on UM coverage section (B)(3), which states as follows:

B. WHO IS AN INSURED

1. You.

2. If you are an individual, any "family member".

3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered auto. The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

Plaintiff acknowledges that, under the UM exception, the motorcycle would be excluded from UM coverage unless it is a "covered 'auto,'" and that the motorcycle is not specifically listed as a "covered 'auto.'" Yet he claims that the language of section (B)(3) shows that a temporary substitute vehicle "qualifies as the equivalent of" a "covered 'auto.'" This is so, according to plaintiff, because "it is logical," because it does not undermine the purpose of a UM policy, and because not extending coverage to an owned temporary substitute vehicle would result in a policy that was "absurd" because Viau would not be covered here but a passenger on his motorcycle might be covered. Yet plaintiff points out no logical connection between the definition of a "covered 'auto'" and the separate language referring to a temporary substitute. Instead, plaintiff apparently believes that since it is so "logical" that "covered 'autos'" should include temporary substitutes, because this will not raise the insurance

company's risk of payment since the same number of vehicles will always be insured, this Court should read this into the contract. However, temporary substitutes are nowhere included within the definition of a "covered 'auto,'" nor are they equated with a "covered 'auto'" anywhere in the policy such that the definition becomes ambiguous. While the policy does refer to temporary substitutes in specific sections (which plaintiff does not claim apply here), this does not thereby change the definition of a "covered 'auto'" or make the policy ambiguous; rather it simply points out that the insurance company was fully able to recognize the distinction and chose not include temporary substitutes within the definition of a "covered 'auto.'"

In addition, plaintiff argues that the liability provision of the policy supports his claim that the motorcycle was not excluded from UM coverage. Section II of the general Business Auto Coverage Form provides liability coverage. In Section I, the covered auto section, the policy refers to this section:

> If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:
>
> * * *
>
> 3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
>
> a. Breakdown;
>
> b. Repair;
>
> c. Servicing;
>
> d. "Loss"; or
>
> e. Destruction.

Plaintiff acknowledges that this section does not apply to this case to help define "covered 'auto'" and thus exclude the motorcycle from UM coverage, because it refers only to *liability* coverage, not UM or general coverage. However, plaintiff claims that because it "makes perfectly good sense" to limit coverage to non-owned vehicles under the liability section, where there is a specific limitation, but "makes no sense whatever" from a risk management standpoint in the context of UM coverage, the UM section should be read to cover owned temporary substitutes in the absence of a specific exclusion of these vehicles. Regardless what this Court believes regarding the "sense" of including or excluding temporary substitutes in different sections of this policy, we must enforce the contract upon which the parties agreed. Here, the language is clear that a "covered 'auto'" includes only those vehicles that are specifically listed, and not temporary substitutes for such vehicles. No matter how sincerely plaintiff believes these autos should have been covered, Viau signed a contract that clearly did not cover them.

We are cognizant of the potential anomalies in this contract identified by plaintiff. The coverage of this contract, as we construe it, may not be logically consistent to some observers. Indeed, it does not seem altogether logically consistent to this Court that a stranger riding on Viau's motorcycle may have been covered by the UM policy here but that the primary insured himself was not. Perhaps there

was some drafting error in this contract, or perhaps we are unappreciative of some logical reason for the specific language here. Either way, though, it makes no difference: the clear language of the policy states that the motorcycle in this case was excluded from coverage by the UM endorsement, and we must enforce this clear language. Regardless whether this Court or plaintiff or defendant thought that this policy "makes sense," the parties are presumed to have intended the scope of coverage set forth by the language of their policy.

For these reasons, we conclude that the motorcycle that Viau was driving at the time of the accident that resulted in his death was excluded from coverage under the UM endorsement to the insurance policy. Viau owned the vehicle and it was not included within the definition of "covered 'auto'" in the policy, putting in squarely within the plain language of the UM exclusion. Therefore, we affirm the trial court's grant of defendant's motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Stephen J. Markman
/s/ Peter D. O'Connell

[1] The policy at issue refers only to "uninsured motorists" coverage. However, defendant states in its brief on appeal that "[t]he policy provided, *inter alia,* uninsured/underinsured motorist coverage." Thus, since all parties concede that the policy did provide for underinsured coverage, and treat the terms interchangeably, we follow suit and do not further address any differences between uninsured and underinsured coverage.

[2] There was no argument that Teal failed to report or properly satisfy any security interests in the motorcycle.

[3] Each coverage listed is also followed by the number "07." Thus, a covered auto is the same under all sections of the policy and each different type of coverage.

[4] We note that we do not have any information regarding any other potential insurance covering the motorcycle. Certainly the motorcycle was not normally used for business purposes and thus was quite possibly covered by a personal auto insurance policy. However, we are unaware of the terms of coverage, if any, and what action, if any, was taken to recover from any other insurance policy.