STATE OF MICHIGAN

COURT OF APPEALS

AMICA MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

v

ROBERT M. LOVEJOY JR., BECKY K. LOVEJOY and ROBERT LOVEJOY III,

Defendants-Appellants,

and

JERRY JOSEPH ATTO,

Defendant.

UNPUBLISHED
June 13, 2000

No. 211463
Oakland Circuit Court
LC No. 97-550886-CK

AMICA MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

v

ROBERT M. LOVEJOY JR., BECKY K. LOVEJOY and ROBERT LOVEJOY III,

Defendants,

and

JERRY JOSEPH ATTO,

Defendant-Appellant.

No. 211645
Oakland Circuit Court
LC No. 97-550886-CK

Before: McDonald, P.J., and Gage and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, defendants Robert Jr., Becky, and Robert Lovejoy III, and Jerry Atto, appeal as of right from the trial court's order granting plaintiff Amica Mutual Insurance Company summary disposition pursuant to MCR 2.116(C)(10) and denying defendants' cross-motion for summary disposition. We affirm.

The underlying facts are not disputed. On May 3, 1997, between midnight and 1:30 a.m., thirteen-year-old Robert Lovejoy III took his father's Ford Explorer without permission. While driving the Explorer without a license, Robert Lovejoy III collided with a vehicle operated by Atto, who was allegedly injured in the accident.

The Explorer was insured under a personal automobile policy which plaintiff issued to Robert Jr. and Becky Lovejoy in 1996. The policy covers damages for bodily injury or property damage for which an "insured" becomes legally responsible "because of an auto accident," and promises to defend or settle any claim for covered damages where deemed appropriate. The term "insured" as used within the policy is defined in part as:

> 1. You or any **family member** for the ownership, maintenance or use of any auto or trailer.
>
> 2. Any person using **your covered auto** . . . . [Emphasis in original.]

After the accident, plaintiff filed this action for declaratory judgment. Plaintiff acknowledged that Robert Lovejoy III qualified as an "insured" under the policy, but denied any obligation to provide coverage or otherwise defend based on exclusion 8.A of the policy, which provides:

> A. We do not provide Liability coverage for any **insured**:
>
> * * *
>
> 8. Using a vehicle without a reasonable belief that **insured** is entitled to do so. [Emphasis in original.]

Plaintiff moved for summary disposition, asserting that the exclusionary language did not apply because Robert Lovejoy III lacked a "reasonable belief" that he was entitled to use the Explorer. In response, the Lovejoys filed a cross-motion for summary disposition, which Atto joined. Defendants agreed that Robert Lovejoy III did not have a "reasonable belief," but argued that the exclusion did not apply. Defendants maintained that the exclusion referred only to "a vehicle" and therefore did not encompass the Explorer, which the policy defined as a "covered auto." The trial court disagreed with defendants and granted summary disposition in favor of plaintiff.

Defendants argue on appeal that the trial court erred in rejecting their construction of the policy and granting summary disposition for plaintiff. Defendants contend that the use of the general, undefined

term "vehicle" in the exclusion, rather than the specific, defined phrase "your covered auto," creates an ambiguity which must be construed against the drafter and in favor of coverage. We disagree.

This Court reviews de novo a trial court's decision to grant a motion for summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). When reviewing a motion brought pursuant to MCR 2.116(C)(10), the court considers the documentary evidence in the light most favorable to the nonmoving party. *Id.*; *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Smith*, *supra* at 454-455; *Quinto*, *supra*. Similarly, the determination whether contractual language is ambiguous is a question of law, which this Court reviews de novo. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

Exclusionary clauses in insurance contracts are strictly construed in favor of the insured. *Trierweiler v Frankenmuth Mut Ins Co*, 216 Mich App 653, 657; 550 NW2d 577 (1996). Coverage under a policy is lost if any exclusion in the policy applies to an insured's particular claims. *Century Surety Co v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998). This Court interprets clear and unambiguous provisions of an insurance policy according to the plain and ordinary meaning of its terms. *Trierweiler*, *supra* at 657. A provision is ambiguous when, after reading the entire contract, its language may reasonably be understood in different ways. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). Where an ambiguity does exist, the policy will be construed against the drafter and in favor of coverage. *Nikkel*, *supra* at 566-567, citing *Raska v Farm Bureau Mut Ins Co*, 412 Mich 355, 362; 314 NW2d 440 (1982). However, where the language is clear and unambiguous, courts cannot interpret it in such a way as to create an ambiguity where none exists, and the policy must be enforced as written. *Charron*, *supra* at 83.

The term "vehicle" is not defined in the policy at issue. However, the fact that a policy does not define a term does not render the policy ambiguous. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Rather, absent policy definitions, terms are given their commonly used meanings. *Id.* "Vehicle" is defined as "any means in or by which someone or something is carried or conveyed: *a motor vehicle*." *Random House Webster's College Dictionary* (1997). (Emphasis in original.) The plain and ordinary meaning of "vehicle" is commonly understood to include automobiles in general. On the other hand, the specific phrase "your covered auto" is defined in the policy as "*any vehicle* shown in the Declarations [section of the policy]," where the Explorer is listed. (Emphasis added.) Because the term "vehicle" commonly includes automobiles such as the Explorer at issue, and particularly when that term is used to describe "your covered auto," we conclude that "vehicle" as used in the exclusion unambiguously refers to and includes the Explorer. Accordingly, the plain language of the exclusion negates coverage because Robert Lovejoy III drove a vehicle, the Explorer, without a reasonable belief that he was entitled to do so.

We are not persuaded by defendants' contention that the policy as a whole favors coverage because the term "vehicle" and phrase "your covered auto" are used both selectively and together throughout and are therefore intended to be mutually exclusive. *Royce*, *supra* at 542 (a particular provision should be interpreted in light of the policy as a whole). Initially, we focus our attention on the

exclusions listed in the "Liability Coverage" section of the policy and note that every relevant exclusion applies to "a vehicle" or "any vehicle" and none of the exclusions apply to "your covered auto." Under defendants' interpretation of the policy then, no exclusion would apply to the Explorer because it is specifically defined as "your covered auto." Such an interpretation would defeat the purpose of incorporating exclusions in the policy since none would apply to vehicles that are subjects of the contract. Moreover, as the trial court noted, the language of the three exclusions that expressly reference "your covered auto" suggest that "vehicle" is meant to include all automobiles, including "your covered auto," unless otherwise specified. Those exclusions state that coverage is unavailable for "[a]ny vehicle, *other than your covered auto*, which is" owned, furnished or available for regular use, and for "[a]ny vehicle *other than your covered auto*, which is" owned, furnished, or available for the regular use of any family member. (Emphasis added.) The third exclusion applies to "any insured while employed in the business of selling . . . vehicles designed for use mainly on public highways" and expressly states that it "*does not apply to the ownership, maintenance or use of your covered auto* . . . ." (Emphasis added.) For the same or similar reasons, defendants' citation to provisions using the terms "vehicle" and "your covered auto" in the "Medical Payments Coverage," "Uninsured Motorists Coverage ," and "General Provisions" sections of the policy is also unpersuasive.

Based on our thorough review of the exclusion in the context of the entire policy, we conclude that it is not ambiguous and must therefore be enforced as written. *Charron, supra* at 83 ("[c]lear and specific exclusions must be given effect because an insurance company cannot be liable for a risk it did not assume"). It would be unreasonable to find that plaintiff assumed the risk of an underage, unlicensed insured being involved in an accident while operating a vehicle listed in the policy. See *Huggins v MIC General Ins Corp*,228 Mich App 84; 578 NW2d 326 (1998).[1] Further, even assuming ambiguity, it is unlikely that the Lovejoys reasonably anticipated the insurance policy to provide coverage under the same circumstances. See *Nikkel, supra* at 569 (rule of reasonable expectations does not apply where no ambiguity exits and the insured could have discovered the clause on examination of the contract); *Fire Ins Exchange v Diehl*, 450 Mich 678, 687-688; 545 NW2d 602 (1996). Accordingly, we hold that the trial court properly granted plaintiff's motion for summary disposition.

Affirmed.

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[1] Defendants rely on the rationale employed by other courts that construed *different* terms of an exclusion similar to the one at issue, and concluded that they were ambiguous when read with other sections of the policy. See e.g., *Hartford Ins Co v Jackson*, 206 Ill App 3d 465; 564 NE2d 906 (1990); *American States Ins Co v Adair Industries, Inc*, 576 NE2d 1272 (Ind App, 1991); *Meridian Mut Ins Co v Cox*, 541 NE2d 959 (Ind App, 1989); *State Auto Mut Ins Co v Ellis*, 700 SW2d 801 (Ky App, 1985). Even assuming the applicability of these cases, they represent the minority view, and other courts have strongly criticized the rationale employed therein. See e.g., *Hartford Ins Co of the Midwest v Halt*, 223 AD2d 204; 646 NYS2d 589 (1996).

/s/ Gary R. McDonald
/s/ Hilda R. Gage
/s/ Michael J. Talbot