STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTO INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED June 29, 2001
v SANDRA CURRAN, Defendant-Appellant.	No. 219235 Oakland Circuit Court LC No. 98-003344-CK

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

In this automobile insurance case, defendant Sandra Curran appeals as of right from the trial court's order granting plaintiff State Farm Mutual Insurance Company summary disposition under MCR 2.116(C)(10). We affirm.

Defendant was injured when her vehicle was rear-ended by a van being driven by Gregory Thorton. The van, which was owned by Thorton's parents, was insured under a policy issued by Government Employees Insurance Company (GEICO). Although listed as an excluded driver on the GEICO policy, Thorton was himself insured with the Maryland Automobile Insurance Fund under a policy which provided liability coverage of up to $20,000 for bodily injury.[1]

Shortly after the accident, defendant filed suit against both Thorton and his parents. The case was submitted to mediation, which resulted in an evaluation awarding defendant $20,000 in damages against Thorton, but finding "no mediation" against his parents as a result of ongoing bankruptcy proceedings. Thorton and defendant accepted the evaluation and an order of judgment was entered pursuant to MCR 2.403(M).

Pursuant to her claims against Thorton's parents, defendant thereafter sought damages from plaintiff under the uninsured motorist provisions of her automobile insurance policy. Denying that it owed defendant such benefits, plaintiff filed a complaint for declaratory judgment

[1] Because Thorton was specifically excluded from the GEICO policy, GEICO denied "any and all liability [or] obligation" with respect to the accident in which defendant was injured.

as to the rights of the parties under the policy. The trial court granted plaintiff summary disposition, concluding that the van driven by Thorton did not fall within the policy's definition of an "uninsured motor vehicle."

On appeal, defendant contends that the trial court erred in reaching this conclusion. We disagree.

A trial court's grant of summary disposition is reviewed de novo. *Otero v Warnick*, 241 Mich App 143, 146; 614 NW2d 177 (2000). Because this case involves interpretation of an uninsured motorist policy, we must determine the parties' intention from the language of the insurance contract. As noted by the panel in *Berry v State Farm Mutual Auto Ins Co*, 219 Mich App 340, 346-347; 556 NW2d 207 (1996):

> Because uninsured motorist benefits are not required by statute, the contract of insurance determines under what circumstances such benefits will be awarded. The policy definitions control. Thus, 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. [Citations omitted.]

The words in an insurance policy are generally considered to be ambiguous when they may be reasonably understood in different ways. *Trierweiler v Frankenmuth Mutual Ins Co*, 216 Mich App 653, 656-657; 550 NW2d 577 (1996). Where such an ambiguity exists, the interpretation that favors coverage should be enforced. *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). However, where no such ambiguity exists, the terms of a contract must be enforced as written. *Id.*

The uninsured motorist provisions of the insurance policy at issue here state in pertinent part:

> We will pay damages for ***bodily injury*** an insured is legally entitled to collect from the owner or driver of any ***uninsured motor vehicle***. The bodily injury must be caused by accident arising out of the operation, maintenance or use of an ***uninsured motor vehicle***.
>
> ***Uninsured Motor Vehicle*** — means:
>
> 1. a land motor vehicle, the ownership, maintenance or use of which is:
>
>   a. not insured or bonded for bodily injury liability at the time of the accident;

Defendant argues that the trial court erred in granting plaintiff summary disposition because the policy language outlined above clearly provides uninsured motorist coverage if either the ownership, the maintenance, or the use of the subject vehicle is uninsured at the time of the accident. In making this argument, defendant asserts that the term "or" in the phrase "ownership,

maintenance, or use" should be interpreted in the disjunctive sense, so that the absence of *any one* of these three forms of insurance would render a vehicle "uninsured" within the meaning of the policy. Plaintiff, on the other hand, urges a conjunctive interpretation of the term, in which case coverage would exist only where the vehicle's ownership, maintenance, and use were *each* uninsured at the time of the accident. However, because we conclude that under the facts of this case the policy language in question does not provide coverage under either interpretation, we find the trial court's grant of summary disposition appropriate.

In support of their respective positions, both parties have cited precedent from this as well as other jurisdictions. We note, however, that although the vehicle's use was insured in each of these cases, its ownership was not.[2] In the instant matter, the van driven by Thorton at the time of the accident was insured by its owners under a policy issued by GEICO, and defendant does not argue that the GEICO policy failed to provide adequate ownership or maintenance coverage for the vehicle.[3] Although Thorton was excluded from coverage under that policy, his liability for use of the vehicle was covered under the Maryland policy.

Accordingly, we find that given the arguments and record presented in this matter, the vehicle driven by Gregory Thorton was not an "uninsured motor vehicle" under either of the interpretations urged by the parties, and that therefore the trial court reached the right result when it granted plaintiff summary disposition.

Defendant further argues, however, that the trial court erred in failing to order arbitration of the issue whether she had been injured by an "uninsured motor vehicle." Again we disagree.

To ascertain the arbitrability of an issue, the court must consider whether there is an arbitration provision in the parties' contract, whether the disputed issue is arguably within the arbitration clause, and whether the dispute is expressly exempt from arbitration by the terms of the contract. *Burns v Olde Discount Corp*, 212 Mich App 576, 580; 538 NW2d 686 (1995). Here, an arbitration clause found in the uninsured motorist endorsement section of the policy provides:

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[2] See *Citizens Ins Co of America v Povey*, 114 Mich App 395; 319 NW2d 341 (1982); *Hull v State Farm Mutual Auto Ins Co*, 222 Wis2d 627, 639-640; 586 NW2d 863 (1998), *Whitehead v Weir*, 862 SW2d 507, 508 (Mo App, 1993); *State Farm Mutual Auto Ins Co v Taylor*, 223 Mont 215, 218; 725 P2d 821, 822-23 (1986).

[3] We note, however, that during oral argument on the parties' cross-motions for summary disposition, defendant asserted that GEICO's denial of coverage was "the equivalent of having no insurance under the terms of the State Farm policy." Defendant has, however, failed to present a similar argument on appeal and we therefore need not consider the merits of such a claim. See *Meagher v Wayne State Univ*, 222 Mich App 700, 718; 565 NW2d 401 (1997). Nonetheless, our review of the State Farm policy reveals no provision equating denial of coverage by a carrier with the status of being "uninsured" for purposes of collecting uninsured motor vehicle benefits.

Deciding Fault and Amount

Two questions must be decided by the ***insured*** and us:

1. Is the ***insured*** legally entitled to collect damages from the owner or driver of the ***uninsured motor vehicle***; and

2. If so, what amount?

If there is no agreement, these questions shall be decided by arbitration upon written request of the ***insured*** or us.

Contrary to defendant's assertions, the provision clearly limits arbitration to disagreements concerning whether an insured person is legally entitled to damages from the owner of an uninsured motor vehicle, not, as argued here, whether the motor vehicle was in fact "uninsured" within the policy's definition. Accordingly, we find that the trial court properly determined that the arbitration provision did not apply in this case.

We affirm.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins