STATE OF MICHIGAN

COURT OF APPEALS

TONYA OLIVAREZ, Personal Representative of the Estate of JENNIFER HIBBS, Deceased,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and MUTUAL SERVICE CASUALTY INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
June 5, 2003

No. 234806
Oakland Circuit Court
LC No. 00-021571-CK

ERASMO DIMAMBRO, CLARA DIMAMBRO, ANTHONY DIMAMBRO, MARIO DIMAMBRO, and ANGELO DIMAMBRO,

Plaintiffs-Appellants,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and MUTUAL SERVICE CASUALTY INSURANCE COMPANY,

Defendants-Appellees.

No. 234979
Oakland Circuit Court
LC No. 99-019351-CZ

Before: Wilder, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

This case arises from a fatal automobile accident that occurred on September 6, 1998, on I-75 near Holly Road in Oakland County. Jason Smith, age 16, was traveling northbound on I-75 operating a 1995 Mercury Sable owned by his father's fiancée, Deborah Olivarez. Jason lost control of the car, which jumped a guardrail, landed on southbound I-75 and collided with the DiMambros' Chevrolet Suburban. The crash resulted in the death of Jason Smith and his

passenger, Jennifer Hibbs,[1] and injuries to the DiMambros. Plaintiffs brought separate declaratory actions under two different insurance policies seeking a declaration of coverage under each policy. The trial court consolidated these actions and granted defendants' motions for summary disposition under MCR 2.116(C)(10). Plaintiffs appeal as of right. We affirm.

I. Facts and Procedure

Jason Smith maintained two residences: one with his father, David Smith, who resided with Deborah Olivarez and her daughter, Jennifer Hibbs; and one with his mother, Lynn Burden, who resided with her husband, Michael Burden. The Burdens insured their vehicles with defendant State Farm. The coverage limits on the State Farm policy were $100,000 per person and $300,000 per occurrence. David Smith and Deborah Olivarez each purchased a separate insurance policy from defendant Mutual Service. Deborah Olivarez's policy covered her Mercury Sable and had limits of $50,000 per person and $100,000 per occurrence. David Smith's policy covered several vehicles and had limits of $100,000 per person and $300,000 per occurrence. In all other respects the policies issued by Mutual Service to David Smith and Deborah Olivarez were identical. Jason Smith was named as an insured on David Smith's policy.

Jason intended to visit relatives in Grand Rapids. Before leaving, Lynn Burden called Deborah Olivarez and suggested that Jason take Deborah's Sable because the Buick Century Jason usually drove was unreliable. Deborah agreed to loan Jason her car, and Jason drove to Grand Rapids. At some point in the trip, Jason picked up Jennifer Hibbs in Flint and returned with her to their home in North Branch. Jason and Jennifer then took the Sable to visit Jason's girlfriend in Auburn Hills. The accident occurred while driving home from Auburn Hills.

In December 1999, the DiMambros filed a declaratory action seeking verification that Lynn Burden's State Farm policy and David Smith's Mutual Service policy covered the accident. In March 2000, Tonya Olivarez, the personal representative for the estate of Hibbs, filed a similar action. On August 14, 2000, the trial court consolidated these cases. Mutual Service and State Farm each filed summary disposition motions under MCR 2.116(C)(10). The DiMambros and Tonya Olivarez each opposed the motions. In addition, Tonya Olivarez filed a cross-motion for summary disposition against the insurance companies. On May 22, 2001, the trial court granted defendants' summary disposition motions because it found that neither the State Farm policy nor the Mutual Service policy covered the accident.

II. Analysis

A. Standard of Review

This Court reviews de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). We also review de novo the interpretation of contractual language. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566;

[1] Jennifer Hibbs was the daughter of Deborah Olivarez.

489 NW2d 431 (1992). Courts should construe contractual language according to its ordinary and plain meaning, and should avoid technical and constrained constructions. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991). If an insurance contract's language is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is clear if it fairly admits of but one interpretation and ambiguous if, after reading the entire contract, its language can be reasonably understood in differing ways. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (1999). A contract provision is not made ambiguous by the existence of factual questions regarding whether it applies in a given situation. *Id*. at 570. If a clear contract does not contravene public policy, the contract will be enforced as written no matter how inartfully worded and clumsily arranged. *Id.* at 566-567; *Van Hollenbeck v Ins Co of North America*, 157 Mich App 470, 477; 403 NW2d 166 (1987). "It is axiomatic that if a word or phrase is unambiguous and no reasonable person could differ with respect to application of the term or phrase to undisputed material facts, then the court should grant summary disposition to the proper party pursuant to MCR 2.116(C)(10)." *Henderson*, *supra* at 353.

B. The Household Exclusions

David Smith's Mutual Service car insurance policy provided the following:

> Subject to the Definitions, Exclusions, Conditions and Limits of Liability of this policy, we will pay damages for which an insured person is legally liable because of bodily injury or property damage arising out of the . . . use . . . of the insured car. The insured car means: your car, which is the vehicle described on the Declaration Certificate . . . and an other car, which is a private passenger car, utility car or trailer *that you or a resident of your household does not own* . . . . [Emphasis added.]

The policy also had an exclusion that stated, "[t]he [l]iability [c]overage does not cover . . . the use of any vehicle which is . . . owned . . . by . . . any resident of your household unless it is . . . the vehicle described on the [d]eclaration [c]ertificate . . . ." Pursuant to this very clear policy language, if a resident of David Smith's household owned a vehicle not expressly listed on the Mutual Service declaration certificate issued to David Smith, that vehicle would not be covered under the Mutual Service policy. Thus, if Deborah Olivarez, the owner of the Sable involved in the accident, is a resident of David Smith's household, there is no coverage under the Mutual Service insurance policy.

Lynn Burden's State Farm policy contained a similar exclusion. This policy expressly excluded from coverage damages arising from the operation of any vehicle owned by "[a]ny other person residing in the same household as you, your spouse or any relative . . . ." Jason Smith was the son of Lynn Burden. Thus, if Deborah Olivarez, the owner of the Sable involved in the accident, resides in the same household as Jason Smith (a relative of Lynn Burden and the named insured under the State Farm policy), no coverage will arise under the State Farm policy.

The parties do not dispute that Deborah Olivarez had been living with David Smith in the same house for more than a year before the accident. Furthermore, plaintiffs do not dispute that Jason resided equally in both his father's and his mother's household. Plaintiffs argue, however, that the trial court erred when it granted summary disposition in favor of defendants because the

law limits the members of a household to those related by blood, marriage, or adoption. We disagree.

"[T]he phrase 'resident of his household' has legal meaning only within the context of the numerous factual settings possible . . . ." *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 461; 217 NW2d 449 (1974). Our Supreme Court has provided the following factors that courts should consider when determining whether someone resides in another's household:

> (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his 'domicile' or 'household'; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; [and] (4) the existence of another place of lodging by the person alleging 'residence' or 'domicile' in the household. [*Workman v DAIIE,* 404 Mich 477, 496-497; 274 NW2d 373 (1979)(citations omitted).]

The Supreme Court added that, "no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others." *Id*. at 496. The Supreme Court did not require any blood or legal relationship between residents of a household, and the nature of the relationship constituted only one factor among many. *Id*. at 496-497.

Nevertheless, plaintiffs argue that the definition of "household" adopted by this Court in *Thomas v Vigilant Ins Co,* 156 Mich App 280, 282; 401 NW2d 351 (1986) and *Stadelmann v Glen Falls Ins Co,* 5 Mich App 536, 540; 147 NW2d 460 (1967), requires a familial relationship. While *Stadelmann* defined "household" as a "family living together," it also stated, "[a] spouse of the insured or a person under 21 years of age in the care of an insured clearly qualifies a person as an integral part of a family." *Id.* at 540-541. *Stadelmann* did not require that the minor have any blood or marital bond to the insured before the child was considered a member of the insured's family. *Id*. at 541. Therefore, we conclude that the existence of a blood or marital relationship is not required to establish that individuals are residents of the same household.

The undisputed facts establish that Deborah Olivarez intended to live in David Smith's home indefinitely, eventually as his wife. Deborah Olivarez and David Smith were engaged to be married one month before the accident and lived together, with their respective children, in the same house. The group occupied David Smith's home for more than a year before the accident, and neither David Smith nor Deborah Olivarez maintained a separate home. Based on these undisputed facts, a reasonable jury would necessarily conclude that Deborah Olivarez, David Smith and Jason Smith resided in the same household. *Henderson, supra* at 353.[2]

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[2] Furthermore, the policy defined "resident relative" as a "resident of your household related to you by blood, marriage or adoption or is your foster child" This is the definition plaintiffs ascribe to the word "household." Plaintiffs' interpretation of the policy renders the definition of "resident relative" inexplicably redundant and fails to afford meaning to all the policy's words. *Auto-Owners Ins, supra* at 566.

Accordingly, the trial court properly concluded that the household exclusion barred recovery under both insurance policies.

C. The Mutual Service Policy Provision Relating to "Broadened Other Car Coverage"

Plaintiffs next argue that the Mutual Service policy included "Broadened Other Car Coverage" that applied to Jason Smith during his operation of Deborah Olivarez's Sable. The broadened other car coverage provision states, "[a] person named on the Declaration Certificate for [b]roadened [o]ther [c]ar [c]overage has [l]iability [c]overage for use of a motor vehicle with four wheels or more not owned by that person or spouse." The provision, however, adds, "[e]xclusions related to business use do not apply; all other policy provisions do apply." Also, a caveat below the title for that part of the policy states, "[a] [c]overage from this [p]art applies only if a premium is listed for it on the [d]eclaration [c]ertificate." David Smith's declaration sheet did not contain any reference to broadened other car coverage or indicate any premium paid for the additional coverage.

Mutual Service's adjuster, Lisa White, testified that she was not aware of any additional premium for the broadened other car coverage, and she could not tell from looking at David Smith's declaration sheet whether he had the coverage. White further testified that the insurance application David Smith filled out did not have a place where he could elect broadened other car coverage.

Plaintiffs argue that the broadened other car coverage would serve no purpose if it did not eliminate the household exclusion and, assuming White's statements were true, David Smith could "reasonably expect" that he had broadened other car coverage. Specifically, plaintiffs maintain that the absence of the additional coverage from the application form, the lack of a designated place for the coverage to appear on the declaration sheet, and the lack of additional premium all created a reasonable expectation that the provision would apply in every policy.[3]

Plaintiffs' reliance on the insured's alleged reasonable expectations is misplaced. An insured's reasonable expectations only affect the scope of policy provisions when the policy contains unclear language. *Geller v Farmers Ins Exch*, 253 Mich App 664, 669; ___ NW2d ___ (2002). An insurance contract's clear terms apply as written unless the terms violate public policy. *Farm Bureau, supra* at 566-567. The policy at issue in this case is clear.

The trial court correctly applied the provision's clear language when it held that the household exclusion applied to the broadened other car coverage. The broadened other car coverage provision clearly states, "[e]xclusions related to [b]usiness [u]se do not apply; all other policy provisions do apply." While plaintiffs argue that the inclusion of this sentence severely

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[3] Additionally, plaintiffs argue that the provision's broad title and first sentence invite application of the provision to every situation where a named individual drives an "other car." Tonya Olivarez also argues that the design of the declaration sheet precludes anyone from being named for "Broadened Other Car Coverage" because the declaration sheet assigns coverage to cars, not people.

limits the provision's applicability,[4] they do not argue that it is ambiguous or deceptive. Therefore, according to the provision's unambiguous terms the household exclusion still applies.

Further, the express terms of the broadened other car coverage provision prevents its application. While plaintiffs argue that the circumstances surrounding the declaration sheet create ambiguity about whether the provision applies, extraneous evidence such as the testimony of Mutual Service's adjuster is only relevant to determine the parties' intentions where exists a contractual ambiguity within the four corners of the contract. *Group Ins Co v Czopek*, 440 Mich 590, 596-597; 489 NW2d 444 (1992). Here, the provision's terms clearly require that the declaration sheet "name" an individual for broadened other car coverage before the provision will apply. Further, as a prerequisite to receiving a type of coverage, the policy clearly requires that the declaration sheet indicate the coverage type and its corresponding premium. David Smith's declaration sheet did not have either indication for broadened other car coverage. By the clear terms of the policy, David Smith did not receive broadened other car coverage and any expectations to the contrary do not matter. *Geller, supra* at 669.

D. Reformation of the Mutual Service Policy

The estate of Hibbs argues that the trial court erred when it refused to reform Deborah Olivarez's policy by raising her policy limits. It argues that Mutual Service refused to acknowledge Deborah Olivarez's relationship with David Smith for purposes of a multi-car discount but now treats her as his spouse for coverage purposes. Courts should approach the question of contract reformation with extreme caution. *Olsen v Porter*, 213 Mich App 25, 28; 539 NW2d 523 (1995). "Courts will reform an instrument to reflect the parties' actual intent where there is clear evidence that both parties reached an agreement, but as the result of mutual mistake, or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties." *Id.* at 29. Only a party to a contract may request its reformation. *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 24; 592 NW2d 379 (1998).

Here, the estate proffered no evidence that Deborah Olivarez mistakenly believed she was contracting for $300,000 per occurrence policy limit instead of the $100,000 limit Mutual Service provided. Furthermore, the inequitable conduct the estate of Hibbs ascribes to Mutual Service does not amount to fraudulently inducing Deborah Olivarez to pay more in premiums for less coverage. The estate fails to present any evidence that either party believed the contract would provide higher policy limits than those clearly stated on Deborah Olivarez's declaration sheet. The trial court did not err when it refused to reform Deborah Olivarez's policy.

E. The Mutual Service Policy Provision Relating to "Temporary Vehicles"

Finally, the DiMambros argue that the "temporary substitute" provisions in the Mutual Service policy and the State Farm policy applied to Jason Smith's use of Deborah Olivarez's

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[4] Plaintiffs cannot validly argue that this sentence renders the broadened other car coverage provision useless surplusage, because the sentence eliminates the "business use" exclusion. Therefore, the broadened other car coverage expands coverage for those insureds who use another's car in their business.

Sable and thus, provided coverage for the accident. The DiMambros argue that Jason only drove Deborah Olivarez's Sable because the vehicle he usually drove was not as reliable. The clear language of the temporary substitute vehicle provisions state that the insured's usual car must be out of use because of breakdown, repair, damage, or loss. The DiMambros failed to present evidence that any of these problems afflicted Jason's usual vehicle. Rather, the evidence indicates that the Sable was simply the more reliable option. Therefore, the trial court did not err when it found that the "temporary substitute" provisions in the Mutual Service and State Farm policies did not apply to the facts of this case.

III. Conclusion

The trial court properly construed the insurance policies at issue in this case. As a matter of law, Deborah Olivarez, Jason Smith and David Smith shared the same household. Accordingly, there is no coverage under the policies of insurance issued by State Farm and Mutual Service for the accident giving rise to this action. The broadened other car coverage mentioned in the Mutual Service insurance policy did not negate the household exclusion. The trial court properly declined to reform the Mutual Service insurance policy issued to Deborah Olivarez. Jason Smith's use of Deborah Olivarez's Sable did not amount to use of a temporary vehicle under any of the insurance policies at issue in this case.

Affirmed.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra