STATE OF MICHIGAN

COURT OF APPEALS

JEROME WOBIO, JR.,

Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

UNPUBLISHED
October 14, 2003

No. 240991
Genesee Circuit Court
LC No. 01-069908-CK

Before: Donofrio, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's denial of defendant's motion for summary disposition under MCR 2.116(C)(10). We reverse.

In this case, we decide whether plaintiff may recover uninsured motorist benefits on a derivative claim from his own insurance company based on his nonresident grandson's death. His young grandson died in an accident caused by the child's mother when she drove her uninsured vehicle the wrong way down a street. Plaintiff insured neither the car nor the child under his policy, but claims the policy entitles him to recovery nonetheless, because the policy's definition of "bodily injury" includes "death of any person."

Defendant argues that the trial court erroneously found an ambiguity in the policy regarding whether the policy's uninsured motorist provision covered the death of plaintiff's grandson. We agree. We review 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). The trial court correctly held that it should construe any ambiguities against the insurer and in favor of coverage. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). But this policy does not contain any ambiguities. An ambiguity only exists if, after reading the contract as a whole and applying it to the uncontroverted facts, one could reasonably draw disparate conclusions. *Id*.

The policy provision at issue states, "We will pay all sums which an **insured person** is legally entitled to recover as **damages** from the owner or operator of an **uninsured motor vehicle** because of **bodily injury** sustained by the **insured person**." To support his argument for ambiguity, plaintiff emphasizes that the policy's definition of "bodily injury" includes "death of any person." Plaintiff's focus on the phrase's broad definition prevents him from appreciating its modification and use in the specific coverage provision under which he claims. In context, the

policy clearly only covers injuries "sustained by the **insured person**." The decedent grandson was neither a named insured nor an insured by definition pursuant to the insuring agreement and definitions. So for plaintiff's claim to succeed, plaintiff must demonstrate that he "sustained" his grandson's death. Applying the meaning of the word "sustained" in its plain and ordinary sense, the only person that sustained the death of plaintiff's grandson was plaintiff's grandson, so plaintiff's argument fails. Because the ambiguous provision at issue in *Auto Club Ins Ass'n v DeLaGarza*, 433 Mich 208, 212; 444 NW2d 803 (1989), did not contain a modifying clause limiting coverage to injuries sustained by the insured, it does not apply to this case. Therefore, the trial court erred when it failed to grant defendant's motion for summary disposition.

Reversed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Peter D. O'Connell