

STATE OF MICHIGAN
COURT OF APPEALS

ZUHEIR FAKHOURY,

Plaintiff-Appellant,

v

STATE FARM INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 19, 2004

No. 243614
Oakland Circuit Court
LC No. 01-036143-NI

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). When determining what the parties' agreement is, the court should read the contract as a whole and give meaning to all the terms contained within the policy. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). If the insurance contract sets forth definitions, the policy language must be interpreted according to those definitions. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997). If a term is not defined in the policy, it is to be interpreted in accordance with its commonly used meaning. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Clear and unambiguous language may not be rewritten under the guise of interpretation. *South Macomb Disposal Auth v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686

(1997). A policy is not rendered ambiguous by the fact that a relevant term is not defined. *Henderson, supra* at 354. The construction and interpretation of an insurance policy and whether the policy language is ambiguous are questions of law that are reviewed de novo on appeal. *Id.* at 353.

The policy at issue provided coverage for accidents with a hit-and-run vehicle whose owner is unknown. To qualify for such benefits, the insured must “report a ‘hit-and-run’ accident to the police within 24 hours . . .” The noun “report” is defined as a “formal oral or written presentation of facts.” Black’s Law Dictionary (7th ed). The verb report is defined as “to relate, as the results of one’s observation or investigation,” as “to give a formal account or statement,” as “to make a report of something observed,” or simply as “to relate; tell.” *Random House Webster’s College Dictionary* (1997). The trial court found that plaintiff “orally reported the accident to the Troy Police Department” within twenty-four hours but granted summary disposition to defendant on the ground that “he failed to provide written notice of the accident within” twenty-four hours. The policy requires only that the plaintiff report the accident to the police. A person may report something orally as well as in writing. Therefore, the trial court erred in reading into the policy a requirement that the plaintiff report the accident in writing.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Jessica R. Cooper
/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood