

STATE OF MICHIGAN
COURT OF APPEALS

SOUTHERN MICHIGAN INSURANCE
COMPANY,

UNPUBLISHED
February 10, 2005

Plaintiff-Appellant,

v

JASON GLENN KILGORE and EDMOND
BAIRD,

No. 251096
Isabella Circuit Court
LC No. 03-002198-CK

Defendants-Appellees.

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant Baird's motion for summary disposition.¹ We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for declaratory judgment, contending that the automobile insurance policy it issued to defendant Kilgore excluded coverage for intentional acts and, therefore, it had no obligation to indemnify or defend Kilgore against Baird in a separate lawsuit. Plaintiff argues that the trial court erroneously concluded that the intentional acts exclusion in its automobile insurance policy is unenforceable under the no-fault act, MCL 500.3101 *et seq.*, and therefore, erred in granting summary disposition to defendant Baird. We disagree.

MCL 500.3131 provides:

¹ The trial court did not specify under which subsection of MCR 2.116(C) it granted summary disposition. Defendant Baird cited subrule (C)(10) in his brief, but as plaintiff pointed out, (C)(8) is the applicable subrule because Baird's motion was based entirely on the pleadings, without reference to the evidentiary support for plaintiff's complaint. Even if summary disposition is granted under the wrong subrule, this Court may review the order under the appropriate subrule. *Stewart v Isbell*, 155 Mich App 65, 74; 399 NW2d 440 (1986).

(1) Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possessions, or in Canada. This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs. *In this state this insurance shall afford coverage for automobile liability retained by section 3135.* [Emphasis added.]

MCL 500.3135 provides, in pertinent part:

(3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

(a) Intentionally caused harm to persons or property. . . .

When reviewing a statute, this Court examines the statutory language to determine whether an ambiguity exists. *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 538; 565 NW2d 828 (1997). If the language is unambiguous, judicial construction is precluded and the statute is enforced as written. *People v Lange*, 251 Mich App 247, 253-254; 650 NW2d 691 (2002).

Reading MCL 500.3101 and MCL 500.3135 together, it is clear that § 3101 requires that automobile insurance policies provide coverage for the residual tort liability that is preserved by § 3135, and that liability for intentional torts is so preserved. Consequently, an automobile insurance policy cannot exclude liability coverage for intentional torts. See *DAIIE v Higginbotham*, 95 Mich App 213, 220-221; 290 NW2d 414 (1980). Although plaintiff argues that this result is contrary to public policy, and that this Court should instead rely on the Uniform Motor Vehicle Accident Reparations Act, we are bound to apply the plain language of the statutes as written. Therefore, summary disposition was properly granted.

Plaintiff also asserts that it should be permitted to proceed with its case in order to discover whether defendant Baird's injuries were causally connected to defendant Kilgore's operation of an automobile. Plaintiff did not raise this issue in its complaint for declaratory relief, which was grounded entirely on its claim that its insurance policy excluded coverage for intentional acts. Consequently, this argument does not provide a basis for reversing the trial court's summary disposition order.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen