

STATE OF MICHIGAN
COURT OF APPEALS

MARIE BRIGGS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

May 12, 2005

No. 252084

Macomb Circuit Court

LC No. 2003-001053-NF

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this claim for uninsured motorist coverage. We affirm.

On appeal, plaintiff argues that defendant's motion for summary disposition should have been denied because issues of material fact exist regarding whether she was entitled to uninsured motorist coverage. After de novo review to consider whether a genuine issue of material fact exists in light of the evidence submitted, we disagree. See *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004); *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

Uninsured motor vehicle coverage is not required by statute; thus, the contract of insurance determines under what circumstances the benefits will be awarded. *Wills v State Farm Ins Co*, 222 Mich App 110, 114; 564 NW2d 488 (1997). Accordingly, the policy definitions control and, where the language is clear and unambiguous, the policy must be enforced as written. *Berry v State Farm Mut Auto Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996). If a contract fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear. *Parker v Nationwide Mut Ins Co*, 188 Mich App 354, 355-356; 470 NW2d 416 (1991). This Court has held that uninsured motorist insurance substitutes for residual liability coverage, and that benefits paid under another policy may be set off against benefits paid under the uninsured policy. *Mead v Aetna Cas and Surety Co*, 202 Mich App 553, 555-556; 509 NW2d 789 (1993).

The uninsured motorist policy at issue provides, in pertinent part:

We will pay damages for *bodily injury* an *insured* is legally entitled to collect from the owner or driver of an uninsured motor vehicle. The *bodily injury* must be sustained by an *insured* and caused by accident arising out of the operation, maintenance or use of an *uninsured motor vehicle*.

The policy further provides that an uninsured motor vehicle includes a motor vehicle that is insured for bodily injury at the time of the accident, but the insuring company becomes insolvent. The limits of liability section of the policy provides:

2. Any amount payable under this coverage shall be reduced by any amount paid or payable to or for the *insured*:
 - a. by or for any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*;

Plaintiff contends that she is entitled to recover under her uninsured motorist policy because the insurance company for the other driver involved in the accident was insolvent. But, a guaranty association took over the administration of claims against the insolvent insurer and plaintiff reached a settlement of these claims with the guaranty association following facilitation. Under the unambiguous limits of liability section of her uninsured motorist policy, this settlement was reached “by or for any person or organization who may be held legally liable for the bodily injury to the insured” and, thus, may be set off against benefits payable under the uninsured policy. Plaintiff’s argument that the terms of the limits of liability section do not apply because the guaranty association was not “legally liable” for plaintiff’s injuries is without merit. The terms are clearly applicable—the guaranty association agreed to pay plaintiff, the insured, a sum specific “by or for” the insolvent insurer who “is or may be held legally liable for the bodily injury to the insured.” The language in the Facilitation Order in no way affects the language of the insurance policy. Therefore, the trial court correctly concluded that defendant was entitled to claim a setoff against the coverage limits and, because the settlement exceeded the coverage limits, properly dismissed this case.

Affirmed.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin