STATE OF MICHIGAN

COURT OF APPEALS

LARRY PARSONS and MARY PARSONS, Plaintiff-Appellants, v FARM BUREAU INSURANCE COMPANY, Defendant-Appellee.	UNPUBLISHED November 29, 2005 No. 255309 Saginaw Circuit Court LC No. 03-047283-NI

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's opinion and order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from a hit and run automobile accident on October 21, 2000, that involved plaintiff Larry Parsons.[1] Plaintiff filed a claim on November 30, 2000 for no fault benefits. On December 12, 2001, plaintiff sent a letter through counsel seeking uninsured motorist benefits. Defendant denied plaintiff's claim because more than a year had passed since the accident and so the claim was barred under the terms of the insurance policy.

Plaintiff filed the underlying complaint on February 5, 2003, claiming breach of contract and bad faith.

Defendant filed a motion for summary disposition under MCR 2.116(8) and 2.116(10). The trial court issued an opinion granting the motion on the ground that the insurance contract was unambiguous and must be enforced as written. Because the policy barred claims presented more than one year after the accident, defendant's claim for uninsured motorist benefits was barred. The trial court rejected plaintiff's argument that MCL 500.2254 prohibited the one-year limitation. Further, the court found that plaintiff's claim for no-fault benefits was not a specific

[1] Plaintiff Mary Parsons' claim for loss of consortium is derivative of her husband's claims. References in this opinion to "plaintiff" in the singular is to plaintiff Larry Parsons.

claim for uninsured motorist coverage and declined to read a judicial tolling provision into the contract.

Plaintiff argues on appeal that MCL 500.2254 prohibits a time limitation of one-year in the insurance policy and that the limitation was unreasonable. He also argues that, even if the statute does not apply and the Court finds that the time limitation is reasonable, the time should have been judicially tolled.

This Court reviews the trial court's ruling on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 59; 680 NW2d 50 (2004). Under MCR 2.116(C)(10), the court considers not only the pleadings, but also any affidavits, depositions, and other documentary evidence, to determine whether a genuine issue of material fact exists that would require a trial. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The trial court should look at evidence submitted in the light most favorable to party opposing the motion. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 615; 537 NW2d 185 (1995).

The reviewing court must examine an insurance contract to determine whether an ambiguity exists. The contract is to be read as a whole, giving the language its ordinary and plain meaning. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Auto Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). A contract is ambiguous when its words may be reasonably understood in different ways. *Eagle v Zurich-American Ins Group (On Remand)*, 230 Mich App 105, 107; 583 NW2d 484 (1998).

Our Supreme Court recently addressed the issue of time limitations in suits involving uninsured motorist insurance policies. In *Rory v Continental Ins Co*, 473 Mich 457, 465-466; 703 NW2d 23 (2005), the Court stated: "Uninsured motorist coverage is optional—it is not compulsory coverage mandated by the no-fault act. Accordingly, the rights and limitations of such coverage are purely contractual and are construed without reference to the no-fault act" (footnotes omitted). The Court further stated that "[l]ikewise, there is no Michigan statute explicitly prohibiting contractual provisions in uninsured motorist policies." *Id.* at 472. In reviewing the statute at issue here, MCL 500.2254, the Court held:

> The plain language of the statute states that '(n)o...policy provision...*prohibiting* a member or beneficiary from commencing and maintaining (a lawsuit) against (the insurer)...shall be valid....' (Emphasis added.) the common definition of 'prohibit' is 'to forbid by authority or command.' Clearly, the statute proscribes contractual provisions that forbid or preclude the commencement or maintenance of a lawsuit. The statute does not, however, bar the imposition of conditions that may be placed on the commencement and maintenance of a lawsuit. [*Id.* at 473 (footnotes omitted).]

The language of the contract at issue here provides in pertinent part that an action "may not be commenced later than 1 year after the date of the accident causing the injury or damage." As in *Rory, supra*, the language of the contract is unambiguous and bars a claim filed over one year after the accident.

Plaintiff's claim of unreasonableness also must fail. Unless the contact violates the law or a traditional defense to the enforcement of a contract applies, the judiciary should not impose its own idea of "reasonableness." *Rory, supra* at 461. We have already concluded that the one-year time limitation contained in the insurance policy does not violate the law. There is no claim on plaintiff's part that there is a traditional defense to the enforcement of this contract.

The trial court also correctly ruled that plaintiff's claim for no-fault benefits was insufficient to put defendant on notice of the instant claim for uninsured motorist benefits. A section of the policy entitled "Conditions" clearly instructs on the duties of the insured under each type of coverage.

Furthermore, plaintiff clearly understood the distinction between the two types of coverage as evidenced by his subsequent claim for uninsured motorist coverage almost fourteen months after the accident. *Morley v Automobile Club of Michigan*, 458 Mich 459, 467-468; 581 NW2d 237 (1998); *Hellebuyck v Farm Bureau General Ins Co of Michigan*, 262 Mich App 250; 685 NW2d 684 (2004).

Affirmed.

/s/ Michael R. Smolenski
/s/ Bill Schuette
/s/ Stephen L. Borrello