STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE EVERHART,

Plaintiff,

v

FARMERS INSURANCE EXCHANGE,

Defendant/Third-Party Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
March 21, 2006

No. 266024
Wayne Circuit Court
LC No. 04-437474-NF

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Appellant Farmers Insurance Exchange appeals as of right from the trial court's order granting the motion for summary disposition filed by appellee Titan Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case deals with the priority of insurers. Plaintiff, a passenger in a vehicle driven by Monique Smith-Lane, sustained injuries when the vehicle was involved in an accident. Plaintiff neither held a policy of insurance nor resided with anyone who did, so he applied for personal injury protection (PIP) benefits through the Assigned Claims Facility. The Assigned Claims Facility assigned plaintiff's claim to Farmers.

The vehicle that Smith-Lane was driving when the accident occurred was owned by her father, and was not insured. Smith-Lane was not a named insured on any insurance policy at that time; however, her husband, Unre Lane, held a policy issued by Titan. Lane and Smith-Lane were legally married on the date the accident occurred, but were not living together.

Plaintiff filed suit alleging breach of contract against Farmers for failure to pay PIP benefits. Farmers filed a third-party complaint against Titan, alleging that Titan was obligated to pay PIP benefits to plaintiff because Titan was in a higher order of priority under MCL 500.3114.[1]

Titan moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that Farmers was the highest priority insurer. Titan asserted that plaintiff's entitlement to benefits was governed by MCL 500.3114(4), which provided that an occupant of a vehicle involved in an accident is entitled to claim benefits from, first, the "insurer of the owner or registrant of the vehicle occupied," or, second, the "insurer of the operator of the vehicle occupied." MCL 500.3114(4)(a) and (b). Titan noted that the owner of the vehicle in which plaintiff was riding, Smith-Lane's father, did not carry insurance on the vehicle. Titan contended that while Smith-Lane was entitled to claim benefits under the policy issued to her spouse, MCL 500.3114(1), she was not an insured under that policy, and thus carried no insurance under which plaintiff could claim benefits. Titan noted that its policy defined an insured in part as the named insured or a family member, or any person occupying the covered automobile. The policy defined "family member" as a person related to the named insured by blood or marriage, and who resided in the named insured's household. Titan contended that because Smith-Lane and Lane did not reside together on the date the accident occurred, Smith-Lane was not an "insured" under the policy. Therefore, plaintiff could not claim benefits under its policy.

Farmers filed a countermotion for summary disposition pursuant to MCR 2.116(C)(10). Farmers asserted that Smith-Lane could claim benefits under Titan's policy; therefore, Titan was Smith-Lane's insurer. Farmers concluded that because Titan was Smith-Lane's insurer, plaintiff was entitled to receive PIP benefits from Titan pursuant to MCL 500.3114(4)(b).

The trial court granted Titan's motion for summary disposition and dismissed Farmers' third-party complaint. Subsequently, the trial court entered an order dismissing the remainder of the case.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000).

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract

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[1] Farmers subsequently paid PIP benefits to plaintiff. Plaintiff is now deceased.

is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably understood in different ways. *Nikkel*, *supra* at 566-567. Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

A person who suffers bodily injury while the occupant of a motor vehicle and who has no available insurance policy of his own or through his family must claim PIP benefits from the insurer of the owner of the vehicle or the insurer of the operator of the vehicle. MCL 500.3114(4)(a) and (b). The vehicle driven by Smith-Lane was uninsured. Therefore, the issue in this case is whether Titan was Smith-Lane's insurer, thus enabling plaintiff to claim PIP benefits under Titan's policy.

We hold that the trial court correctly concluded that Titan was not Smith-Lane's insurer, and that for that reason, Titan was not in a higher priority than Farmers, and had no obligation to reimburse Farmers for PIP benefits paid to plaintiff. The term "insurer" is not defined in Titan's policy. The Insurance Code, MCL 500.100 *et seq*., defines "insurer" as any individual or entity "engaged or attempting to engage in the business of making insurance or surety contracts." MCL 500.106. Titan obviously fits within this definition; however, this definition is general in nature, and does not assist in determining whether Titan was Smith-Lane's insurer at the time the accident occurred. *Black's Law Dictionary*, 7th Ed, p 811, defines "insurer" as "[o]ne who agrees, by contract, to assume the risk of another's loss and to compensate for that loss."[2] Titan and Smith-Lane did not enter into a contract. Smith-Lane is not the named insured on Titan's policy.

Notwithstanding the fact that Titan and Smith-Lane did not enter into a contract, Smith-Lane, as the spouse of the named insured, would have been entitled to payment of PIP benefits had she made a claim for same. MCL 500.3114(1).[3] However, pursuant to MCL 500.3114(4)(b), in order for plaintiff to be entitled to benefits under Titan's policy, Smith-Lane must be considered an "insured" under the policy. Smith-Lane was related to the named insured by marriage, but she did not reside in the same household with the named insured on the date the accident occurred. She did not meet the policy definition of an "insured." Logically, then, Titan cannot be considered Smith-Lane's insurer if Smith-Lane is not an insured. Titan's policy fairly admits of but one interpretation, i.e., that Smith-Lane was not an insured. *Nikkel*, *supra* at 566. The trial court correctly held that plaintiff was not entitled to claim benefits under Titan's policy, and that Farmers, as the assigned carrier, was liable for payment of benefits to plaintiff.

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[2] If a term is not defined in an insurance policy, its meaning may be established through a dictionary definition. See *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

[3] An estranged spouse is entitled to benefits under PIP benefits. See *Citizens Mut Ins Co v Community Services Ins*, 65 Mich App 731, 732-733; 238 NW2d 182 (1975).

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra