STATE OF MICHIGAN

COURT OF APPEALS

MARIE MALBURG, Guardian of EDWIN PETER MALBURG, a Legally Incapacitated Person, Plaintiff-Appellee,	UNPUBLISHED April 13, 2006
v	No. 258886 Oakland Circuit Court
FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN, Defendant-Appellant.	LC No. 04-058846-NF

Before: White, P.J., Whitbeck, C.J., and Davis, J.

PER CURIAM.

Defendant Farm Bureau General Insurance Company appeals by leave granted from the circuit court's order denying its motion for summary disposition. We reverse and remand for entry of an order dismissing this case with prejudice.

I

Edwin Malburg was injured in an automobile accident on October 15, 2001, while driving a 1992 Ford pickup truck, which was insured under a policy issued by Allstate Insurance Company. At the time of the accident, Malburg also had an insurance policy with defendant that covered two trailers used in his business. That policy provided underinsured motorist coverage in the amount of $250,000. In May 2003, Malburg's attorney notified defendant that Malburg was claiming underinsured motorist coverage under that policy. Malburg[1] later sued defendant, seeking underinsured motorist benefits.

Defendant moved for summary disposition, arguing that coverage was excluded on several grounds, including that Malburg failed to provide timely notice of his claim, that

[1] Malburg sued defendant in his own name. Plaintiff Marie Malburg was subsequently appointed as his guardian and the caption of the action was amended to name Marie Malburg as the plaintiff, as guardian for Edwin Malburg.

Malburg failed to provide timely notice of a lawsuit he filed against the tortfeasor, that coverage was excluded by the "owned vehicle exclusion" of the policy because Malburg was operating an automobile owned by him but not insured for uninsured motorist coverage under defendant's policy, and that Malburg could not recover because he released the tortfeasor and negated defendant's subrogation rights without written approval in violation of the policy provisions. The circuit court denied defendant's motion. This Court subsequently granted defendant's application for leave to appeal. On appeal, defendant argues that it was entitled to summary disposition for all of the reasons previously argued before the circuit court.

II

The uninsured motorists coverage endorsement contained an exclusion, which was not modified by the provisions of the underinsured motorists coverage endorsement, stating that the coverage did not apply to:

> Any person injured while "occupying" an "auto" owned by you or a "family member", if the "auto" is not insured for Uninsured Motorists Coverage by this policy.

Underinsured motorist benefits are not mandated by statute. *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 10; 512 NW2d 324 (1993). Thus, the general rules of policy interpretation are applicable to determine under what circumstances coverage must be provided. *Id.* at 10-11. 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). If the language of a contract is clear, its construction is as question of law for the courts. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous only if the language can be reasonably understood in different ways. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (1999).

In this case, plaintiff admits that the policy language is clear and unambiguous. It provides that coverage will not be afforded to any person injured while occupying an "auto" owned by the insured or a family member if that auto is not insured for uninsured motorists coverage under the policy. It is undisputed on the record before this Court that plaintiff owned the vehicle he occupied at the time of his injury and that the vehicle he occupied was not insured for uninsured motorist coverage under the policy. Thus, the policy unambiguously excluded coverage.

In denying defendant's motion, the circuit court relied on *Stoddard v Citizens Ins of America*, 249 Mich App 457; 643 NW2d 265 (2002), but that case is factually distinguishable. In *Stoddard*, the plaintiff was injured in an automobile owned by her employer, Ciba Vision. The accident occurred with an uninsured motorist, and Ciba Vision did not have uninsured motorist coverage on the vehicle. The plaintiff filed a claim under a policy covering her husband's landscaping business, Stoddard's Lawn Shapers. This Court determined that the plaintiff was not excluded from uninsured motorist coverage under the language of that policy. *Id.* at 461-466. The plaintiff, as a family member, was an "insured" under the policy. *Id.* at 461. This Court read the definitions and exclusions in the policy, which included language very similar to that involved in this case, and held that the policy unambiguously provided coverage in circumstances where the automobile covered by the policy was not involved, including the

circumstances of the plaintiff's accident. *Id.* at 464. The policy coverage was found to follow the insured and not a specific vehicle, and no exclusions applied.

In *Stoddard*, this Court noted that, "if the uninsured motorist coverage applied only when the covered auto was involved there would be no need for the 'owned vehicle exclusion' in part c, limiting liability in circumstances where the named insured or a family member was not occupying the covered automobile, but was in another *owned* vehicle that was not a covered auto under the policy." *Id.* at 464-465. Thus, the *Stoddard* Court recognized that the "owned vehicle exception" would serve to limit liability if the insured or family member was in another *owned* vehicle, which was not covered. That exception, however, did not apply in *Stoddard* because the plaintiff was not injured in another "owned" vehicle. Rather, she was injured in a vehicle owned by her employer, not her husband, his business, or another family member. Under the terms of the policy, the plaintiff in *Stoddard* was entitled to coverage.

Plaintiff's argument that under *Stoddard*, the underinsured coverage here must follow plaintiff personally is irrelevant because the issue is not whether the policy follows the insured, but whether the unambiguous policy exclusion nevertheless precludes coverage because plaintiff was injured in an automobile *owned* by him and not covered for uninsured motorist coverage under the policy at issue. *Stoddard* has no bearing on this issue.[2]

Plaintiff asserts that the exclusion, although unambiguous, should not be enforced for public policy reasons, because the coverage is illusory since the trailers insured under defendant's policy could never be operated except when being pulled by another vehicle. We disagree. First, the coverage is, in fact, applicable by its clear terms if the vehicle pulling the trailer is not owned by the insured or a family member. Second, the question whether the exclusion applies if an insured is injured while occupying a truck that is pulling one of the insured trailers depends on whether such a truck constitutes a separate "auto" under the exclusion when attached to and pulling an insured trailer. This question is not presented here, and we see no reason to grant coverage that is unambiguously excluded on the ground that under other circumstances, a court might properly find the exclusion does not defeat coverage.

Because we conclude that coverage is defeated by the exclusion, we need not address defendant's remaining claims on appeal.

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[2] The exclusion at issue here was applied in *Heath v State Farm Mut Auto Ins Co*, 255 Mich App 217, 219; 659 NW2d 698 (2002), although the issue there was whether the motorcycle driven by the insured at the time of the accident was a "motor vehicle" within the meaning of the exclusion.

Reversed and remanded for entry of an order dismissing this case with prejudice. We do not retain jurisdiction.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Alton T. Davis