STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY and ALLSTATE INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
May 2, 2006

No. 266677
Kent Circuit Court
LC No. 05-000561-NF

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff Farm Bureau General Insurance Company of Michigan appeals as of right from orders entered by the trial court granting summary disposition in favor of Auto-Owners Insurance Company and Allstate Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Robert Lehner, III, and Scott Wetzel were riding their bicycles southbound on West County Line Road. A vehicle driven by Rickey Sherman, Jr., was traveling southbound behind Robert and Scott. Sherman slowed to allow a northbound vehicle driven by Carey Richards to pass before he moved into the northbound lane to pass the boys. After Richards' vehicle passed, Sherman moved into the northbound lane, but Robert rode his bicycle into the northbound lane in front of Sherman's vehicle. Sherman's vehicle struck Robert's bicycle.

Farm Bureau insured Sherman's vehicle, and paid personal injury protection (PIP) benefits to Robert. Allstate insured Richards' vehicle. Auto-Owners insured a vehicle co-owned by Robert's mother and maternal grandmother. Farm Bureau requested that Auto-Owners reimburse it for benefits paid to Robert. Auto-Owners refused the request.

Farm Bureau filed suit, naming both Auto-Owners and Allstate as defendants. Farm Bureau alleged that Robert met the definition of an "injured person" under Auto-Owners' policy, and that Robert was entitled to benefits under Auto-Owners' no-fault endorsement. In the alternative, Farm Bureau argued that it was in equal priority with Allstate because both Sherman's vehicle and Richards' vehicle were involved in the accident, and that Allstate was obligated to reimburse it for a portion of the benefits paid to Robert.

Allstate moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was not obligated to reimburse Farm Bureau because Richards' vehicle was not "involved" in the accident in that it did not actively contribute to the accident. *Amy v MIC General Ins Corp*, 258 Mich App 94, 121-122; 670 NW2d 228 (2003), rev'd in part on other grounds sub nom *Stewart v State*, 471 Mich 692; 692 NW2d 376 (2004). The trial court granted Allstate's motion, finding that the evidence showed that, when the accident occurred, Richards' vehicle had passed Sherman's vehicle and the bicyclists and did not cause either Sherman's vehicle or Robert to do anything that lead to the accident.

Farm Bureau moved for summary disposition pursuant to MCR 2.116(C)(10) against Auto-Owners, arguing that Auto-Owners was first in priority for payment of PIP benefits to Robert. Farm Bureau observed that because Robert was not the occupant of a vehicle when he was injured, the priorities for the payment of PIP benefits were set out in MCL 500.3115(1). That statute pointed to MCL 500.3114(1), which states that a no-fault policy applies to bodily injury sustained by the named insured, the named insured's spouse, and relatives of either domiciled in the same household. Farm Bureau acknowledged that because Robert did not reside with his grandmother, the named insured, MCL 500.3114(1) did not impose liability on Auto-Owners, but contended that the language of Auto-Owners' policy imposed such liability. The policy stated that Auto-Owners would pay PIP benefits to or on behalf of an injured person for bodily injury arising out of the operation or use of a motor vehicle as a motor vehicle. Farm Bureau asserted that no exclusion in Auto-Owners' policy applied to preclude the payment of PIP benefits to Robert, including exclusion (i), which stated that the policy did not cover:

> **bodily injury** sustained by any person other than the **named insured** or a **relative**, while **occupying**, or through being struck by a **motor vehicle**, other than an **insured motor vehicle**, which is being operated by the **named insured** or a **relative** if the **owner** or registrant of the **motor vehicle** has provided the security required by Chapter 31 of the Michigan Insurance Code. [emphasis in original]

Farm Bureau contended that because Robert was not struck by a vehicle operated by a named insured or a relative of the named insured, the exclusion was inapplicable.

The trial court denied Farm Bureau's motion for summary disposition and granted summary disposition in favor of Auto-Owners, finding that exclusion (i) precluded payment of PIP benefits to Robert. The trial court rejected Farm Bureau's assertion that the exclusion applied only if the vehicle was "being operated by the named insured or a relative," and found that that phrase modified "other than an insured motor vehicle." The trial court concluded that application of exclusion (i) would prevent payment of PIP benefits to Robert because he was struck by a vehicle that was insured by Farm Bureau.

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).

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, 567; 596 NW2d 915 (1999). If the language of an insurance contract 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). Exclusions are strictly construed in favor of the insured. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

MCL 500.3115(1) states that, except as provided in MCL 500.3114(1), a person who suffers bodily injury while not an occupant of a motor vehicle shall claim PIP benefits from, first, the insurers of owners or registrants of vehicles involved in the accident. In *Amy*, *supra*, we addressed the meaning of the phrase "involved in the accident," and concluded, inter alia, that a vehicle is involved in an accident if it "actively contributes to either the accident or the injuries sustained" therein. *Amy*, *supra* at 121. Physical contact is not required to show that a vehicle was involved in an accident, and fault is not a relevant consideration in the determination. However, a mere "but for" connection between the operation of a vehicle and an accident is insufficient to show that the vehicle was involved in the accident. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995).

First, Farm Bureau argues that the trial court erred by granting summary disposition to Allstate on the ground that no evidence created a question of fact regarding whether Richards' vehicle was involved in the accident. We disagree.

The presence of Richards' vehicle in the northbound lane may have caused Robert and Scott to slow their bicycles in order to allow her to pass before they crossed the road, and may have caused Sherman to slow his vehicle to allow her to pass before he passed the boys, but did not cause Sherman to move into the northbound lane, or cause Robert to ride his bicycle in front of Sherman's vehicle. The accident occurred after Richards' vehicle had passed the boys and Sherman's vehicle. No activity of Richards' vehicle actively contributed to Robert's injuries. See *Michigan Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626; 455 NW2d 352 (1990) (student struck by oncoming traffic after disembarking from properly stopped school bus; bus found not to be involved in accident). The accident could have occurred in the same way it did had Richards' vehicle not been present in the northbound lane (i.e., Sherman's vehicle could have moved into the northbound lane, and Robert's could have ridden in front of him), or had Richards not slowed her vehicle (i.e., causing her to pass Sherman's vehicle and the boys sooner, thereby allowing the accident to occur sooner). Richards' vehicle did not engage in any activity that caused the accident to occur. Cf. *Frierson v West American Ins Co*, 261 Mich App 732; 683 NW2d 695 (2004) (vehicle turned left, causing the motorcycle on which the plaintiff was a passenger to swerve and crash). Allstate was entitled to summary disposition.

Next, Farm Bureau argues that the trial court erred by granting summary disposition to Auto-Owners. Farm Bureau contends that although neither MCL 500.3114(1) nor MCL 500.3115(1) imposed liability on Auto-Owners, the language of Auto-Owners' policy required it to pay PIP benefits to Robert. Auto-Owners' policy provides that it will pay PIP benefits to "an **injured person** for accidental **bodily injury** arising out of the ownership, operation, maintenance, or use of a **motor vehicle** as a **motor vehicle**, subject to the provisions of Chapter 31 of the Michigan Insurance Code" (emphasis in original). Farm Bureau asserts that this language provides for payment of PIP benefits to Robert. Farm Bureau contends that exclusion (i) applies only if the vehicle that struck Robert was operated by a named insured under Auto-

Owners' policy or a relative of the named insured, and that because that was not the case, exclusion (i) does not preclude payment of benefits to Robert.

We affirm the grant of summary disposition to Auto-Owners, albeit for a different reason than that stated by the trial court.[1] Farm Bureau relies on general language in Auto-Owners' policy that provides for the payment of PIP benefits to an injured person for injuries sustained as a result of the use or operation of a motor vehicle, "subject to the provisions of Chapter 31 of the Michigan Insurance Code." Application of this language to the facts of this case excludes coverage for Robert under Auto-Owners' policy. Neither MCL 500.3114(1) nor MCL 500.3115(1) requires Auto-Owners to pay benefits for Robert. This language fairly admits of but one interpretation, *Nikkel*, *supra* at 567, that being that Auto-Owners had no obligation to pay benefits for Robert because the no-fault act did not require it to do so. Auto-Owners was entitled to summary disposition.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

[1] If we conclude that the trial court reached the correct result, we will affirm that decision even if we do so under alternative reasoning. *Messenger v Ingham County Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998).