STATE OF MICHIGAN

COURT OF APPEALS

TOMMIE SPIGHT,

Plaintiff-Appellant,

v

CARLA ANN KENDRICK and ROY CLARKSON,

Defendants,

and

FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
March 27, 2007

No. 272997
Genesee Circuit Court
LC No. 05-081994-NI

Before: Zahra, P.J. and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order that granted summary disposition in favor of defendant Farm Bureau Mutual Insurance Company (Farm Bureau) on his claim seeking uninsured motorists benefits. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On August 23, 2002, plaintiff was involved in an automobile accident in Flint while insured under a policy issued by Farm Bureau. The driver of the other vehicle, Carla Ann Kendrick, did not have insurance. On August 1, 2005, plaintiff filed suit against Farm Bureau seeking uninsured motorist benefits under the policy. The insurer moved for and the trial court granted summary disposition under MCR 2.116(C)(10).

On appeal, plaintiff asserts that the trial court erred in holding that the one year limitation of action provision set forth in the policy applied in the case at bar.

The decision to grant or deny summary disposition is a question of law that we review de novo. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003). Similarly,

the proper interpretation of a contract constitutes a question of law subject to de novo review. *Id.*, citing *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

Under MCR 2.116(C)(10), summary disposition is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A question of material fact exists "when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*. In deciding a motion under this rule, the trial court must consider "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists to warrant a trial." *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

Courts must construe the terms of insurance policies in accord with the well-settled principles of contract construction. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 417; 668 NW2d 199 (2003). Where they are clear and unambiguous, "the terms are to be taken and understood in their plain, ordinary, and popular sense." *Michigan Mut Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994), citing *Clevenger v Allstate Ins Co*, 443 Mich 646, 654; 505 NW2d 553 (1993). An "ambiguous provision in an insurance contract must be construed against the drafting insurer and in favor of the insured." *Id.*

The mere fact that a policy fails to define a particular term does not render it ambiguous. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Words and phrases must be read in context to determine the meaning they convey to the ordinary reader. *Id.*, 356-357. And courts may "refer to dictionary definitions when appropriate when ascertaining the precise meaning of a particular term." *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

The insurance policy at issue included "Family Protection Coverage" under which Farm Bureau agreed to pay any sums the insured was "legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury." An "amendatory endorsement" added to the policy contained the following provision titled "time limitation for acting against us."

> Any person seeking Family Protection Coverage must:
>
> > (a) present the claim for compensatory damages according to the terms and conditions of this coverage and policy; and
> >
> > (b) present to us a written notice of the claim for Family Protection Coverage within one year after the accident occurs.
>
> A suit against us for Family Protection Coverage may not be commenced later than one year after the accident that caused the injuries being claimed, unless there has been full compliance with the provisions of paragraphs (a) and (b), above.

Further, the Family Protection Coverage section of the policy contained a Proof of Claim provision that stated in pertinent part:

> *As soon as practicable*, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable. [Emphasis added.]

Viewed in the light most favorable to plaintiff, the evidence showed that the limitations provision did not provide a basis for granting summary disposition in favor of Farm Bureau. But contrary to plaintiff's assertions, the trial court did not grant the motion on the basis of this provision. Rather, it held that plaintiff failed to comply with the Proof of Claim provision.

Paragraph six of the Conditions section of the insurance policy stated that no action shall lie against the company for family protection benefits unless there has been full compliance with the terms of the policy. This included compliance with the Proof of Claims provision. Plaintiff obtained a letter from a neurologist in May 2004 providing proof of his injuries and he filed the instant suit on August 1, 2005. But plaintiff presented no evidence to dispute the affidavit of Farm Bureau's claims adjuster stating that, as of August 1, 2006, neither plaintiff nor his attorneys had submitted any medical records or other proof of plaintiff's claim for uninsured motorist benefits. The trial court therefore found that plaintiff failed to submit proof "as soon as practicable" as required by the Proof of Claim provision and granted Farm Bureau's motion.

In determining whether the trial court reached the correct result, we must examine the plain meaning of the phrase "as soon as practicable." Because the insurance policy in question does not provide a definition for the term "practicable," we may refer to a dictionary definition to ascertain its precise meaning. *Morinelli, supra*, 262. The *American Heritage Dictionary of the English Language* (3rd ed, 1996) defines the term as "capable of being effected, done, or put into practice; feasible." Thus, under the plain language of the Proof of Claim provision, plaintiff had to submit proof of his claim as soon as he was capable of doing so. But the undisputed facts show that, even after obtaining it more than a year earlier, plaintiff still had not submitted such proof to Farm Bureau as of August 2006. Consequently, the trial court did not err in determining that plaintiff failed to comply with the Proof of Claim provision and in granting summary disposition in favor of Farm Bureau.

We affirm.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens