STATE OF MICHIGAN

COURT OF APPEALS

PROGRESSIVE MICHIGAN INSURANCE COMPANY, Plaintiff-Appellee, v WILLIAM SMITH and SHERI HARRIS, Defendants, and SCOTT MIHELSIC and ANDREA MIHELSIC, Defendants-Appellants, and PIONEER STATE MUTUAL INSURANCE COMPANY, Intervening Defendant.	FOR PUBLICATION No. 287505 Kent Circuit Court LC No. 07-003903-CK Advance Sheets Version

Before: MARKEY, P.J., and BANDSTRA and MURRAY, JJ.

BANDSTRA, J.

In this matter of first impression, I would conclude that the warning notice requirement of MCL 500.3009(2) must be enforced as written. Thus, the named driver exclusion in the policy of insurance at issue here is invalid because it does not strictly comply with the statute.

BACKGROUND FACTS AND PROCEEDINGS BELOW

Defendants-Appellants, Scott and Andrea Mihelsic, were injured in an automobile accident when a truck driven by defendant William Smith crossed the centerline of the road and struck their vehicle. When Smith purchased the truck, he did not have a driver's license because he had too many points on his record. In order to obtain license plates and insurance, he added his friend, defendant Sheri Harris, to the title. Harris obtained insurance with appellee, Progressive Michigan Insurance Company, and Smith paid for it. A form signed by Harris lists Smith as an excluded driver. The declaration page of the insurance policy also lists him as an excluded driver, as does the certificate of insurance.

Appellants brought an action against Smith, and a default was entered against him on October 4, 2006. Progressive then brought this declaratory judgment action to determine its liability to indemnify Smith and moved for summary disposition pursuant to MCR 2.116(C)(10) on the basis of the named driver exclusion. Appellants responded and filed a countermotion for summary disposition. They argued, in part, that appellee had failed to use the required statutory language for exclusion of a named driver on the documents showing insurance coverage. Disagreeing, the trial court granted appellee's motion for summary disposition and denied appellants' cross-motion, leading to this appeal.

ANALYSIS

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Further, statutory interpretation is a question of law that is reviewed de novo. *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 12; 773 NW2d 243 (2009).

"'The primary goal of statutory interpretation is to give effect to the intent of the Legislature.' Fundamentally, '[t]his task begins by examining the language of the statute itself.'" *Id*. at 13 (citations omitted). Clear and unambiguous statutory language must be enforced as written. *Id*. at 12.

MCL 500.3009(2) states:

> If authorized by the insured, automobile liability or motor vehicle liability coverage may be excluded when a vehicle is operated by a named person. Such exclusion shall not be valid unless the following notice is on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance: Warning – when a named excluded person operates a vehicle all liability coverage is void – no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

In this case, the warning on the declaration page of plaintiff's policy is identical to the portion of this statutory provision following the colon. However, in the warning provided both on the face of the policy and on the certificate of insurance, the last word is "responsible" instead of "liable."[1]

Appellee argues, first, that the warning on the declaration page alone is adequate. According to appellee, the "and" in the second sentence of MCL 500.3009(2) links the "certificate of the policy" and the "certificate of insurance," meaning that placing the warning on

[1] The parties do not mention on appeal what warning, if any, appeared on the certificate of the policy.

both of these documents is an alternative to placing it on either "the face of the policy or the declaration page." Thus, appellee argues that, because warning language identical to the statute is found on the declaration page, the statutory notice provision was satisfied notwithstanding any failure of the language used on the other documents.

I disagree. Appellee's argument disregards the grammatical structure of the statute. The sentence, "Such exclusion shall not be valid unless the following notice is on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance," contains two parallel clauses after the verb "is": "on the face . . ." and "on the certificate of insurance . . . ." The first clause contains three alternatives, separated from each other by "or." The first and second clauses are joined by "and." Therefore, to satisfy the statute, the warning must appear on at least one of the three alternatives mentioned in the first clause *and* on the certificate of insurance. Appellee's interpretation that a correctly worded warning on the declaration page alone satisfies the statute is inconsistent with the grammatical structure of the statute. The trial court correctly concluded that the requirements of § 3009(2) were not satisfied merely by the correctly worded warning on the declaration page.

Nonetheless, the trial court determined that the excluded driver provision was valid under the statute, explaining:

> The fact that the warning on the certificate of insurance contained the word "responsible" rather than the word "liable" does not defeat the named driver exclusion election. If the Legislature intended that the warning must be taken verbatim from the statute and placed on the enumerated documents in order to be effective, it would have been simple to indicate as much in the statute itself. Absent such a requirement, this Court finds that Plaintiff complied with the mandates of MCL 500.3009(2) in that it received authorization from the insured; placed a suitable warning on the declaration page of the policy and on the certificate of insurance.

In essence, the trial court concluded that substantial compliance with the statute was sufficient; it was enough that a "suitable" warning was provided. I disagree.

Although there is no binding authority that states that "strict compliance" with § 3009(2) is necessary,[2] the statute itself indicates that failure to follow its requirements results in the invalidity of the exclusion. Again § 3009(2) provides:

> If authorized by the insured, automobile liability or motor vehicle liability coverage may be excluded when a vehicle is operated by a named person. Such exclusion shall not be valid unless the following notice is on the face of the policy or the declaration page or certificate of the policy and on the certificate of insurance: Warning—when a named excluded person operates a vehicle all liability coverage is void—no one is insured. Owners of the vehicle and others

[2] But see *Detroit Auto Inter-Ins Exch v Felder*, 94 Mich App 40, 44; 287 NW2d 364 (1979).

> legally responsible for the acts of the named excluded person remain fully personally liable.

The Legislature did not merely set forth the substance of the required warning. Instead, the statute mandates use of "the following notice," which notice is explicitly provided for insurers to use verbatim.[3] Further, the Legislature did not merely state that this notice is required, without specifying the effect of noncompliance. If the required warning notice is not provided, the named person "exclusion shall not be valid." The statute could not be clearer.

In this case, the verbatim statutorily mandated warning notice does not appear, as required, on the certificate of insurance.[4] Accordingly, the mandate of the statute is clear: the named driver exclusion "shall not be valid . . . ." The trial court erred by granting appellee's motion for summary disposition and by denying appellants' cross-motion.[5] I would reverse and remand for further proceedings consistent with this opinion. I would not retain jurisdiction.

Having fully prevailed on appeal, appellants should be allowed to tax costs. MCR 7.219.

/s/ Richard A. Bandstra

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[3] As noted earlier, appellee did use the prescribed language on the policy's declaration page.

[4] Whether the meaning of the language used by appellee conveys the same meaning as the statutorily mandated warning is immaterial. The statute does not require "the following notice or a notice of similar effect" or otherwise allow for any deviation from its terms.

[5] In light of this determination, we need not consider appellants' other arguments on appeal.