

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL G. MIKOLASIK and PAMELA
MIKOLASIK,

UNPUBLISHED
August 19, 2010

Plaintiffs-Appellants,

v

No. 292005
Macomb Circuit Court
LC No. 2008-000281-NI

JOANNE C. KANTROW and CITIZENS
INSURANCE,

Defendants,

and

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

Plaintiffs¹ appeal as of right the trial court's order granting summary disposition for defendant Farmers Insurance Exchange pursuant to MCR 2.116(C)(10).² We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in an automobile accident while driving his wife's Pontiac Vibe, which was insured by Citizens. Plaintiff owned a different vehicle that was insured by defendant. Plaintiff received personal protection insurance (PIP) benefits from defendant. Plaintiff also sought underinsured motorist benefits from defendant and he filed this lawsuit

¹ "Plaintiffs" refers to both Daniel Mikolasik and Pamela Mikolasik. "Plaintiff" refers only to Daniel Mikolasik.

² Defendants Joanne C. Kantrow and Citizens Insurance are not involved in this appeal. After the trial court entered the order underlying this appeal, it entered a final order pursuant to a stipulation dismissing Kantrow and Citizens.

when defendant denied coverage. Defendant moved for summary disposition, arguing that plaintiff was precluded from receiving underinsured motorist benefits under the policy. The trial court agreed and this appeal followed.

We review de novo a trial court's order granting summary disposition. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). Determinations regarding the interpretation of contracts are also reviewed de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). "An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). The policy is to be read as a whole with meaning given to all terms. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). "[I]f a contract, even an inartfully worded or clumsily arranged contract, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear." *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 382; 591 NW2d 325 (1998).

Part II of the Insurance Policy provides coverage for "uninsured motorist coverage." Under this provision, defendant agrees to pay the insured all sums that he would legally be entitled to recover from the owner of an "uninsured motor vehicle." Part II of the policy defines the term "uninsured motor vehicle," as "used in" Part II, to include underinsured motor vehicles. It provides:

Uninsured motor vehicle means a motor vehicle which is:

- a. Not insured by a bodily injury liability bond or policy at the time of the accident.
- b. Insured by a bodily injury liability bond or policy at the time of the accident which provides coverage in amounts less than the limits of Uninsured Motorist Coverage shown in the Declarations.

Thus, under the policy an uninsured motor vehicle is synonymous with an underinsured motor vehicle. It follows that Part II of the policy provides not only for "uninsured motorist coverage," but also for underinsured motorist coverage, and that all provisions of Part II apply to both types of coverage.

Significantly, Part II of the policy contains certain exclusions from uninsured and underinsured motorist coverage. It provides in pertinent part:

This coverage does not apply to bodily injury sustained by a person:

1. While occupying any vehicle owned by you or a family member for which insurance is not afforded under this policy or through being struck by that vehicle.

Here, plaintiff was occupying a vehicle owned solely by his wife and insured by another insurance company when he sustained a bodily injury. Thus, pursuant to the above exclusion, plaintiff is not entitled to underinsured motorist coverage under his policy with defendant. The trial court did not err by granting summary disposition in defendant's favor.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly