STATE OF MICHIGAN

COURT OF APPEALS

RONALD MICALLEF,

Plaintiff-Appellant,

v

AAA AUTO CLUB GROUP OF AMERICA, INC.,

Defendant-Appellee.

UNPUBLISHED
February 20, 2014

No. 313068
Wayne Circuit Court
LC No. 12-006273-CP

Before: O'CONNELL, P.J., and WILDER and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(10), based on the trial court's determination that plaintiff's insurance contract did not provide underinsured motorist coverage for the specific accident at issue. We affirm.

Plaintiff was employed as a resident engineer by Continental Teves. On the afternoon in question, plaintiff's job duties required him to drive a prototype 2013 Ford Fusion from Continental Teves's Auburn Hills offices to a Ford engineering campus in Dearborn. While en route, plaintiff was rear-ended by a car driven by Joel Iglesias. Plaintiff sustained injuries that required recurring doctor visits and specialized neurological care. Some of plaintiff's medical bills were covered by Continental Teves's workers' compensation insurance. In addition, plaintiff accepted a $20,000 settlement from Iglesias's insurer.

Plaintiff had underinsured motorist coverage through a personal automotive insurance policy with defendant. However, defendant denied plaintiff's request for underinsured motorist benefits, maintaining that plaintiff was operating a motor vehicle furnished by his employer. Plaintiff maintained that none of the policy's exclusions regarding underinsured motorist coverage applied to the case at hand.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). "This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). In reviewing the grant of summary disposition under MCR 2.116(C)(10), this Court considers the pleadings, admissions,

and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Sallie v Fifth Third Bank*, 297 Mich App 115, 117-118; 824 NW2d 238 (2012). This Court is "limited to considering the evidence submitted to the trial court before its decision on the motions." *Calhoun Co v Blue Cross Blue Shield of Mich*, 297 Mich App 1, 12; 824 NW2d 202 (2012). Summary disposition is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when, after viewing the evidence in the light most favorable to the nonmoving party, the record leaves open an issue upon which reasonable minds may differ. *Debano-Griffin v Lake County*, 493 Mich 167, 175; 828 NW2d 634 (2013).

The trial court properly granted defendant's motion for summary disposition. Like any other contract, an insurance policy is an agreement between the parties, *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 444; 761 NW2d 846 (2008), and is construed in accordance with the principles of contract construction, *Titan Ins Co v Hyten*, 491 Mich 547, 554; 817 NW2d 562 (2012). The construction and interpretation of an insurance contract presents a question of law that this Court reviews de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

"An insurance contract must be read as a whole and meaning given to all terms. The language of the contract is to be given its ordinary, plain meaning and technical, constrained constructions should be avoided." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001) (internal citations omitted). "Ambiguities in the policy are construed against the insurer, who is the drafter of the contract." *Id.* "A contract is said to be ambiguous when its words may reasonably be understood in different ways," but "[t]he mere fact that a term is not defined in a policy does not render that term ambiguous." *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 515; 773 NW2d 758 (2009) (internal quotation and citation omitted). Further, an ambiguity is not found simply because different dictionary definitions exist for the undefined term. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 535 n 6; 676 NW2d 616 (2004).

"[R]eviewing courts must interpret the [undefined] terms of the policy in accordance with their commonly used meanings." *Liparoto Const, Inc v General Shale Brick, Inc*, 284 Mich App 25, 35; 772 NW2d 801 (2009). A court may use a dictionary to define a word or phrase not defined in an insurance policy. *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 84; 730 NW2d 682 (2007). "While the burden of proving coverage is on the insured, it is incumbent on the insurer to prove that an exclusion to coverage is applicable." *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 378; 836 NW2d 257 (2013).

The parties do not dispute that, at the time of the accident on August 10, 2010, plaintiff was employed by Continental Teves and was driving the prototype vehicle in the course of his employment. Further, plaintiff testified that the prototype vehicle was not his automobile, and that it was not explicitly covered by his insurance policy with defendant. Plaintiff only disputes that Continental Teves "furnished" the vehicle to him within the meaning of the policy.

The insurance policy at issue states, in pertinent part:

> This [underinsured motorist] coverage does not apply to **bodily injury** sustained by an **insured person**:
>
> * * *
>
> d. while **occupying a motor vehicle** furnished by an **insured person's** employer and operated in the course of that **insured person's** employment unless the **motor vehicle** is **your car** . . . .

The policy did not further define the term "furnished." Again, this Court must interpret an undefined term in accordance with its commonly used meaning, *Liparoto Const, Inc*, 284 Mich App at 35, and may use a dictionary to do so, *Citizens Ins Co*, 477 Mich at 84.

Plaintiff argued, with citation to the online *Merriam-Webster Dictionary*, that the term "furnish" is ambiguous because Continental Teves did not own the prototype vehicle, and therefore, cannot be said to have "furnished" the prototype vehicle to plaintiff. However, plaintiff's own proffered definition defined "furnish" as "to provide with what is needed." Neither the insurance policy nor plaintiff's own proffered definition of the term require Continental Teves to have ownership over any vehicle in order to "furnish" such vehicle to plaintiff.

Further, the definition of "furnish," as found in *Random House Webster's College Dictionary* (1997), is simply "to provide or supply." Plaintiff also testified that when manufacturers, such as Ford Motor Company, provide prototype vehicles to Continental Teves, they are meant for specialized "vehicle test engineers," and not for plaintiff in particular. Therefore, in order to allow plaintiff to complete the requested task, i.e., return of the prototype vehicle to the Ford testing facility, it is indisputable that Continental Teves would have "to provide or supply" plaintiff with the prototype vehicle because he did not previously work on the vehicle or necessarily have access to it. Even using plaintiff's proffered definition of furnish, it is clear that the prototype vehicle is "what is needed" to complete the requested task. Therefore, plaintiff has not proven that the policy term "furnish" is ambiguous, and summary disposition was proper.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter