

STATE OF MICHIGAN
COURT OF APPEALS

TA'SHOUEN NEWSOME, a Minor, by his Next
Friend, SHALON NEWSOME, JAQUITA MAYS,
a Minor, by her Next Friend, DEBRA MAYS,
ZARIUS WALKER, a Minor, by his Next Friend,
THOMAS WALKER,

UNPUBLISHED
April 10, 2014

Plaintiffs-Appellees,

and

WILLIAM BEAUMONT HOSPITAL,

Intervening Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION and
AUTO CLUB GROUP INSURANCE
COMPANY,

No. 311367
Wayne Circuit Court
LC No. 10-013640-NF

Defendants-Appellees,

and

GEICO GENERAL INSURANCE COMPANY
and GEICO INDEMNITY COMPANY,

Defendants-Appellants.

Before: DONOFRIO, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

GEICO General Insurance Company and GEICO Indemnity Company (GEICO) appeal as of right a judgment holding it liable on a claim for personal injury protection (PIP) survivor benefits instead of Auto Club Insurance Association and Auto Club Insurance Company (Auto Club), the assignee of the Assigned Claims Facility. We reverse and remand for entry of an

order granting summary disposition in favor of GEICO and for any further proceedings consistent with this opinion.

On December 17, 2009, Alfreeka Newsome died in a single-car accident after she lost control of a vehicle she was driving. The vehicle was titled to her friend, Alvin Westbrook, Jr., who had co-signed for the vehicle.¹ But it is undisputed that Newsome was the statutory owner of the vehicle under MCL 500.3101(2)(h)(i), i.e., she had use of the vehicle for more than 30 days. Newsome's mother, Debra Mays, testified that after the vehicle was purchased, she and her husband, Richard, "got insurance on [Newsome's] car in our name." They already had insurance through GEICO on their own vehicle. Debra further testified that when she called GEICO to insure Newsome's vehicle, she was asked where the car was located and she gave Newsome's address in Taylor, Michigan.² Newsome did not live with her and Richard. Debra also testified that she did not list Newsome as a named insured on the policy and, when she was asked by GEICO who was going to be driving the vehicle, Debra testified that she said "me and my husband, and sometimes my daughter."

Following Newsome's fatal accident, her children sought PIP survivor benefits from GEICO. After GEICO failed to provide the requested benefits, those benefits were requested from the Assigned Claims Facility and Auto Club was assigned the claim. See MCL 500.3172(1). After Auto Club failed to pay the claim, this lawsuit was filed. Shortly thereafter, cross-motions for summary disposition pursuant to MCR 2.116(C)(10) were filed by GEICO and Auto Club. GEICO argued that, pursuant to the policy terms, an "insured auto" is one in which the owner or registrant is required to maintain no-fault insurance and neither Debra or Richard were required to maintain insurance on this vehicle because it was not registered to them and they did not own it; thus, it was not liable on the claim. Auto Club argued that GEICO was notified that the vehicle would be "garaged at" Newsome's address and still issued an insurance policy; thus, GEICO was liable on the claim for survivor benefits.

After oral arguments on the cross-motions, the trial court agreed with GEICO and granted its motion for summary disposition. Auto Club then filed a motion for reconsideration, arguing that Newsome's address was listed on the declarations page of the GEICO policy and, thus, GEICO knew that Newsome was a driver of the insured vehicle. Auto Club further argued that the GEICO policy defined "*eligible injured person*" as "[a]ny other person who suffers *bodily injury* while *occupying* an *insured auto*." Because Newsome was occupying an "insured" vehicle, she was an "*eligible injured person*" under the GEICO policy. The trial court agreed with Auto Club and granted its motion for reconsideration. Thereafter, the court entered a judgment holding GEICO liable on the claim for survivor benefits. This appeal followed.

¹ It appears undisputed that Newsome did not live with Westbrook and Westbrook did not have automobile insurance.

² According to the declaration page of the GEICO policy, the "rated location" of Debra and Richard's vehicle was also Taylor, Michigan.

GEICO argues that it is not liable on the claim for survivor benefits under the no-fault policy issued to Debra and Richard because Newsome was not a named insured on that policy, Newsome did not live with them, and they were not the owners or registrants of the vehicle at issue. We agree.

We review for an abuse of discretion a trial court's decision on a motion for reconsideration. See *Tinman v Blue Cross & Blue Shield of Mich*, 264 Mich App 546, 556-557; 692 NW2d 58 (2004). A trial court's decision on a motion for summary disposition is reviewed de novo. *Cork v Applebee's of Mich, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 30-31; 651 NW2d 188 (2002). And we review de novo as a question of law issues of contract interpretation. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007).

An insurance policy is a contract between the parties and is generally construed in accordance with contract construction principles. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). The policy application, the declarations page, and the policy itself together constitute the contract. *Dancey v Travelers Prop Cas Co*, 288 Mich App 1, 8; 792 NW2d 372 (2010) (citation omitted). "The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere*, 275 Mich App at 529.

Here, GEICO's insurance policy provided that it would "pay for personal injury protection benefits to or on behalf of each *eligible injured person* . . . as a result of *bodily injury*" An "*eligible injured person*" was defined as including:

- (a) *You* or any *relative* who suffers *bodily injury* in a *motor vehicle accident*;
- (b) Any other person who suffers *bodily injury* while *occupying* an *insured auto*.

The policy term "*you*" was defined in the policy as "the policyholder named in the Declarations or his or her spouse if a resident of the same household." A "*relative*" was defined as including "a person residing with you, and related by blood, marriage, or adoption" An "*insured auto*" was defined as "an auto with respect to which *you* are required to maintain security under Chapter 31 of the Michigan Insurance Code and to which the *Bodily Injury* liability coverage of this policy applies and for which a specific premium is charged."

Pursuant to the plain language of the insurance policy, Newsome was not an "*eligible injured person*" under the terms of the GEICO policy because she was not the policyholder and was not a resident relative of the policyholders, Debra and Richard. She also did not suffer bodily injury "while occupying an insured auto" because the policyholders, Debra and Richard, were not required to maintain security on Newsome's vehicle under the Insurance Code. Therefore, GEICO was not liable under the policy issued to Debra and Richard to pay survivor's benefits with regard to Newsome. Accordingly, the trial court properly granted GEICO's motion for summary disposition and its reversal of that decision on reconsideration constituted an abuse of discretion. See *Tinman*, 264 Mich App at 556-557.

Reversed and remanded for entry of an order granting summary disposition in favor of GEICO and for any further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen