

STATE OF MICHIGAN
COURT OF APPEALS

VICTORIA KALTZ,

Plaintiff-Appellant,

v

MERIDIAN MUTUAL INSURANCE CO.,

Defendant-Appellee.

UNPUBLISHED

May 17, 1996

No. 164029

LC No. 92-003708-CK

Before: White, P.J., and Holbrook, Jr. and P.D. Schaefer,* JJ

PER CURIAM.

Plaintiff appeals the circuit court's order dismissing her claim to recover uninsured motorist benefits under a policy issued by defendant. Defendant had issued a corporate automobile insurance policy covering plaintiff's vehicle but refused to provide uninsured motorist benefits on the basis that plaintiff's vehicle was not owned by the corporation. Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). The circuit court granted summary disposition in favor of defendant. We reverse.

Plaintiff is the president of Masonry Concepts, Inc., a closely-held corporation. Defendant issued a business automobile policy to Masonry Concepts providing coverage for four specified motor vehicles and three trailers, effective April 15, 1989. Plaintiff was the actual titleholder of one of these vehicles, a 1988 Chevrolet van. On the evening of August 2, 1989, plaintiff was driving the van to church in the evening and was in an automobile accident with an uninsured motorist. Plaintiff made a claim for PIP and uninsured motorist benefits under the policy. Defendant provided some PIP benefits, but denied plaintiff's claim for uninsured motorist benefits, claiming that the van was not covered under the policy because it was not actually owned by Masonry Concepts.

The declaration portion of the business auto policy issued by defendant lists Masonry Concepts, Inc., as the insured party. Item Two of the declaration is titled "SCHEDULE OF COVERAGES AND COVERED AUTOS" and states

* Circuit judge, sitting on the Court of Appeals by assignment.

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those autos shown as covered autos. Autos are shown as covered autos for a particular coverage by the entry of one or more of the symbols from the covered auto section of the business auto coverage form next to the name of the coverage.

Next to uninsured motorists coverage is listed the coverage code 02. The second page of the policy declaration section contains Item Three, which is entitled SCHEDULE OF COVERED AUTOS YOU OWN. Plaintiff's van was specifically listed as a covered auto under this schedule as unit 012. The chart of premiums indicates that a premium was paid for uninsured motorist coverage for unit 012. The code is not defined in the declarations. There is an entry in the premium column opposite uninsured motorist coverage.

Page one of the policy states that the words "you" and "your" refer to the named insured shown in the declaration, Section I, of the policy, which is entitled COVERED AUTOS, states in relevant part:

ITEM TWO of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" which may be covered "autos." The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos."

A. DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS

SYMBOL

DESCRIPTION

1= ANY "AUTO."

2= OWNED "AUTOS" ONLY. Only those "autos" you own (and for liability coverage any "trailers" you don't own while attached to power units you own) . This includes those "autos" you acquire ownership of after the policy begins.

* * *

The original application for insurance listed Masonry Concepts, Inc., as the applicant. Under General Information, the form asked "With the exception of encumbrances, are all vehicles solely owned by and registered to the applicant?" The "Yes" box is checked next to this question.

At the motion hearing, defense counsel argued Masonry Concepts was the insured, and that under the terms of the policy uninsured motorist coverage applied only to automobiles actually owned by the insured. Plaintiff's counsel admitted that plaintiff held title to the van, but argued that the van was owned by the corporation, which paid for the van's payments and insurance premiums. Plaintiff denied

making any misrepresentations regarding ownership of the van, stating that the van was in her name merely because the corporation did not qualify for credit. Plaintiff's counsel argued that the van was listed as being insured under the policy, that there had been no intentional fraud or misrepresentation, and that the contract was the result of an arms-length transaction between the parties. The court took the matter under advisement.

In its written opinion the court noted that the application for insurance indicated that the vehicles listed were solely owned by and registered to Masonry Concepts Inc., and concluded that "Any existing ambiguity is not a result of the language of the insurance contract read in conjunction with the application for insurance, but a result of Kaltz's undenied representation that the vehicle titled in her name was solely owned by and registered to (MCI)." The court concluded that the van was not a covered auto and granted summary disposition to defendant.¹

A trial court's grant of summary disposition is reviewed de novo. *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. Giving the benefit of reasonable doubt to the nonmoving party, the court must determine whether a record might be developed which would leave open an issue upon which reasonable minds might differ. *Farm Bureau Mutual Ins Co v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991). The party opposing the motion has the burden of showing, via affidavit or documentary evidence, that a genuine issue of fact exists for trial. MCR 2.116(G)(4).

We conclude that the circuit court erred by granting summary disposition in favor of defendant. Uninsured motorist benefits are not required by statute. Thus, the coverage is governed by the language of the specific insurance policy. *Rohlman v HawkeyeSecurity Ins Co*, 442 Mich 520, 525; 502 NW2d 310 (1993). Insurance contracts should be read and interpreted as a whole. In *Taylor v Blue Cross-Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994), this Court noted:

An insurance contract is clear if it fairly admits of but one interpretation. If an insurance contract's language is clear, its construction is a question of law for the court. An insurance contract is ambiguous if, after reading the entire contract, its language reasonably can be understood in differing ways. Furthermore, ambiguities in an insurance policy drafted by an insurer are to be construed against the insurer and in favor of the insured. [Citations omitted.]

Review of the entire policy shows an ambiguity regarding whether plaintiff's van was considered "owned" by Masonry Concepts for the purposes of the policy. Defendant relies on Section I of its policy, which indicates that coverage under symbol 2 applies only to autos owned by the insured. However, the word "owned" is not defined in the policy. Item Three of the declaration section lists the van under the "schedule of covered autos you own," thereby indicating that the van is covered by the policy and is considered owned by Masonry Concepts for purposes of the policy. Furthermore, Item Three shows that Masonry Concepts was charged a premium for uninsured motorist coverage on the

van. Thus, while the definition of symbol 2 might indicate that the van is not covered if not owned, owned is not defined and the declaration section indicates that the van is included in the group of covered autos owned by the insured. The circuit court erred by concluding that the term “owned” was unambiguous under the policy and in granting summary disposition to defendant.

Further, there was a question regarding whether the corporation owned the vehicle. Again, the policy did not define “owned,” and title is not the exclusive indication of ownership. MCL 257.37; MSA 9.1837. There can be more than one owner of a vehicle. *John v John*, 47 Mich App 413; 209 NW2d 536 (1973).

Reversed and remanded for further proceedings. We do not retain jurisdiction..

/s/ Helene N. White

/s/ Donald E. Holbrook, Jr.

/s/ Philip D. Schaefer

¹ The circumstances surrounding the execution of the application were not set forth in the trial court. Nor was there discussion regarding the materiality of the asserted misrepresentation.