STATE OF MICHIGAN

COURT OF APPEALS

MERVIN ALLEN MORLEY and LINDA CAROL MORLEY,

Plaintiffs-Appellees,

v

AUTO CLUB OF MICHIGAN, a/k/a AAA,

Defendant-Appellant.

UNPUBLISHED
June 11, 1996

No. 172969
LC No. 92-016021 CK

MERVIN ALLEN MORLEY and LINDA CAROL MORLEY,

Plaintiffs-Appellants,

v

AUTO CLUB OF MICHIGAN, a/k/a AAA,

Defendant-Appellee.

No. 173000
LC No. 92-016021 CK

Before: Hoekstra, P.J., and MacKenzie and R.L. Tahvonen*, JJ.

PER CURIAM.

In Docket No. 172969, defendant insurer appeals as of right from a final judgment for plaintiffs. We reverse. In Docket No. 173000, plaintiffs appeal as of right from an order denying their motion for attorney fees, costs and interest. We affirm.

In December 1986, defendant issued an automobile insurance policy to Virginia and Leonard Mileskiewicz to cover their pickup. The following May, defendant sent the Mileskiewiczes an offer to

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

renew the policy and a certificate of insurance, but apprised them that the certificate would only become effective upon payment of the renewal amount. The Mileskiewiczes failed to remit the renewal amount and, on June 8, 1987, defendant sent them a confirmation on non-renewal.

On November 28, 1987, Leonard Mileskiewicz, while driving the pickup, collided with plaintiffs' vehicle. Plaintiffs suffered bodily injuries as a result of the collision. At the time of the accident, defendant also insured plaintiffs' vehicle. Defendant subsequently began paying PIP benefits to plaintiffs as a result of their injuries.

On October 20, 1988, plaintiffs filed an automobile negligence action against Leonard Mileskiewicz to recover damages for their injuries; they later obtained a default judgment against him. On May 9, 1989, defendant's attorney notified plaintiffs that it would not defend or indemnify Mileskiewicz in the negligence suit because his policy was not in effect on the date of the accident.

On August 28, 1991, more than three and one-half years after the accident, plaintiffs sent defendant a demand for uninsured motorist benefits. Part IV of defendant's policy was entitled "Uninsured Motorists Insurance Coverage", and contained six sub-parts, two of which provided as follows:

> **UNINSURED MOTORISTS COVERAGE**
>
> Subject to the Definitions, Exclusions, Conditions and Limits of Liability that apply to this part, **we** will pay damages for **bodily injury** which: is caused by accident; and arises out of the ownership, operation, maintenance or use of an **uninsured motor vehicle**; and results in death, serious impairment of a body function or permanent serious disfigurement; and an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle**.
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> * * *
>
> **ARBITRATION**
>
> If **we** do not agree with the **insured person(s)**: that they are legally entitled to recover damages from the owner or operator of an **uninsured motor vehicle**; or as to the amount of payment; either they or **we** must demand, in writing, that the issues, excluding matters of coverage, be determined by arbitration. A Demand for Arbitration must be filed within 3 years from the date of the accident or **we** will not pay damages under this Part. Unless otherwise agreed by express written consent of both parties, disagreements concerning insurance coverage, insurance afforded by the coverage, or whether or not a **motor vehicle** is an **uninsured motor vehicle** are not subject to arbitration and suit must be filed within 3 years from the date of the accident.

Defendant denied coverage for uninsured motorist benefits on the ground that plaintiffs had failed to make a timely demand for arbitration as required by the policy. This declaratory action followed, with plaintiffs seeking, in relevant part, a determination that Mileskiewicz was insured by defendant, or if he was uninsured, that plaintiffs were entitled to arbitrate and recover their losses under the uninsured motorist coverage of their policy.

Following a trial, the court determined that Mileskiewicz was uninsured because his policy of insurance terminated for non-renewal several months before the accident. The court then ruled that plaintiffs were entitled to arbitration of their uninsured motorist benefits claim notwithstanding that their demand for arbitration was not sent until more than three years after the date of the accident. In reaching this conclusion, the court determined that the three-year period stated in the insurance contract was ambiguous and therefore unenforceable.

As a threshold matter, we reject plaintiffs' claim in Docket No. 173000 that the trial court erred in determining that Mileskiewicz's vehicle was not insured by defendant at the time of the collision. Defendant's policy clearly and unambiguously provided that failure by the insured to pay the required renewal premium would automatically terminate coverage at the end of the policy term. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 239-240; 507 NW2d 741 (1993). There is no dispute that the Mileskiewiczes failed to pay defendant to renew their policy. Accordingly, coverage automatically expired before the collision, and defendant was not required to send the Mileskiewiczes a cancellation notice. *Id*. Plaintiffs argue that defendant should be equitably estopped from denying coverage because it issued Mileskiewicz a certificate of insurance with its offer of renewal. However, for equitable estoppel to apply, plaintiffs must have justifiably relied upon the perceived fact that Mileskiewicz was insured by defendant and acted upon that belief. *Soltis v First of American Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994). There is no evidence that plaintiffs drove their vehicle because they relied on defendant's representation that Mileskiewicz was insured. The doctrine of equitable estoppel is thus unavailable to plaintiffs. The trial court properly determined that Mileskiewicz was an uninsured motorist at the time he collided with plaintiffs.

In Docket No. 172969, defendant contends that the trial court erred in declaring ambiguous – and hence unenforceable – the three-year limitations period contained in Part IV of its policy governing uninsured motorist coverage. We agree.

Uninsured motorist benefits are not statutorily required, so the policy in question dictates in what manner the benefits will be awarded. *Gentry v Allstate Ins Co*, 208 Mich App 109, 112; 527 NW2d 39 (1994). A policy is ambiguous when, after reading the entire document, its language can be reasonably understood in different ways. *Taylor v Blue Cross & Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994). If the trial court determines that the policy is ambiguous, it will be construed against the insurer because it drafted the contract in question. *Rohlman v Hawkeye-Security Ins Co (On Remand)*, 207 Mich App 344, 350; 526 NW2d 183 (1994). However, if the contract is unambiguous, the trial court must enforce it as written. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991).

In *Mapes v AAA Ins Co*, 208 Mich App 5, 7; 527 NW2d 22 (1994), this Court found a no-fault policy's uninsured motorist coverage to unambiguously mean that the insured has three years from the date of the accident in question to either demand arbitration or file suit. The policy in that case was similar to the policy at issue here. Although *Mapes* has no precedential effect, see 450 Mich 914 (1995), we agree with the *Mapes* panel's conclusion that the policy is unambiguous in its requirement that a person claiming uninsured motorist benefits must do so within three years of the date of the accident. Further, there is no discovery rule concerning the insurance status of another driver before a claim accrues for the purposes of the contractual limitations period. *Sallee v Auto Club Ins Ass'n*, 190 Mich App 305, 307; 475 NW2d 828 (1991). Because the insurance contract should have been enforced as written, the trial court erred when it determined that plaintiff were excused from making their demand for uninsured motorist coverage. *Bianchi, supra*. Accordingly, we reverse in Docket No. 172969.

Applying the unambiguous three-year limitation period contained in that part of defendant's policy governing uninsured motorist coverage, plaintiffs were barred from asserting their claim for uninsured motorist benefits. This result makes it unnecessary to consider the remaining issues in Docket No. 173000.

Affirmed in part and reversed in part.

/s/ Barbara B. MacKenzie
/s/ Randy L. Tahvonen