# STATE OF MICHIGAN

# COURT OF APPEALS

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PARTNERS MUTUAL INSURANCE COMPANY

Plaintiff-Appellant,

v

TRACEY LOUBERT and MARTHA LOUBERT,

Defendants-Appellees,

and

ROSE DRAVERS,

Defendant.

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UNPUBLISHED
August 30, 1996

No. 183123
LC No. 94-003288-CV

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the order of the circuit court granting summary disposition in favor of defendants, and dismissing plaintiff's complaint seeking, in pertinent part, a declaration that the insurance policy issued by plaintiff did not cover defendants' injuries. We affirm.

I

The facts in this case are not in dispute. Defendants were driving in a motor vehicle, owned by them, when they were involved in an accident with an uninsured motorist. At the time, defendants lived with Joseph Loubert, Tracey Loubert's father. Although defendants were covered by their own insurance policy, they sought additional coverage from plaintiff, claiming they were covered as "relatives" under plaintiff's policy. In its complaint, plaintiff agrees that coverage is initially afforded under the uninsured motorist section of its policy, but claims that the "owned vehicle exclusion" in that section precludes coverage. That provision provides in pertinent part:

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

We do not cover **bodily injury** to a person:

(1) **occupying**, or struck by a **motor vehicle** owned by **you** or a **relative** for which insurance is not afforded under this part.

Defendants claimed that this language was ambiguous and thus must be construed in favor of coverage. The trial court agreed with defendants and granted summary disposition in their favor.

II

We review the trial court's decision under MCR 2.116(I)(1), de novo to determine whether evidence existed to create an issue of material fact. *Husted v Dobbs*, 213 Mich App 547, 551; 540 NW2d 743 (1995).

A

An insurance policy is much the same as any other contract, and when presented with a dispute, a court must determined the parties' intent under the contract and enforce that intent. See *Fragner v American Community Mutual Ins Co*, 199 Mich App 537, 542-543; 502 NW2d 350 (1993).

Contractual language is to be given its ordinary and plain meaning, and technical and constrained construction should be avoided. *Bianchi v Auto Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991). An insurance contract is clear if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co of Michigan v Stark*, 437 Mich 175, 182; 468 NW2d 498 (1991). Such a contract is ambiguous, however, if after reading the entire contract, its language can reasonably be understood in differing ways. *Bianchi, supra* at 70. Ambiguities in the language of an insurance policy exclusion must be strictly construed against the insurer and in favor of the policy holder. *Farm Bureau Mutual Ins Co, supra* at 181. Owned vehicle exclusion clauses have been upheld as valid so long as the clauses were clear and unambiguous and employed easily understood and plain language. *Allen v Auto Club Ins Ass'n*, 175 Mich App 206, 209; 437 NW2d 263 (1988).

In addition to these rules of contractual interpretation, we examine whether a policyholder, on reading the contract, was led to a reasonable expectation of coverage. *Vanguard Ins Co v Clarke*, 438 Mich 463, 472; 475 NW2d 48 (1991).

B

Here, we conclude that the language employed by plaintiff was ambiguous because it could be interpreted in at least two ways. First, it could be read to suggest that defendants were not covered if they did not have insurance under that "part," i.e., the uninsured motorist provision. However, as noted, that part did provide defendants with coverage. Under that interpretation, defendants could reasonably have expected coverage. Granted, the exclusion also could be read as denying coverage, but the fact that two plausible interpretations exist leads to the conclusion that the language was ambiguous.

The distinction is made more clear by an examination of this Court's opinion in *Automobile Club Ins Ass'n v Page*, 162 Mich App 664; 413 NW2d 472 (1987). There, this Court found the following exclusion involving uninsured motorist coverage to be clear:

> This coverage does not apply to bodily injury sustained by an Insured Person:
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> while occupying a motor vehicle which is owned by you or a relative unless that motor vehicle is YOUR CAR . . . . [*Id.* at 667-668.]

The policy defined "YOUR CAR" as "the vehicle described on the Declaration Certificate." *Id.* at 668.

Thus, in *Page*, the policy clearly set forth that coverage was not provided for vehicles not listed in the declaration certificate, i.e., for which no premium had been paid. We find this language more clear than the arguably circular definition employed by plaintiff.

Accordingly, we affirm the trial court's order of summary disposition in favor of defendants.[1]

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson

[1] Although plaintiff also included, as an appellate issue, an argument that the arbitration clause in its policy was not meant to include the issues presented in this case, we conclude that the trial court agreed with plaintiff on this issue, and thus, no appeal may be taken from that ruling because it was not one by which plaintiff was aggrieved.