STATE OF MICHIGAN

COURT OF APPEALS

FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellant,

v

NORITA VALLELY SULLIVAN, MARTIN McCOLLUM and KATHERINE FERRINI,

Defendants-Appellees.

UNPUBLISHED
December 20, 1996

No. 188694
LC No. 95-510143-CK

Before: Markman, P.J., and Smolenski and G.S. Buth,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants in this insurance coverage dispute. We reverse and remand the case to the trial court for entry of summary disposition for plaintiff.

Defendants Norita Vallely Sullivan and Martin McCollum were involved in a car accident in which Sullivan suffered physical injury. McCollum was driving a Mazda which was owned by his wife, defendant Katherine Ferrini, and which was insured by plaintiff with a liability limit of $30,000. McCollum also owned a Ford Ranger at the time of the accident. The Ranger was insured by plaintiff with a liability limit of $100,000. McCollum was the named insured on both insurance policies. Sullivan sought to recover under the higher liability limits of the insurance policy covering the Ranger ("the Ranger policy"). Plaintiff filed the instant action, seeking a declaratory judgment that Sullivan was not entitled to recover under the Ranger policy. The trial court found that, because of an ambiguity in the policy, coverage must be afforded to McCollum under the Ranger policy and, accordingly, entered summary disposition for defendants.

Plaintiff argues on appeal that the trial court erred in finding that the Ranger policy provided coverage for liability incurred by McCollum while driving the Mazda. We agree. Reviewing the Ranger policy as a whole, we find that a fair reading of its terms cannot reasonably lead to different

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

understandings of the scope of coverage. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991). Because the insurance policy is clear and unambiguous, it must be enforced as written. *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 595-596; 489 NW2d 444 (1992).

The Ranger policy provides coverage for bodily injury or property damage resulting from the use by any person of an insured car. However, the policy explicitly defines an insured car to exclude any car not named in the policy if that car is owned by the named insured or a family member. Because the Mazda is not named in the Ranger policy and is owned by McCollum's wife, the Mazda is not an insured car under the Ranger policy.

The Ranger policy also provides coverage for any liability incurred by the named insured while driving a car not specifically insured by the policy. However, the policy contains a clear, unambiguous and, therefore, valid exclusion of coverage if the car driven is owned by the named insured or a family member. See *Englund v State Farm Mut Automobile Ins Co*, 190 Mich App 120, 122; 475 NW2d 369 (1990); *Auto-Owners Ins Co v Johnson Estate*, 184 Mich App 686, 688; 459 NW2d 7 (1990).[1] Because McCollum's wife owned the Mazda, McCollum was not covered under the Ranger policy for liability incurred while driving the Mazda.

Sullivan argues that a provision governing the amount of coverage afforded in cases where the named insured holds other applicable insurance ("the anti-stacking clause") creates ambiguity in the scope of coverage. Because ambiguity in coverage must be resolved in favor of the insured, see *Bianchi*, *supra* at 70, Sullivan argues that the trial court was correct in granting summary disposition to defendants. We disagree.

The anti-stacking provision states that "[i]f any applicable insurance other than this policy is issued to you by us or any other member company of the Farmers Insurance Group of Companies, the total amount payable among all such polices shall not exceed the limits provided by the single policy with the highest limits." Because plaintiff did not define the term "applicable" in the policy itself, we must give this term its commonly used meaning. *Czopek*, *supra* at 596.

"Applicable" is commonly defined as "capable of being applied; fit to be applied; appropriate; having relevance." *Webster's New Twentieth Century Dictionary: Unabridged Edition* (2d ed, 1983). An insurance policy is not applicable unless it is "capable of being applied," that is, unless it provides coverage for the claim in question. Because the Ranger policy does not provide coverage for this claim, Sullivan cannot reach that policy under the Mazda policy's anti-stacking provision. Further, because the anti-stacking clause discusses applicable insurance "other than this policy," the provision is not triggered unless the underlying policy itself is "applicable." Therefore, the anti-stacking provision in the Ranger policy is never reached. If that clause were considered, the liability limit would be selected from the limits established by "all such policies," that is, all applicable policies. Again, because the Ranger policy is not applicable, that policy's liability limit would not be considered under this clause.

The anti-stacking provision cannot create coverage under an otherwise inapplicable policy. Thus, this provision does not create any ambiguity in the contract[2] nor does it conflict with or nullify the

"family-owned car" exclusion. The trial court erred in finding an ambiguity or conflict between the provisions and, therefore, interpreting the Ranger policy to provide coverage for McCollum in this situation.

Reversed and remanded for entry of an order of summary disposition in favor of plaintiff. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth

[1] The arguments made in this case were very similar to those asserted here. In *Auto Owners*, *supra*, this Court found that a "family-owned car" exclusion was valid despite the inclusion of an "other insurance" provision which the insured claimed created ambiguity in the scope of coverage. Unfortunately, this Court did not include the substance of the "other insurance" clause in the opinion to allow for direct comparison of the policy language in each case.

[2] Sullivan's reliance on this Court's ruling in *State Farm Mut Automobile Ins Co v Tiedman*, 181 Mich App 619, 624; 450 NW2d 13 (1989), for the proposition that an anti-stacking clause creates ambiguity or otherwise requires coverage in the face of a family-owned car exclusion is misplaced. That case considered only the validity of an anti-stacking clause where the applicable insurance policies covered a different group of named insureds and held that so long as the named insured incurring liability under one policy is named in the other, the anti-stacking clause applies. *Id*. at 623-624. This Court explicitly limited its ruling to that issue and did not consider the validity of a "family-owned car" exclusion similar to the provision at issue in this case. *Id*. at 624.