STATE OF MICHIGAN

COURT OF APPEALS

RONALD SMIT and VICTORIA SMIT,

Plaintiffs-Appellees,

v

JUDY KAECHELE, d/b/a COUNTRY TOWN & FLORAL, and DAWN RENEE SENNEKER,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Garnishee Defendant-Appellant.

UNPUBLISHED
April 11, 1997

No. 186946
Kent Circuit Court
LC No. 91-072456-NI

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Garnishee-defendant appeals as of right from a judgment entered by the circuit court following an evidentiary hearing conducted pursuant to this Court's order of remand in *Smit v State Farm Mutual Auto Ins Co*, 207 Mich App 674; 525 NW2d 528 (1994). We reverse.

The material facts of this case are undisputed. On August 17, 1990, a vehicle driven by defendant Dawn Senneker struck a motorcycle ridden by plaintiff Ronald Smit. The accident occurred while Senneker was making a floral delivery for her employer, defendant Judy Kaechele d/b/a Country Town and Floral.

At the time of the accident, Judy Kaechele owned Country Town as a sole proprietor. However, the vehicle driven by Senneker was titled in the name of "Thomas H. Kaechele, d/b/a Country Town."

After plaintiffs initiated the underlying action, garnishee-defendant, Senneker's no-fault carrier, denied liability in a letter to plaintiffs' counsel. Subsequently, plaintiffs, Senneker, Country Town, and Farm Bureau Mutual Insurance, Kaechele's insurer, reached a settlement whereby Farm Bureau agreed to pay plaintiffs $200,000 in exchange for plaintiffs' agreement to dismiss with prejudice the complaint against Country Town; Senneker agreed to the entry of judgment against her "in such sum as the court determines fully and fairly compensates the plaintiffs for their injuries and damages"; plaintiffs agreed to enforce the judgment only against garnishee-defendant; and Senneker assigned to plaintiffs her rights, claims, and causes of action against garnishee-defendant.

The trial court consequently assessed plaintiffs' damages at $500,000, subtracted the $200,000 already paid by Farm Bureau, and entered judgment against Senneker for $300,000. In conformance with the settlement agreement, the judgment specified that it could only be enforced against garnishee-defendant.

On September 20, 1991, plaintiffs secured issuance of a writ of garnishment directed to garnishee-defendant. On July 17, 1992, garnishee-defendant moved for summary disposition, arguing that plaintiffs' claim fell within a policy exclusion. Specifically, garnishee-defendant argued that because an endorsement to Senneker's policy excluded coverage for loss arising from the use of any vehicle owned by an employer of Senneker, the policy provided no coverage for the accident. Plaintiffs, however, responded with their own motion for summary disposition, arguing that garnishee-defendant was precluded from raising the policy exclusion because it failed to assert the exclusion in its original letter denying coverage. The trial court agreed with plaintiffs and entered judgment against garnishee-defendant in the amount of $100,000, garnishee-defendant's policy limit, plus costs, interest, and attorney fees.

On appeal, this Court found that the trial court erred in determining that garnishee-defendant was limited to the defenses raised in the original letter denying liability and remanded for a determination whether defendant Country Town owned the vehicle driven by Senneker at the time of the accident, thereby bringing the claim within the policy exclusion. *Smit, supra,* at 679. Garnishee-defendant appeals from the judgment entered by the circuit court following the hearing.

Garnishee-defendant first argues that the trial court erred in concluding that Thomas Kaechele, and not Country Town, owned the vehicle involved in the accident, thereby rendering the policy exclusion inapplicable. We agree.

The question of ownership of a motor vehicle is generally one of fact that is to be decided by the factfinder. *Botsford General Hospital v Citizens Ins Co*, 195 Mich App 127, 133; 489 NW2d 137 (1992). However, the parties do not dispute the material facts relevant to the issue of ownership issue. Further, the circuit court found as a matter of law that defendant Country Town did not own the vehicle at the time of the accident. Thus, our review of a circuit court's application of law to undisputed facts is *de novo.* See *People v Barrera*, 451 Mich 261, 269 n 7; 547 NW2d 280 (1996).

The applicable language of the policy exclusion in this case provides that garnishee-defendant would not afford coverage "for the operation, maintenance or use of any vehicle . . . *owned by* or registered in the name of . . . an employer" of the insured (emphasis added). However, because the policy does not provide a definition of the phrase "owned by," we must interpret this provision without assistance from the contract itself.

An insurance policy is generally treated the same as any other contract in that it is an agreement between the parties. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). Therefore, when presented with a dispute, we must determine what the parties' agreement is and enforce it. *Fragner v American Community Mutual Ins Co*, 199 Mich App 537, 542-543; 502 NW2d 350 (1993). We believe that the circuit court erred in relying exclusively on the definition of the term "owner" applicable to the Michigan Vehicle Code, MCL 257.37; MSA 9.1837, in concluding that Thomas Kaechele, and not Country Town, owned the vehicle involved in the accident. True, insurance contracts are subject to statutory regulation and statutory provisions must be read into them when applicable. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 680; 499 NW2d 419 (1993). However, this case is strictly one of contractual interpretation, and the provisions of the Michigan Vehicle Code are not at issue.

In interpreting a provision of an insurance contract, the contractual language is to be given its ordinary and plain meaning. *Bianchi v Auto Club of Michigan*, 437 Mich 65, 71 n 1; 467 NW2d 17 (1991). The uncontradicted evidence revealed that Country Town used the vehicle for business purposes for approximately three years preceding the accident. Although the evidence showed that the Kaecheles used the vehicle for both personal and business reasons, the business purposes always took priority. Country Town also modified the vehicle to make better use of the vehicle to transport flowers. In particular, Country Town removed the seats of the vehicle, tinted the windows, purchased a water- and dirt-resistant mat for the floor, installed plant and flower holders in the back of the van, and affixed a sign to the windshield to signify that the vehicle was a floral delivery van. Further, the evidence established that in 1990, the Kaecheles deducted as a business expense roughly ninety-four percent of the expenses associated with the vehicle. And, in the same year, the vehicle accumulated 21,322 miles of which Judy Kaechele attributed 20,063 to the floral business. Accordingly, we believe that in giving the phrase "owned by" its ordinary and plain meaning, the evidence established that Country Town qualified as an owner of the vehicle at the time of the accident. *Id*.

Our decision is supported by the rule of reasonable expectation, which requires us to inquire whether a policyholder, upon reading the insurance contract, was led to a reasonable expectation of coverage. *Vanguard Ins Co v Clarke*, 438 Mich 463, 472; 475 NW2d 48 (1991). We believe that it would be unreasonable for a policyholder to expect coverage under the undisputed facts of this case. We are aware of the policy of strictly construing insurance contracts against the insurer, *Fire Ins Exchange v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996); however, we are convinced that garnishee-defendant did not contract to insure Senneker for the underlying claim.

We note that assuming that the circuit court's sole reliance on MCL 257.37; MSA 9.1837 was appropriate, Country Town would nevertheless qualify as an owner. In arriving at its conclusion, the

trial court concentrated on one subsection of the statute, MCL 257.37(b); MSA 9.1837(b), and the concept of title. However, ownership under MCL 257.37; MSA 9.1837 does not relate only to technical concepts of title. *State Farm Mutual Auto Ins Co v Sentry Ins*, 91 Mich App 109, 116; 283 NW2d 661 (1979). Specifically, MCL 257.37(a); MSA 9.1837(a) imposes liability as an owner on "[a]ny person, firm, association, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days." This Court has held that the "exclusive use" language in MCL 257.37(a); MSA 9.1837(a) is broadly interpreted. *Ringewold v Bos*, 200 Mich App 131, 137; 503 NW2d 716 (1993), referring to *Ketola v Frost*, 375 Mich 266, 278-279; 134 NW2d 183 (1965) (holding that because a defendant business had the exclusive right to use the vehicle in question whenever the vehicle was needed, it was the owner under MCL 257.37(a); MSA 9.1837(a) despite the fact that when the defendant business did not need to use the vehicle the vehicle was used by others.). Our review of the undisputed evidence leads us to conclude that Country Town had a right to exclusive use of the vehicle for a period exceeding thirty days and accordingly qualifies as an owner under MCL 257.37(a); MSA 9.1837(a). *Ketola*, *supra*.

Having determined that Country Town owned the vehicle at the time of the accident, we need not address defendant's remaining contentions.

Accordingly, for the reasons stated herein, we find that plaintiffs' claim against garnishee-defendant falls within the policy exclusion set forth herein, and we vacate the circuit court's judgment against garnishee-defendant.

Reversed.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Michael R. Smolenski