

STATE OF MICHIGAN
COURT OF APPEALS

SUE A. MCGILL, as Personal Representative of
the Estate of CHARLES WILLIAM MCGILL, III,
Deceased,

UNPUBLISHED
April 26, 2002

Plaintiff-Appellee,

v

SCOTTSDALE INSURANCE COMPANY,

No. 227525
Oakland Circuit Court
LC No. 00-019992-CK

Defendant-Appellant.

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff commenced this declaratory action to determine the limits of coverage under an insurance policy issued by defendant Scottsdale Insurance Company to its insured, Williams Quality In Home Care (“Williams Home Care”). The parties filed cross motions for summary disposition and the trial court granted plaintiff’s motion, determining that the insurance policy is ambiguous and should be construed against defendant, and that the policy limit was \$1,000,000. The court further determined that defendant was estopped from contesting plaintiff’s standing to bring the declaratory action. Defendant now appeals as of right. We affirm.

This declaratory judgment action arises from an underlying action brought by plaintiff against Williams Home Care and Binson’s Assisted Care. The prior action culminated in a settlement, the details of which were set forth in a stipulation and order that provided, in pertinent part:

Plaintiffs and Williams have agreed on a minimum settlement amount of One Hundred Fifteen Thousand and 00/100 (\$115,000.00) Dollars, said settlement amount to be paid by Scottsdale Insurance Company on behalf of Williams; and

Plaintiffs and Williams and Williams insurer, Scottsdale Insurance Co. (“Scottsdale”), have agreed that said minimum settlement shall be held in abeyance pending resolution of a declaratory action to be filed by Plaintiffs to determine the limits of coverage available to Williams under a policy issued by Scottsdale; and

Plaintiffs and Williams have agreed that Williams shall deposit with the Court, in an interest bearing account, the minimum settlement of . . . (\$115,000.00) Dollars pending resolution of Plaintiffs' declaratory action; and

Donald L. Payton, Esq., attorney for Williams, has agreed to accept service on behalf of Scottsdale Insurance Company, and Scottsdale as the Insurer of Williams has agreed that [the circuit court] shall have jurisdiction over the declaratory action; and

Plaintiffs, Williams and Scottsdale have agreed that a speedy and expedited hearing on said declaratory action, pursuant to MCR 2.605(D), shall be requested of [the circuit court]; and [the circuit court] being otherwise fully advised in the premises:

* * *

IT IS FURTHER ORDERED that Plaintiff may effect service of her declaratory action upon Williams and Scottsdale Insurance Company by serving Donald L. Payton, Esq., and that [the circuit court] shall have exclusive jurisdiction over said cause of action pursuant to the stipulation of the parties, including the insurer Scottsdale, and [the circuit court] shall retain such jurisdiction even if said declaratory action is reassigned to another division of [the circuit court];

IT IS FURTHER ORDERED that should [the circuit court] determine that the limits of liability of Williams' insurance carrier are One Million and 00/100 (\$1,000,000.00) Dollars in this matter, the issue of the settlement in excess of . . . (\$115,000) Dollars shall continue before [the circuit court], and that such issue shall be decided through further settlement negotiations, or if unresolved, said case shall be set for trial as soon as possible;

IT IS FURTHER ORDERED that should [the circuit court] determine that the limits of liability of Williams' insurance carrier are not One Million and 00/100 (\$1,000,000.00) Dollars, or some other amount in excess of One Hundred Thousand and 00/100 (\$100,000.00) Dollars in this matter, the amount held in escrow by [the circuit court], plus interest, shall be disbursed forthwith to Plaintiffs.

The stipulation and order was signed by all parties, including attorney Donald Payton, as "Attorney for Defendant, Williams Quality In Home Care and for Scottsdale Insurance Co."

Plaintiff subsequently commenced this declaratory action and the parties filed cross motions for summary disposition. Despite the foregoing stipulation, defendant contested plaintiff's standing to bring the action, because plaintiff was not a party to the insurance contract between it and Williams Home Care. The trial court determined that, in light of the stipulation, defendant was estopped from contesting plaintiff's standing. The court also determined that the insurance policy was ambiguous and should be construed against defendant, and that the policy limit was \$1,000,000.

I. Plaintiff's Standing

On appeal, defendant argues that the trial court erroneously determined that it was estopped from contesting plaintiff's standing. We find no error.

Whether a party has standing to bring an action is a question of law, which is reviewed de novo. *Franklin Historic District Study Committee v Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000). Moreover, “[w]hen reviewing an equitable determination reached by the trial court, we review the conclusion de novo, but we review the supporting findings of fact for clear error.” *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). Clear error is found when an appellate court is left with the definite and firm conviction that a mistake has been made. *Buchanan v City Council of Flint*, 231 Mich App 536, 546; 586 NW2d 573 (1998).

Relying on *In re Finlay Estate*, 430 Mich 590, 595; 424 NW2d 272 (1988), *Skiera v National Indemnity Co*, 165 Mich App 184, 188; 418 NW2d 424 (1987), and *Lisiewski v Countrywide Ins Co*, 75 Mich App 631, 635; 255 NW2d 714 (1977), defendant contends that plaintiff did not have standing to bring this declaratory action because she was not a party to the insurance contract, and, unless she obtained a judgment against Williams Home Care and an assignment of Williams Home Care's contractual rights against defendant, there was not an “actual controversy” between the parties. Defendant further argues that the trial court should not have accepted the stipulation because it was in direct contravention of the law.

We conclude that neither *Skiera* nor *Lisiewski* prevent an insurer from stipulating that a party who has reached a conditional settlement with the insurer's insured may subsequently commence a declaratory action to determine the limits of the insurer's liability under its policy with the insured. Defendant's reliance on *In re Finlay Estate* is also misplaced. In that case, the parties stipulated to apply a statute that was no longer in effect. That situation is not the equivalent of the facts and circumstances of this case. Where, as here, there is no evidence of mistake, fraud, unconscionable advantage, abandonment, or disaffirmance, a court may give a stipulation its full force and effect. *Troy v Papadelis (On Remand)*, 226 Mich App 90, 95; 572 NW2d 246 (1997); *Limbach v Oakland Co Bd of Co Road Comm'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1997).

Defendant acknowledges that attorney Donald Payton was the counsel retained by defendant to represent Williams Home Care. However, defendant claims Payton was not counsel for Scottsdale and, thus, Payton's act of signing the settlement did not bind defendant or waive defendant's challenge to plaintiff's standing. We conclude the record establishes that, to the extent Payton was not an authorized agent of defendant, defendant's conduct subsequent to the settlement amounted to a ratification of the terms of the settlement agreement. “Even if unauthorized, acts of an agent are ratified by the principal if the latter accepts the benefits of the unauthorized acts with knowledge of the material facts.” *Hutton v Roberts*, 182 Mich App 153, 162; 451 NW2d 536 (1989).

It is undisputed that defendant paid the \$115,000 amount required under the settlement into escrow. In so doing, defendant was accepting the benefits of the settlement agreement

executed on defendant's behalf by Payton.¹ Further, defendant was fully apprised of the terms of the settlement at the time it paid the settlement amount into escrow. Under these circumstances, we conclude defendant ratified the settlement agreement and is estopped from claiming Payton's involvement in the settlement had no bearing on defendant.

II. Interpretation of the Policy

Defendant next argues that the trial court erred in determining that the insurance contract is ambiguous. We disagree. "This Court reviews contract language for ambiguity, and construes clear contract language, de novo." *Stover v Garfield*, 247 Mich App 456, 461; 637 NW2d 221 (2001).

"An insurer is free to define or limit the scope of coverage as long as the policy language fairly leads to only one reasonable interpretation and is not in contravention of public policy." *Zurich-American Ins Co v Amerisure Ins Co*, 215 Mich App 526, 531; 547 NW2d 52 (1996). "Exclusionary clauses in insurance policies are to be strictly construed." *Id.* at 533. "One engaged in business in this state is presumed to know the law as it relates to the operation of that business." *American Way Service Corp v Comm'r of Ins*, 113 Mich App 423, 433; 317 NW2d 870 (1982).

"Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; ___ NW2d ___ (2001). "A contract is ambiguous if its provisions may reasonably be understood in different ways. *Id.*"²

¹ The most significant benefit that inured to defendant as a result of the settlement agreement was the fact that its insured was dismissed from litigation. Consequently, defendant no longer was required pursuant to the terms of the insurance contract to provide its insured a legal defense to this litigation.

² To the extent the parties comment on plaintiff's "reasonable expectations" under the policy, we do not consider such argument relevant to the disposition of this case. Our Supreme Court has recognized the reasonable expectation theory as a valid means of interpreting insurance contract language, see *Vanguard Ins Co v Clarke*, 438 Mich 463, 472-473; 475 NW2d 48 (1991), and we are bound to follow that precedent. However, we find it unnecessary to employ the reasonable expectations theory in this case given our resolution of the case in plaintiff's favor under the interpretation of the policy provisions discussed herein. Furthermore, we have considerable doubt regarding the usefulness and logic of examining what plaintiff could reasonably expect in order to interpret the policy. Well-settled principles of contract interpretation require one to first look to a contract's plain language. If the plain language is clear, there can be only one reasonable interpretation of its meaning and, therefore, only one meaning the parties could reasonably expect to apply. If the language is ambiguous, long-standing principles of contract law require that the ambiguous provision be construed against the drafter. Applied in an insurance context, the drafter is always the insurer. Thus, it appears that the "rule of reasonable expectations" is nothing more than a unique title given to traditional contract principles applied to insurance contracts, notwithstanding the Supreme Court's conclusion in *Vanguard Ins Co* that an insured's "reasonable expectations" can override the terms of an otherwise unambiguous insurance contract.

In this case, the affidavit of defendant's specialty claims examiner, Jane Moyer, establishes that the certified copy of the policy's exclusions page did not contain any entry under the "Description of Professional Services," thereby instructing the insured to look to the "declarations" page to find the "information required to complete this endorsement." A review of the "declarations" and "supplemental declarations" pages discloses that there is nothing on either page labeled "professional services." Instead, in Item 4 of the declarations page, there is a place for entry of the insured's "Business Description." The description included in this policy merely provides: "Home Health Care." The supplemental declarations page also lists the insured's "Business Description" as "Home Health Care." Defendant argues that phrase adequately describes the professional services to be excluded under the policy. According to defendant, for the purposes of this policy, the term "professional services" is synonymous with "Home Health Care."

We conclude that while the business description "Home Health Care" may embody the "professional services" excluded under the policy, it is just as reasonable to conclude that there is no "description of professional services" on the exclusion page or declarations pages and, therefore, no professional services have been designated as excluded. The phrase "Home Health Care" is used only with respect to the insured's "Business Description." There is no logical reason to assume that phrase was certainly intended to embody the "professional services" to be excluded. "Home Health Care" is not synonymous with "professional services." Indeed, "Home Health Care" may include several, or no, professional services. The phrase, itself, is not plainly descriptive of professional services. Under these circumstances, we cannot say that the insured's "Business Description" within the policy unambiguously provides a description of excluded "professional services."³ Defendant does not argue and this Court does not find that excluded "professional services" are listed elsewhere on the declarations or supplemental declarations pages.

Because the policy language does not fairly lead to only one reasonable interpretation, and instead, may reasonably be understood in different ways, it is ambiguous. *Zurich-American Ins Co, supra; Universal Underwriters, supra*. Defendant is presumed to know the law concerning exclusionary provisions, i.e., that they are to be strictly construed, and that any ambiguity will be construed against it. *Zurich-American Ins Co, supra; American Way Service Corp, supra*. Accordingly, the trial court properly determined that the policy was ambiguous and construed it against defendant to provide for a \$1,000,000 policy limit.⁴

³ We note that the exclusion page does not refer the reader to see the "professional services" specifically listed as such on the declarations pages, but instead generally provides: "If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement." However, as stated, the "Business Description" "Home Health Care" cannot be said to unambiguously provide the "information required to complete [the] endorsement."

⁴ Given our conclusion that the policy is ambiguous and is, therefore, construed against defendant, we need not consider plaintiff's argument that Williams Home Care's employee was not rendering "professional services" within the meaning of the policy exclusion.

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra