

STATE OF MICHIGAN
COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellant,

v

ALVIN MCKINZIE, VANESSA SUE BECK, as
Personal Representative of the Estate of RONALD
MURRAY BECK, Deceased, HERBERT
SANDLIN, and MARY HUNT, as Personal
Representative of the Estate of JEFFREY
GRUNO, Deceased,

Defendants-Appellees.

UNPUBLISHED

August 16, 2002

No. 227866

Oakland Circuit Court

LC No. 99-016287-CK

Before: Murray, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff appeals as of right from an order granting summary disposition in favor of defendants Vanessa Beck and Mary Hunt, as the personal representatives of the Estates of Ronald Beck and Jeffrey Gruno, respectively, and directing plaintiff to indemnify and defend defendant Alvin McKinzie in accordance with the terms of his automobile insurance policy. We reverse and remand for entry of summary disposition in favor of plaintiff under MCR 2.116(C)(10).

The material facts are not disputed. The decedents were motorcyclists who were killed after being struck by a utility trailer that detached from a motor vehicle owned and operated by codefendant Herbert Sandlin (Sandlin). The trailer was owned by McKinzie, who loaned it to Sandlin. After the personal representatives commenced an independent action against McKinzie, plaintiff filed this declaratory action, seeking a determination that it did not have a duty to defend and indemnify McKinzie under either a homeowner's policy or an automobile insurance policy that it had issued to McKinzie. Plaintiff subsequently moved for summary disposition under MCR 2.116(C)(8) and (10), and the personal representatives sought summary disposition under MCR 2.116(I)(2). Relying on *Allstate Ins Co v Freeman*, 432 Mich 656; 443 NW2d 734 (1989), modified 433 Mich 1202 (1989), the trial court granted summary disposition in favor of the personal representatives, determining that the automobile insurance policy provided coverage because McKinzie's trailer was attached to an insured automobile.

On appeal, plaintiff argues that coverage did not exist under McKinzie's auto policy because it was not the insurer of the automobile to which McKinzie's trailer was attached. We review de novo the trial court's decision on a motion for summary disposition. *Spiiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In recent years the Supreme Court has clarified the standards governing review of motions under this subrule:

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Glove Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993). [*Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).]

An insurance contract is much the same as other contracts. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). "It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties." *Id.* at 566. The insurance contract should be read and interpreted as a whole. *Id.* It must be enforced according to the policy terms. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111-112; 595 NW2d 832 (1999).

In *Freeman, supra* at 692, our Supreme Court addressed the meaning of the phrase "an insured" in a homeowner's liability policy that excluded coverage for "any bodily injury or property damage which may reasonably be expected to result from the intentional or criminal acts of an insured person." The phrase "an insured" was deemed to unambiguously refer to any insured *under the policy*. *Id.* at 694-699. It did not impose a blanket exclusion for all claims resulting from an intentional act. See *Allstate Ins Co v Johnson*, 205 Mich App 495, 500-501; 517 NW2d 799 (1994).

In the instant case, the phrase “an insured” is also used in the policy, but is distinguishable from *Freeman* by the fact that it is not part of an exclusionary clause. Rather, it is the last part of a provision identifying the meaning of “insured autos” for purposes of Part I (Automobile Liability Insurance) of the policy. The provision as a whole provides:

1. Any **auto** described on the declarations page. This includes the four wheel private passenger **auto** or **utility auto you** replace it with.
2. An additional four wheel private passenger **auto** or **utility auto you** acquire ownership of during the policy period will be covered for 30 days immediately after **you** become the owner. . . .
3. A substitute four wheel private passenger **auto** or **utility auto**, not owned by **you** or a **resident**, being temporarily used while **your** insured **auto** is being serviced or repaired, or if **your** insured **auto** is stolen or destroyed.
4. A non-owned **private passenger** or **utility auto** used by **you** or a **resident relative** with the owner’s permission. This **auto** must be available for the regular use or an insured person.
5. A trailer while attached to an insured **auto**. The trailer must be designed for use with a private passenger **auto** or **utility auto**. This trailer can’t be used for business purposes with other than a private passenger **auto** or **utility auto**. [Emphasis in original.]¹

Applying the rationale of *Freeman* to the language “trailer while attached to an insured **auto**,” we conclude that “an insured **auto**” refers to any auto insured under the policy, not any auto that has some type of insurance. Based on our reading of the policy language, that is the only reasonable interpretation that may be reached. Thus, there is no ambiguity requiring judicial construction. See generally *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566-568; 596 NW2d 915 (1999). We reject the personal representatives’ claim that the phrases “your insured auto” and “any auto owned by you” would have been used if the intent was to limit ¶ 5 only to autos that plaintiff insures under the policy. Such limitations would have narrowed the scope of ¶ 5 by, for example, excluding a substitute auto falling within the ambit of ¶ 3.

Although we must look to the contract as a whole, *Churchman, supra* at 566, we also reject the personal representatives’ claim that the limits of liability provision in Part VI (Protection Against Loss To The Auto) of the policy supports their position on how the disputed policy language in the “insured autos” provision of Part I should be construed. Finally, given the lack of ambiguity in the disputed policy language, we reject the personal representatives’ claim that the rule of reasonable expectations supports their construction of the disputed policy provision. *Nikkel, supra* at 569-570.

¹ Bold printed words are defined in the policy. For instance, “**You**” or “**Your**” are defined as “the policyholder named on the declarations page and that policyholder’s **resident** spouse.”

In sum, we hold that the trial court erred in granting summary disposition in favor of the personal representatives, rather than plaintiff, on the question of coverage under the automobile policy. Plaintiff was entitled to summary disposition under MCR 2.116(C)(10), because the only reasonable interpretation of the disputed policy language is that the trailer must be attached to an auto insured under the policy; it does not encompass a trailer, as in this case, that is attached to an auto insured under a different policy.

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

/s/ Christopher M. Murray

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell