

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB GROUP INSURANCE CO.,

Plaintiff-Appellee,

v

BARBARA RUSH,

Defendant,

and

JOYCE LEACH, Personal Representative of the
Estate of CALVIN C. BRIDGES, Deceased,

Defendant-Appellant.

UNPUBLISHED

January 24, 2006

No. 257419

Genesee Circuit Court

LC No. 03-076891-CZ

Before: Cavanagh, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant Joyce Leach appeals by right an order granting summary disposition in favor of plaintiff in this declaratory judgment action. This case involves whether the homeowner's insurance policy plaintiff issued to defendant Barbara Rush provides coverage for a wrongful death lawsuit brought after Calvin C. Bridges was fatally injured when he fell from a go-cart driven by then 14-year-old Victor Cordell. We affirm.

Defendant Leach first argues that the trial court erred in holding that an exclusion contained in the insurance policy applied because the go-cart was not a motor vehicle subject to registration, and it was not "owned" by an insured. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 278. When deciding a motion for summary disposition a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party to determine whether the movant was entitled to judgment as a matter of law. *Id.* Our review is limited to the evidence that was presented to the trial court at the time the motion was decided. *Peña v Ingham County Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). Also, we review de novo the construction and interpretation of the language

of an insurance contract as an issue of law. *Allstate Ins Co v Muszynski*, 253 Mich App 138, 140-141; 655 NW2d 260 (2002).

Part II of the policy provides liability insurance coverage for bodily injury claims, but paragraph c of Part II excludes coverage for “a recreational land motor vehicle, other than a golf cart while used for golfing, owned by an insured person, if the bodily injury or property damage occurs away from the insured premises.” However, “[t]his exclusion does not apply to a recreational land motor vehicle which is not subject to motor vehicle registration and is not owned by an insured person”

The parties do not dispute that Victor was an insured: at the time of the accident he was living with his grandmother, Rush. It is also undisputed that Bridges’ bodily injury occurred away from the insured premises. Defendant Leach contends that the “recreational land motor vehicle” exclusion does not apply to the instant case because under the off-road recreation vehicle section of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.81101 *et seq.*, the go-cart fits the definition of an off-road vehicle (ORV), and an ORV is not subject to motor vehicle registration. Although the go-cart is an ORV under MCL 324.81101(m), an ORV is required to be registered when it is being operated on a public street. MCL 324.81122(1) provides: “A person shall not operate an ORV that is not registered under the code upon a public highway, street, or right-of-way of a public highway or street,” except in certain circumstances not present in this case.

In *Coffey v State Farm Mutual Automobile Ins Co*, 183 Mich App 723, 729; 455 NW2d 740 (1990), this Court held that when a go-cart is operated on a public highway, it is a motor vehicle subject to the registration requirements of the Michigan Vehicle Code (MVC), MCL 257.1 *et seq.* The *Coffey* Court quoted § 216 of the MVC and held that the phrase “subject to motor vehicle registration” does not mean that the vehicle is capable of being registered, but rather that it must be registered if it is to be driven on a highway. *Id.* at 729. Likewise, we find that the go-cart in question was subject to registration as a motor vehicle because the undisputed facts show that Victor was operating it on a public street at the time of the accident. Because Victor failed to register the go-cart, plaintiff’s “recreational land motor vehicle” exclusion applies to the instant case and precludes coverage for the underlying wrongful death suit.

Even if the go-cart were not subject to motor vehicle registration, the exclusion still applies because an insured, Victor, “owned” the go-cart. Although, the policy does not define the term “owner” or “owned,” we reject defendant Leach’s argument that the definition of the term “owner” in the NREPA, MCL 324.81101(n)(i)-(iii), applies to interpret the term “owned” in the homeowners insurance policy. The statutory definitions of “owner” in MCL 324.81101(n) are irrelevant to the terms of the homeowner’s insurance policy governing non-statutory coverage. As in *Twichel v MIC General Ins Corp*, 469 Mich 524, 534; 676 NW2d 616 (2004), nothing in the plain language of the policy at issue supports the application of the statutory definition to the policy’s independent, nonstatutory coverage.

The terms of an insurance policy are given their commonly used meanings unless they are clearly defined in the policy. *Id.*; *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). To determine the common meaning of a word, a court may consult a dictionary. *Chandler v Muskegon Co*, 467 Mich 315, 320; 652 NW2d 224 (2002); *Morinelli v Provident Life & Accident Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000). But an undefined word is not

rendered ambiguous simply because different dictionary definitions exist. *Twichel, supra* at 535 n 6. In *Twichel*, our Supreme Court used dictionary definitions to determine whether an insured “owned” the vehicle he was occupying and found “that possession, control, and dominion are among the primary features of ownership.” *Id.* at 534. Here, we hold that the term “owned” is not ambiguous as used in the policy and that under its commonly understood meaning, Victor “owned” the go-cart at the time of the accident because he had possession, control, and dominion over it. *Id.* at 534-535. Victor routinely used the go-cart, had its keys, stored it in the backyard garage of his residence, and performed most of its maintenance.

We disagree that Albert Brackins’ sales agreement and retail installment contract for the go-cart’s purchase evidence Brackins’ ownership of the go-cart. Rather, these documents merely establish that Brackins purchased the go-cart. Although Brackins purchased the go-cart, he gave it to Victor as a gift, and Victor retained possession of it until the accident. Thus, Victor was the “owner” of the go-cart. We also reject defendant Leach’s argument that because Brackins’ gift to Victor was conditioned on Victor’s keeping good grades in school and driving the go-cart responsibly, Brackins had a right to retrieve the go-cart and was thus its “owner.” A gift may be conditioned on the performance of some act by the donee, and the donor may recover the gift if the condition is not fulfilled. *Meyer v Mitnick*, 244 Mich App 697, 701; 625 NW2d 136 (2001). Here, however, the undisputed facts show that before the accident, Victor had not violated the conditions of the gift, and Brackins never took the go-cart from Victor. Consequently, the trial court did not err in finding that “the gift was complete” and that Victor “owned” the go-cart for purposes of the “recreational land motor vehicle” exclusion. Because there was no genuine issue of material fact that Victor was the “owner” of the go-cart, and the “recreational land motor vehicle” exclusion at issue applies to the instant case, the trial court’s summary disposition ruling was proper.

Next, defendant Leach argues that the trial court erred in ruling that she lacked standing to raise the reservation of rights defense. We disagree.

Defendant Leach mischaracterizes the trial court’s ruling. Standing is a legal term that refers to a party’s having sufficient interest in the outcome of the litigation to assure sincere and vigorous advocacy, an interest that warrants judicial protection. *Allstate Ins Co v Hayes*, 442 Mich 56; 68; 499 NW2d 743 (1993). In *Hayes*, the Supreme Court addressed whether the injured person, as a joined defendant, had standing in a declaratory action instituted by the insurer to pursue the action to a final determination of policy coverage. Here, unlike *Hayes*, the trial court did not consider whether defendant Leach as personal representative of the estate of Bridges has standing in this declaratory judgment action. The trial court simply rejected defendant Leach’s argument that plaintiff’s delay in providing Rush with a reservation of rights should estop plaintiff from denying coverage for the wrongful death suit. The trial court explained that creating insurance coverage via waiver or estoppel principles implicates the issue of prejudice to the insured, Rush, not the issue of prejudice to defendant Leach, who was making a claim against the insured. Although the trial court’s use of the word “standing” was not accurate, the substance of its ruling was correct. We will not reverse when the lower court reaches the right result for the wrong reason. *Grand Valley Health Center v Amerisure Ins Co*, 262 Mich App 10, 21; 684 NW2d 391 (2004).

Under the doctrine of equitable estoppel, one party to a contract may be prevented from enforcing a specific provision contained in the contract. *City of Grosse Pointe Park v Mich Mun*

Liab & Prop Pool, 473 Mich 188, 204; 702 NW2d 106 (2005). In the context of an insurance policy, our Supreme Court has stated that “once an insurance company has denied coverage to an insured and stated its defenses, the insurance company has waived or is estopped from raising new defenses.” *Kirschner v Process Design Associates, Inc*, 459 Mich 587, 593; 592 NW2d 707 (1999). In addition, “when an insurance company undertakes the defense of its insured, it has a duty to give reasonable notice to the *insured* that it is proceeding under a reservation of rights, or the insurance company will be estopped from denying its liability.” *Id.* “The application of waiver and estoppel is limited, and, usually, the doctrines will not be applied to broaden the coverage of a policy to protect the insured against risks that were not included in the policy or that were expressly excluded from the policy.” *Id.* at 593-594. Nevertheless, waiver and estoppel may be applied “in situations in which the insurance company has misrepresented the terms of the policy to the insured or defended the insured without reserving the right to deny coverage.” *Id.* at 594. But our Supreme Court noted it had “never held that waiver or estoppel can be applied to extend coverage beyond the terms of the policy when an insurer, who is not a party to the underlying litigation, fails to notify a plaintiff, who is not the insured, of a reservation of rights.” *Id.* at 595.

In the instant case, because plaintiff undertook Rush’s defense, it was required to notify its insured, Rush, of a reservation of rights. Plaintiff, however, did not have a duty to notify defendant Leach, who is not the insured. Because defendant Leach only argues that plaintiff’s alleged delay in filing its reservation of rights prejudiced her, the trial court did not err in rejecting her argument.

In any event, we find that defendant Leach’s estoppel argument fails on the merits. Defendant Leach mistakenly relies on *Meirthew v Last*, 376 Mich 33; 135 NW2d 353 (1965), to argue that plaintiff was estopped from denying coverage because the delay in filing a reservation of rights denied Rush a fair and timely opportunity to settle with defendant Leach and to conduct discovery in the underlying suit to avoid application of the exclusion and support a finding of coverage. In *Meirthew*, the insurance company defended its insured; it did not give notice of an exclusion on which it intended to rely to disclaim liability until it lost the principal lawsuit. *Id.* at 36-37. Our Supreme Court found that the insurance company’s failure to give reasonable notice of the exclusionary clause prejudiced its insured. *Id.* at 39. Unlike *Meirthew*, here, plaintiff brought its declaratory judgment action against Rush and defendant Leach before a trial in the wrongful death suit, giving clear notice that it intended to deny coverage on the basis of the “recreational land motor vehicle” provision. A declaratory judgment action is a suitable alternative to sending the insured a reservation of rights letter. *Multi-States Transport, Inc v Michigan Mut Ins Co*, 154 Mich App 549, 557; 398 NW2d 462 (1986), citing *Security Ins Co of Hartford v Daniels*, 70 Mich App 100; 245 NW2d 418 (1976). Thus, *Meirthew* is inapposite.

Moreover, there is no evidence that the timing of plaintiff’s declaratory judgment action prejudiced either Rush or defendant Leach. The trial court repeatedly adjourned trial in the wrongful death suit during the pendency of this declaratory judgment action. The court also stayed indefinitely trial in the wrongful death suit pending the outcome of this appeal. Thus, Rush has been given ample time to negotiate an independent, pretrial settlement with defendant

Leach. We find no basis to create a liability plaintiff never assumed in its contract with Rush.
Kirschner, supra at 594.

We affirm.

/s/ Mark J. Cavanagh

/s/ Joel P. Hoekstra

/s/ Jane E. Markey