

STATE OF MICHIGAN
COURT OF APPEALS

HOME-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

UNPUBLISHED
July 10, 2012

v

VIRGIE DOWNS, Individually and as Next Friend
of JACQUELYN DOWNS, GARY STEIN,
KIMBERLY HALEY-STEIN, and JADE STEIN,

Nos. 301105, 301775
Arenac Circuit Court
LC No. 10-011286-CK

Defendant-Appellees.

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying plaintiff's motion for summary disposition and granting summary disposition to defendants under MCR 2.116(I)(2). Plaintiff filed this action seeking a declaratory judgment that it had no duty to defend and indemnify an insured for an accident that occurred off the insured's premises. We reverse and remand.

On July 20, 2009, Jacquelyn Downs, age 14, was involved in an accident during which the off-road recreational vehicle she was operating left the roadway and struck a metal fence. Jacquelyn was visiting the residence of the Stein defendants when she was asked by Jade Stein, Gary Stein and Kimberly Haley-Stein's 15-year-old daughter, to go riding on a recreational vehicle. The recreational vehicle belonged to Gary and Kimberly. Defendant Virgie Downs filed a complaint alleging that the Steins negligently caused Jacquelyn's accident by (1) permitting her to operate the 1986 Honda recreational vehicle while it was unsafe to drive due to inadequate brakes and negligently maintaining the recreational vehicle's brakes or brake system, (2) permitting the recreational vehicle to be operated by a child under 16 years old without direct visual supervision by an adult, and (3) failing to furnish Jacquelyn with a helmet.

At the time of the accident, Gary and Kimberly were insured under a homeowner's policy issued by plaintiff. Plaintiff denied coverage, stating that the policy specifically excluded liability coverage for accidents relating to recreational vehicles not on the insured premises. Plaintiff then filed a complaint for a declaratory judgment, seeking a declaration that it had no duty to defend or indemnify. Plaintiff moved for summary disposition under MCR 2.116(C)(10).

Virgie filed an answer and cross-motion for summary disposition, and Gary, Kimberly, and Jade filed a concurrence.

The trial court denied plaintiff's motion for summary disposition and granted defendants' cross-motion, finding that "[t]here is . . . at least [a] valid argument that there is ambiguity in this policy" and that "the alleged negligence occurred on the premises." The trial court issued an order to this effect, granting summary disposition to Virgie, and it later amended its order to grant the same relief to the Steins.

Plaintiff argues that it is entitled to summary disposition. We agree. We review de novo a trial court's decision concerning a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

The homeowner's insurance policy issued by plaintiff to the Steins provides for personal liability coverage as follows:

a. Coverage E – Personal Liability

(1) We will pay all sums any **insured** becomes legally obligated to pay as damages because of or arising out of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies. However, with respect to any **aircraft, motor vehicle, recreational vehicle** or **watercraft**:

(a) we will pay damages because of or arising out of the ownership, maintenance, use, loading or unloading of only:

* * *

5) recreational vehicles owned by any **insured** while on an insured premises [Bolding in original.]

The policy provides that an "[o]ccurrence means an accident that results in bodily injury or property damage and includes, as one occurrence, all continuous or repeated exposure to substantially the same generally harmful conditions" (bolding removed).

The first issue on appeal concerns whether the policy precludes coverage for off-premises accidents involving recreational vehicles. To determine whether an insured is entitled to benefits under an insurance policy, this Court applies a two-part analysis. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 172; 534 NW2d 502 (1995). First, this Court must determine if the policy provides coverage for the insured's claim; if it does, this Court must next ascertain whether that coverage is negated by an exclusion. *Id.* The insured has the burden of establishing that his or her claim falls within the terms of the policy. *Michigan Twp Participating Plan v Federal Ins Co*, 233 Mich App 422, 431; 592 NW2d 760 (1999).

The primary goal in the interpretation of a contract is to honor the intent of the parties. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003). Clear contractual language not in contravention of public policy must be enforced as written. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 418; 668 NW2d 199 (2003). The terms of an

insurance policy are given their commonly used meanings, unless otherwise clearly defined in the policy. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 534; 676 NW2d 616 (2004); *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). An insurance contract is clear if it fairly allows one interpretation. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 567; 596 NW2d 915 (1999). A contract provision is ambiguous if a fair reading of the entire provision may reasonably be understood in different ways. *Id.* at 566-567. If all other means of ascertaining meaning have failed to establish the meaning of the contract, the ambiguities are to be construed against the drafter of the contract. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 60; 664 NW2d 776 (2003). Also, “contract terms should not be considered in isolation and contracts are to be interpreted to avoid absurd or unreasonable conditions and results.” *Hastings Mut Ins v Safety King Inc*, 286 Mich App 287, 297; 778 NW2d 275 (2009).

Stripped of extraneous terms not at issue in the instant case, the policy provides: “with respect to any recreational vehicle, we will pay damages because of or arising out of the ownership, maintenance, use, loading or unloading of . . . recreational vehicles owned by any insured while on an insured premises.”¹ The word “while” is being used as a conjunction to join the essential, dependent clause “on an insured premises” to an independent clause. Plaintiff argues that the dependent phrase refers back to “recreational vehicles.” Plaintiff also argues that the phrase “owned by any insured” modifies “recreational vehicles,” thereby creating two conditions for liability to attach: (a) the recreational vehicle must be owned by the insured and (b) the recreational vehicle must be on the insured premises at the time of the accident.

Virgie² agrees that the dependent clause modifies the term “recreational vehicles,” but argues that this term is part of a larger phrase that includes the five associated acts. She focuses on the phrase “arising out of” and argues that if any of the five acts of “ownership, maintenance, use, loading or unloading” occurred on the premises, and the accident could be understood to “aris[e] out of” that act, then the accident should be covered regardless of whether the accident occurred on or off the premises.³ This construction, though, leads to an absurd result. Any recreational-vehicle accident could be deemed to have arisen out of the ownership of that recreational vehicle, and all recreational vehicles owned by an insured could properly be understood to be owned on the insured premises. Indeed, because the insured lives on the premises, he or she owns his or her various possessions “while on [the] premises.”⁴ Under plaintiff’s interpretation, it would seem surplusage for the insurance company to have included

¹ The word “only” is omitted because it simply signals that the list is exhaustive.

² Virgie Downs is the only defendant to have filed an appellate brief.

³ The policy exclusions and other contractual terms are not helpful in resolving the dispute. In fact, the potentially applicable exclusion merely states that recreational vehicles other than those covered by the personal liability section are not covered.

⁴ Consider, as an analogy, the doctrine of “constructive possession” as explained in *People v Hardiman*, 466 Mich 417, 421 n 4; 646 NW2d 158 (2002) (“constructive possession exists where the defendant has the right to exercise control over [goods] and has knowledge of their presence”).

the “while on an insured premises” language. Construction of contracts should attempt to give effect to every word, *Klapp*, 468 Mich at 467, and contracts “are to be interpreted to avoid absurd or unreasonable conditions and results,” *Hastings*, 286 Mich App at 297.

In order to maintain the integrity of the list, a more appropriate reading is that, for coverage to apply, the damage must arise on the premises and when the listed action occurs (e.g., an individual is injured while fixing the brakes or unloading the vehicle on the premises). In other words, the damage must occur “during . . . the time that”⁵ the recreational vehicle is on the insured premises. We find that the trial court erred in holding otherwise and that it should have granted summary disposition to plaintiff.

The second issue identified on appeal concerns whether the accident itself or the antecedent negligence is the determinative event in regards to whether a covered occurrence exists. Our finding on the first issue essentially disposes of this issue. The policy defines an “occurrence” as “an accident that results in bodily injury or property damage and includes, as one occurrence, all continuous or repeated exposure to substantially the same generally harmful conditions” (bolding removed). The fact that the definition of “occurrence” does not include a location restriction is not dispositive because the phrase “while on an insured premises” serves to augment the coverage when recreational vehicles are involved. Reversal is warranted, as discussed above.

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

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

⁵ *Random House Webster’s College Dictionary* (1997) (defining “while”).