

STATE OF MICHIGAN
COURT OF APPEALS

HOME OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

MICHAEL REED and LORRAINE THOMPSON,

Defendants,

and

IRMA PENA GONZALEZ,

Defendant/Third-Party Plaintiff,

and

FARMERS INSURANCE EXCHANGE,

Third-Party Defendant-Appellant.

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

PER CURIAM.

Third-party defendant, Farmers Insurance Exchange (Farmers), appeals by remand of our Supreme Court as on leave granted an order rescinding an automobile insurance contract between plaintiff, Home Owners Insurance Company (Home Owners), and the deceased husband of defendant, Lorraine Thompson. *Home Owners Ins Co v Reed*, 472 Mich 877; 693 NW2d 816 (2005). Home Owners claims that Farmers does not have standing to appeal. We conclude that Farmers has standing, but affirm the trial court's order.

We first address Home Owners' challenge to Farmers' standing. Whether a party has standing is a question of law that we review de novo. *Nat'l Wildlife Fed'n v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004); *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 527; 695 NW2d 508 (2004). Home Owners argues that Farmers does not have standing to appeal because Farmers did not file a cross-claim in the trial court against Home Owners and because defendant, Irma Gonzalez, who is insured by Farmers, concurred in the relief sought by Home Owners. See *Farm Bureau Gen Ins Co of Mich*

v Riddering, 172 Mich App 696; 432 NW2d 404 (1988), criticized on other grounds *People v Yamat*, 475 Mich 49; 714 NW2d 335 (2006); *Winters v Nat'l Indemnity Co*, 120 Mich App 156; 327 NW2d 423 (1982). Home Owners has failed to convince us, however, that the *Riddering/Winters* line of cases is controlling under the facts of the instant case.

Generally, a party seeking appellate relief must be an “aggrieved party.” MCR 7.203(A); *Federated Ins Co v Oakland Co Rd Comm’n*, 475 Mich 286, 291; 715 NW2d 846 (2006). To be an aggrieved party for purposes of appeal, “a litigant must have suffered a concrete and particularized injury . . . arising from either the actions of the trial court or [an] appellate court judgment.” *Id.* at 291-292. Here, the trial court rescinded the portion of the Home Owners policy that covered the involved vehicle (“the Jeep”) and determined that Home Owners had no duty to defend or indemnify the driver, defendant Michael Reed, for the injuries sustained by Gonzalez. The court concluded that Home Owners was not liable for full coverage under its policy, but invited further argument from Farmers regarding whether Home Owners was barred from rescinding the minimum statutory coverage of \$20,000 per person and \$40,000 per occurrence. When Farmers raised this argument in its motion for reconsideration, however, the court denied the motion without specific comment on the issue. The stipulated order dismissing Gonzalez’s third-party complaint against Farmers without prejudice closed the case, but did not revisit the relationship between the insurers. Thus, Farmers was left as the sole insurer of Gonzalez’s injuries and certainly suffered a concrete and particularized injury as a result of the proceedings in the trial court.

Moreover, the purpose of declaratory actions is

to allow parties to avoid multiple litigation by enabling litigants to seek a determination of questions formerly not amenable to judicial determination, and that the rule is to be “liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” [*Allstate Ins Co v Hayes*, 442 Mich 56, 64-65; 499 NW2d 743 (1993) (citations omitted).]

It is essential in a declaratory action that all parties with apparent or actual interests in the matter be joined “so that they may be guided and bound by the judgment.” *Id.* at 65-66 (citation omitted). “Moreover, the declaratory remedy is an especially appropriate vehicle for resolving insurance coverage disputes.” *Id.* at 65. We also note that, once an insurer with a claim against it brings a declaratory action regarding coverage and names the injured party in the suit, the trial court has the power to declare the injured party’s rights. *Id.* at 63, 67-68, 69-70.

Hayes, supra, addressed standing at the trial court level. We find the case helpful here, nonetheless, for two reasons. First, Farmers was a named, active party at the trial level, arguing that Home Owners’ policy covered Reed’s use of the Jeep and Home Owners made no objection to Farmers’ standing to do so. Second, and most significant to our conclusion that the *Riddering/Winters* line of cases is distinguishable, Farmers is now the subrogee of Gonzalez’s rights to recovery under the Home Owners’ policy by virtue of the following clause in Gonzalez’s contract with Farmers: “In the event of any payment under this policy, we are entitled to all the rights of recovery of the person to whom payment was made against another.” Farmers paid Gonzalez pursuant to her uninsured/underinsured motorist policy with Farmers as the result of an arbitration between Farmers and Gonzalez. Thus, Home Owners has failed to convince us that the *Riddering/Winters* line of cases automatically prevents Farmers from having

standing, regardless that Farmers did not formally file a cross-claim. Therefore, we conclude that Farmers has standing to appeal because it was clearly aggrieved by the proceedings in the trial court.

Turning to whether the trial court properly rescinded the Jeep's coverage under the Home Owners policy, we initially note that the following facts appear to be uncontested. Thompson added the Jeep to the policy of her husband, John Thompson, because he intended to purchase the Jeep from Reed, who is the Thompsons' nephew. Reed did not reside with the Thompsons. The sale never occurred, however, because John Thompson became very ill and died. On the date of Reed's collision with Gonzalez, Reed's Jeep was listed on John Thompson's policy as a vehicle leased and driven by John Thompson. Thompson stated that she had forgotten that the Jeep had been added to the policy.

After Gonzalez brought a separate negligence action against Reed, Home Owners initiated the instant case seeking, in part, a declaration that Home Owners was not liable for damage or injury caused by Reed's use of the Jeep. The trial court granted Home Owners' request for rescission of the portion of the policy which covered the Jeep in response to Home Owners' motion for summary disposition pursuant to MCR 2.116(C)(10). We review a trial court's decision on a motion for summary disposition de novo. *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004).

The parties' arguments rely primarily on the construction of Michigan's financial responsibility act, MCL 257.501 *et seq.* The financial responsibility act requires certain motor vehicle insurance for the owner or operator of a vehicle. MCL 257.520(a), (b) and (c). This includes a minimum of \$20,000/\$40,000 coverage for damages arising out of the ownership, maintenance or use of the vehicle. MCL 257.520(b)(2). MCL 257.520(f)(1) reads:

The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy, and except as hereinafter provided, no fraud, misrepresentation, assumption of liability or other act of the insured in obtaining or retaining such policy, or in adjusting a claim under such policy, and no failure of the insured to give any notice, forward any paper or otherwise cooperate with the insurance carrier, shall constitute a defense as against such judgment creditor.

The goal of statutory construction is to discern and give effect to the intent of the Legislature, thus clear and unambiguous language is enforced as written. *Anzaldúa v Band*, 457 Mich 530, 534-535; 578 NW2d 306 (1998). Here, although "[g]enerally, a material misrepresentation made in an application for no-fault insurance entitles the insurer to void or to cancel retroactively the policy[,] . . . this right to rescind a policy altogether ceases to exist once there is a claim involving an innocent third party." *Farmers Ins Exchg v Anderson*, 206 Mich App 214, 218; 520 NW2d 686 (1994). However, rescission is only absolutely barred for the minimum required coverage; the statute does not prevent an insurer from using a defense of

fraud to rescind excess coverage beyond the minimum required by statute. See *id.* at 218-219; see, also, MCL 257.520(g).

Farmers argues, first, that because Gonzalez was injured while the Home Owners policy was still in effect, Home Owners is now barred from rescinding the coverage by MCL 257.520(f)(1). We agree with Home Owners, however, that the bar to rescission does not apply in this case because the coverage for the Jeep obtained in John Thompson's name was not "required by th[e] chapter" based on the plain language of the statute.

MCL 257.520(a) defines "motor vehicle liability policy," as used in the statute, as "an owner's or an operator's policy of liability insurance."¹ MCL 257.520(b) and (c) describes the required insurance for an owner and an operator, respectively. The bar to rescission in MCL 257.520(f) refers only to "[e]very motor vehicle liability policy," and the bar is limited to "the insurance required by this chapter" by MCL 257.520(f)(1). Moreover, *Farmers Ins Exchg, supra* at 217, 220, makes it very clear that the language of the financial responsibility act governs the scope of liability coverage when an accident occurs in Michigan, regardless of the broad language in earlier cases such as *Katinsky v Auto Club Ins Assoc*, 201 Mich App 167, 171; 505 NW2d 895 (1993), addressing the public policy concerns that underlie the bar to rescission when an innocent third party has been injured.

Accordingly, we conclude that rescission of the Jeep's coverage is not prevented in this case because MCL 257.520(f)(1) applies only to the "insurance required by th[e] chapter," and the chapter only describes the insurance requirements for an owner or operator. Because John Thompson did not own or operate the Jeep, he was not required to insure it. Therefore, the bar to rescission of statutorily required insurance is inapplicable to insurance procured for the Jeep under his name.

The only remaining question is whether the Jeep's coverage was, in fact, rescindable based on Thompson's material misrepresentations. We conclude that the trial court correctly decided that it was. "Rescission is justified without regard to the intentional nature of the misrepresentation, as long as it is relied upon by the insurer. Reliance may exist when the misrepresentation relates to the insurer's guidelines for determining eligibility for coverage." *Lake States Ins Co v Wilson*, 231 Mich App 327, 331; 586 NW2d 113 (1998). Here, there is no question that Thompson obtained coverage for the Jeep based on the fact that John Thompson would purchase and operate it. There was no intention that Reed be covered, and Farmers does not contend that Reed would have qualified for coverage individually or under the Thompson's policy; he was not a resident relative and his driving record rendered him ineligible for coverage. Moreover, it is of no consequence that the misrepresentation related to a future occurrence.

¹ We note that the no-fault act, MCL 500.3101 *et seq.*, also states that "[t]he *owner or registrant* of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." MCL 500.3101(1) (*italics added*). "Owner" is further defined by MCL 500.3101(g) to include persons renting a vehicle for over 30 days, MCL 500.3101(g)(i), most persons holding legal title to a vehicle, MCL 500.3101(g)(ii), and person with immediate rights of possession of a vehicle under an installment contract, MCL 500.3101(g)(iii).

“[F]uture statements support an action for fraud where the representations of fact are intended to be relied upon and accepted, and where the matter was within the particular knowledge of the speaker.” *Foreman v Foreman*, 266 Mich App 132, 147; 701 NW2d 167 (2005).

Most significantly, Farmers does little to meaningfully contest whether Thompson misrepresented material facts. Rather, Farmers’ arguments address only whether she did so intentionally. For instance, Farmers refers to an e-mail related to an internal investigation conducted by Home Owners which states that the investigation “has not uncovered any fraud or any material misrepresentation . . . [that] it appears there was no conspiracy to avoid underwriting . . . [and that Home Owners] will never be able to prove anything that will enable [it] to rescind the policy on the basis of wrong doing.” There is no reason, however, that this internal opinion during an investigation is dispositive of the legal effect of Thompson’s comments. Furthermore, the investigation appeared aimed at discovering any intentional wrongdoing, and the e-mail explicitly acknowledges Thompson’s innocent representation. Thus, there is no real dispute that Thompson misrepresented a fact which directly related to Home Owners’ guidelines for determining eligibility for coverage. Whether she did so unintentionally is irrelevant. The coverage was, therefore, rescindable.

Accordingly, we affirm the order of rescission as well as the trial court’s apparent later decision, in response to Farmers’ motion for reconsideration, that the Jeep’s coverage was fully rescindable and Home Owners is not liable for the minimum coverage required by statute.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Patrick M. Meter