

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF ABIGAIL N. FRICKE, by its
Personal Representative, HORIZON TRUST &
INVESTMENT MANAGEMENT,

Plaintiff-Appellant,

v

FARM BUREAU MUTUAL INSURANCE
COMPANY OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
February 15, 2011

No. 295338
Berrien Circuit Court
LC No. 09-000118-CK

Before: TALBOT, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

In this suit for declaratory relief, plaintiff Horizon Trust & Investment Management (Horizon Trust), as the personal representative of the Estate of Abigail N. Fricke, appeals as of right the trial court's order granting defendant Farm Bureau Mutual Insurance Company of Michigan's (Farm Bureau) motion for summary disposition. On appeal, we conclude that there were no errors warranting relief. For that reason, we affirm. We have decided this appeal without oral argument under MCR 7.214(E).

I. BASIC FACTS AND PROCEDURAL HISTORY

The facts in this case are undisputed. In January 2007, Thomas Fricke was driving with his wife, Abigail Fricke, in the front passenger seat. As he was driving down the couple's driveway, Thomas lost control of the car and drove into a pond. Thomas and Abigail both drowned.

Horizon Trust eventually filed a claim with the Fricke's automobile insurer, Farm Bureau. Although the policy provided for \$500,000 in coverage for bodily injury, Farm Bureau sent a letter to Horizon Trust indicating that the coverage limit was only \$20,000. Farm Bureau cited an exclusion that limited coverage to \$20,000 in the event that the insured injures a member of his or her own family.

In April 2009, Horizon Trust caused the Estate of Abigail Fricke to sue Farm Bureau. Horizon Trust sought a declaration that the exclusion cited by Farm Bureau in its letter did not apply and, as a result, the proper coverage level was \$500,000. Farm Bureau moved for summary disposition on the ground that the policy was unambiguous on its face and clearly excluded coverage in excess of the statutory minimum coverage for accidents involving the insured's own family. The trial court determined that the exclusion was valid and enforceable. For that reason, in November 2009, it entered an order granting Farm Bureau's motion for summary disposition and declaring that the applicable coverage limit was \$20,000.

This appeal followed.

II. DECLARATORY RELIEF

A. STANDARDS OF REVIEW

On appeal, Horizon Trust argues that the trial court erred in granting summary disposition in favor of Farm Bureau. Specifically, it argues that the exclusion at issue is ambiguous and must be construed against Farm Bureau and in favor of the higher coverage limits. It also argues that the exclusion contravenes public policy and, for that reason, is unenforceable. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009) This Court also reviews de novo the proper interpretation of an insurance contract, see *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005), and reviews de novo, as a question of law, whether a provision in an insurance contract contravenes public policy, *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

B. ANALYSIS

The policy at issue generally provides \$500,000 in bodily injury coverage for each person and each occurrence. However, the policy also provides that Farm Bureau does "not provide Liability Coverage" for an insured under certain circumstances. One such exclusion provides that Farm Bureau does not provide "for **bodily injury** to you or to any **family member** that exceeds the minimum statutory limits of the financial responsibility law or any similar laws of the state of Michigan or any other state or province in which an otherwise covered auto accident occurs."

The exclusion is not ambiguous. A contract is ambiguous if the words may reasonably be understood in different ways or the provisions irreconcilably conflict with each other. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). Horizon Trust does not argue that there are different ways to interpret the language or that there is a conflict in its provisions; rather, it argues that a typical policyholder would not understand the reference to the minimum limits provided under the financial responsibility law. The fact that contract language is complicated or technical does not render it ambiguous. Moreover, contrary to Horizon Trust's assertion, it is *not* unreasonable to expect policyholders to know the laws of this state; Michigan courts have repeatedly held that citizens "are presumed to know the law." *Adams Outdoor Advertising v East Lansing (After Remand)*, 463 Mich 17, 27 n 7; 614 NW2d 634 (2000).

Further, the fact that the provision is found under the exclusions rather than as a limitation on the coverage level does not render the term ambiguous. The provision clearly indicates that coverage in excess of the statutory minimum is excluded—that is, coverage is excluded except to the extent that Michigan law requires otherwise. This language is clear despite the fact that the term does not state the applicable minimum or cite the specific statutory provision; an ordinary policy holder is on notice that the coverage provided for accidents involving bodily injury to family members is the minimum coverage required by statute rather than the coverage level provided on the declarations page.¹ Likewise, as Farm Bureau points out, the language of the clause is substantially similar to that of the residual liability statute, MCL 500.3131(1), which provides in relevant part: “This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs.” And no court has yet found this language to be ambiguous.

Finally, as for Horizon Trust’s argument that the provision contravenes public policy, this Court has already determined that a similar exclusion was not contrary to public policy. See *Manier v MIC General Ins Corp*, 281 Mich App 485, 492; 760 NW2d 292 (2008).² Accordingly, we cannot conclude that the exclusion in this case is contrary to public policy.

The trial court did not err in granting summary disposition in favor of Farm Bureau.

Affirmed. As the prevailing party, Farm Bureau may tax its costs. MCR 7.219(A).

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Michael J. Kelly

¹ We also note that this exclusion is not the only one that excludes coverage except to the extent that Farm Bureau is required to provide coverage by statute. There is a similar provision for intentional acts causing bodily injury or property damage and for injuries arising from the use of the vehicle for racing.

² We do not agree with Horizon Trust’s claim that the relevant holding in *Manier* is non-binding dicta. In *Manier*, the Court determined that the insurer could lawfully reform the insurance contract on the basis of a misrepresentation. *Manier*, 281 Mich App at 489-490. However, the insurer did not reform the contract to reduce the amount of coverage. *Id.* at 487, 491. Rather, it relied on the household-related exclusion found in both the original and reformed policies to reduce coverage. *Id.* at 491 (rejecting the argument that the insurer unlawfully reformed the coverage to the detriment of innocent third parties because the argument was “factually unfounded.”). As such, the Court had to resolve the validity of this provision and its decision is binding on this Court. See MCR 7.215(C)(2).