

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

FREMONT INSURANCE COMPANY,  
  
Plaintiff-Appellant,

UNPUBLISHED  
November 29, 2011

v

No. 300825  
Kent Circuit Court  
LC No. 10-003010-CK

MICHAEL IZENBAARD and HALEY  
IZENBAARD,

Defendants-Appellees,

and

NATHAN KADAU,

Necessary Party Defendant-  
Appellee.

---

Before: WILDER, P.J., and HOEKSTRA and BORRELLO, JJ.

PER CURIAM.

In this insurance declaratory action, plaintiff, Fremont Insurance Company (Fremont), appeals as of right the trial court order granting summary disposition in favor of defendants. Because we conclude that the strip of land on which the accident at issue occurred is not a premises, we reverse.

Defendants Michael and Haley Izenbaard purchased a homeowner's insurance policy from Fremont on August 1, 2009. The policy provided coverage to a residence located in Grand Rapids, Michigan and to a secondary residence located in Caledonia, Michigan. The policy period was August 1, 2009 to August 1, 2010. On August 22, 2009, a bachelor party for defendant Nathan Kadau was held at the insured residence located in Caledonia. That evening, Michael, Kadau, and two other individuals went for a ride in Michael's all-terrain vehicle (ATV). Michael was driving the ATV, and Kadau was standing in the bed of the vehicle. Michael drove the ATV away from the insured residence and onto a path located on property owned by Consumers Energy Company. The ATV flipped over when Michael turned onto a steep, two-track dirt path and tried to drive up the incline. Kadau was injured when the vehicle flipped. The accident occurred about 1,000 feet away from the insured residence on property that was owned by Consumers Energy Company.

After the accident, Kadau brought a personal injury lawsuit against the Izenbaards. The Izenbaards asked Fremont to defend Kadau's lawsuit, and Fremont provided an attorney under a full reservation of rights. The instant case stems from Fremont's declaratory judgment action for a determination of its obligation, if any, to the Izenbaards. Specifically, Fremont requested a judgment finding that it has no contractual obligation to defend the lawsuit or indemnify the Izenbaards. Kadau was joined as a necessary party defendant. On September 3, 2010, Kadau moved the trial court for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). Kadau argued that the Izenbaard's insurance policy expressly and unambiguously provided coverage for bodily injuries that occurred on the Izenbaard's property or any premises used in connection with their property. On September 10, 2010, the Izenbaards moved to join Kadau's motion for summary disposition. Fremont responded to the motions on September 30, 2010, and argued that the insurance policy expressly excluded coverage of injuries arising from the use of motor vehicles and that under the circumstances of the accident, none of the exceptions to the exclusion were applicable. Specifically, Fremont claimed that Kadau was not injured on a "premises" used "in connection with" an insured location.

After hearing arguments regarding the summary disposition motion on October 8, 2010, the trial court granted summary disposition under MCR 2.116(C)(10) in favor of Kadau and the Izenbaards. The trial court noted that the policy provided coverage if the accident occurred on a "premises" used in connection with the insured residence. The trial court concluded that "premises" was not defined in the contract, and found that the term was ambiguous because courts and dictionaries have defined "premises" in multiple ways. The trial court stated that because any ambiguity must be construed against the drafter, it concluded that the location of the accident was a "premises" within the meaning of the contract. It further concluded that it was "beyond dispute" that the "premises" was used in connection with the insured residence.

On appeal, Fremont argues that the trial court erred in finding that the insurance policy provided liability coverage for the accident. Fremont raises two issues. First, Fremont argues that the trial court incorrectly interpreted the term "premises," and that the plain meaning of the term requires the presence of buildings. Second, Fremont argues that the trial court erred in determining that the accident occurred in a location that was used "in connection with" the insured residence.

We review a trial court's decision to grant summary disposition de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim based on the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Id.* The evidence is viewed in the light most favorable to the nonmoving party. *Id.* at 567-568. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to a judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The proper interpretation of a contract is a question of law that we review de novo. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

"The terms of an insurance policy are interpreted in accordance with Michigan's well-established principles of contract construction." *Henderson v State Farm Fire and Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). The goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties.

*Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). If the language is clear and unambiguous, the contract must be interpreted and enforced as written. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 111; 595 NW2d 832 (1999). The Court should interpret the words in a contract according to their ordinary meaning, and a dictionary may be used to determine the ordinary meaning of a word or a phrase. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 515; 773 NW2d 758 (2009).

We first address Fremont’s argument that the trial court incorrectly interpreted the term “premises” as used in the insurance policy. This issue requires that we interpret the insurance policy. The insurance policy in this case provided coverage for personal liability, but it specifically excluded personal liability coverage for bodily injury or property damage arising out of “the ownership, operation, . . . use, . . . of motor vehicles or all other motorized land conveyances.” However, the policy contained an exception to the exclusion, which provided that the exclusion would not apply to “a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and . . . owned by an insured and on an insured location.” The parties do not dispute that the accident resulted from “a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration.” The parties also admit that the vehicle involved in the accident was owned by the insured. The dispute in this case is in regard to whether the accident occurred on an “insured location.” The policy defined “insured location” as:

4. “insured location” means:
  - a. the residence premises
  - b. the part of other premises, other structures and grounds used by you as a residence and:
    - (1) which is shown in the Declarations; or
    - (2) which is acquired by you during the policy period for your use as a residence;
  - c. any premises used by you in connection with a premises in 4a or 4b above;

\* \* \*

8. “residence premises” means:
  - a. the one family dwelling, other structures, and grounds; or
  - b. that part of any other building; where you reside and which is shown as the “residence premises” in the Declarations.

The parties specifically disagree about the meaning of the term “premises” as used in section 4c, quoted above. Fremont contends that the situs of the accident was not a “premises” used “in connection with” the residence premises because it was on private property belonging to Consumers Energy Company, and there were no buildings on the land. Kadau and the

Izenbaards contend that the situs of the accident was a “premises” used “in connection with” the insured residence premises, and that even if a building is required for an area to constitute a “premises,” the power lines and bike path located on the property are structural improvements that satisfy the building requirement.

Because the policy does not define nor does any published Michigan case address the scope of the term “premises” as used in the policy, this issue presents a question of first impression. But both parties discuss two unpublished decisions of this Court. “An unpublished opinion is not precedentially binding under the rule of stare decisis.” MCR 7.215(C)(1). However, unpublished opinions can be instructive or persuasive. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136 n 3; 783 NW2d 133 (2010). First, the parties discuss *Sheldon v Zimmerman*, unpublished opinion per curiam of the Court of Appeals, issued July 22, 2004 (Docket No. 246053), which interpreted insurance contract language nearly identical to the language in this case. In *Sheldon*, the issue was whether a public roadway constituted a “premises” within the meaning of the insurance contract and this Court held, without explaining what is required to constitute a “premises,” that the plain and ordinary meaning of the term “premises” did not include a public roadway. The parties also discuss *Mich Basic Prop Ins Ass’n v Crouch*, unpublished memorandum opinion of the Court of Appeals, issued February 22, 2002 (Docket No. 227812). In *Crouch*, this Court affirmed an order granting summary disposition in favor of the insured because it found that the “in connection with” language of an insurance policy with identical language to the policy at issue in this case was ambiguous and that the language must consequently be construed against the drafter in favor of coverage.

The parties also cite cases from other jurisdictions that interpret nearly identical insurance contract language in support of their arguments. Judicial decisions from foreign jurisdictions may be persuasive, but are not binding on Michigan courts. *Hiner v Mojica*, 271 Mich App 604, 612; 722 NW2d 914 (2006). We note that none of the cases cited to us from other jurisdictions specifically address whether the use of the term “premises” requires the presence of a building, and many were decided on the basis of whether the accident area was being used “in connection with” a premises. See, e.g., *Indiana Ins Co v Dreiman*, 804 NE2d 815, 820 (Ind App, 2004) (finding that a public roadway is not a “premises,” citing the dictionary definitions for “premises” in Black’s Law Dictionary and *The American Heritage Dictionary*); *State Farm Fire and Cas Co v MacDonald*, 850 A2d 707, 708 (Pa Super, 2004) (holding that an insurance policy provided coverage based on a determination that the field where the accident occurred was “used in connection with” the insured’s property, no discussion regarding whether it was a “premises”). Consequently, we do not find the unpublished decisions of this Court or the cases from other jurisdictions persuasive because none of the cited cases specifically address the meaning of the term “premises.”

Because no binding authority has addressed the proper interpretation of the term “premises,” we employ well-settled tools of statutory construction to resolve this issue. We begin by recognizing that a term used in an insurance policy is not ambiguous simply because it is not defined in the insurance policy. *Henderson*, 460 Mich at 354. In such circumstances, we seek to identify the common meaning of the term and may rely on dictionary definitions. *Vushaj*, 284 Mich App at 515. *Random House Webster’s College Dictionary* (1992) defines “premises” as “(a) a tract of land including its buildings; (b) a building or part of a building together with its grounds and other appurtenances.” And Black’s Law Dictionary (8th ed)

defines “premises” as “a house or building, along with its grounds.” While these definitions of “premises” vary somewhat, both definitions expect that for there to be a premises there must be both buildings and land. Accordingly, under the common meaning of the term “premises,” the presence of a building is required.

In this case, it is undisputed that the land where the accident occurred did not have any improvements that could be characterized as a building. However, high voltage power lines are strung over the land on towers and a paved bike path runs through it. Kadau and the Izenbaards argue that the power lines and towers, and the bike path are clearly structures that qualify the property as being a “premises.” The insurance policy does not define “structures.” *Random House Webster’s College Dictionary* (1992) defines “structure” as “something constructed, as a building or bridge” and as “anything composed of organized or interrelated elements.” The power lines, towers and bike path arguably meet the common definition of structure. However, the common definitions of “premises” do not mention a “structure.” The definitions of “premises” require the presence of buildings, which are a specific type of structure. “Building” is defined as “any relatively permanent enclosed structure on a plot of land, having a roof and usu[ally] windows.” *Random House Webster’s College Dictionary* (1992). Accordingly, we conclude that the plain meaning of “premises” is not satisfied by any structure, such as the power lines and towers, but that it requires the specific presence of a building.

Because the policy specifically used the term “premises” instead of a more inclusive term, such as “land,” the plain language of the policy limits the type of area where coverage applies. An insurance contract must be enforced in accordance with its terms and a court “must not hold an insurance company liable for a risk that it did not assume.” *Henderson*, 460 Mich at 354. The clear language of the exclusionary clause in the insurance contract disavows coverage where the “motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration” is not operated on an “insured location.” Because the location of the accident was not a “premises,” it was not an “insured location.” We conclude that the insurance contract does not provide liability coverage for the accident. Accordingly, Fremont is entitled to judgment in its favor pursuant to MCR 2.116(I)(2) because the plain language of the insurance contract does not cover the location of the accident in this case.<sup>1</sup>

Reversed and remanded for entry of judgment in favor of plaintiff. We do not retain jurisdiction. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219

/s/ Kurtis T. Wilder  
/s/ Joel P. Hoekstra  
/s/ Stephen L. Borrello

---

<sup>1</sup> Because we conclude that the location of the accident was not a “premises” as defined by the contract, we need not address whether the location of the accident was used “in connection with” the insured residence.