

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

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FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES L. DUNCAN,

Defendant-Appellee,

and

LARRY J. COCHRANE, Personal Representative  
of the Estate of Purnella Duncan,

Defendant,

and

ANNIE ANDERSON,

Defendant-Appellee,

and

GMAC INSURANCE COMPANY,

Intervening Defendant-Appellant.

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FARM BUREAU GENERAL INSURANCE  
COMPANY OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES L. DUNCAN,

UNPUBLISHED  
August 14, 2008

No. 277531  
Genesee Circuit Court  
LC No. 05-082812-CK

No. 277662  
Genesee Circuit Court  
LC No. 05-082812-CK

Defendant-Appellee,

and

LARRY J. COCHRANE, Personal Representative  
of the Estate of Purnella Duncan,

Defendant,

and

ANNIE ANDERSON,

Defendant-Appellant,

and

GMAC INSURANCE COMPANY

Intervening Defendant.

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Before: Davis, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, several defendants<sup>1</sup> appeal the trial court's grant of summary disposition in favor of plaintiff Farm Bureau General Insurance (Farm Bureau). We reverse and remand for further proceedings.

This case arises out of an automobile accident in which James Duncan had a heart attack and lost control of a rental vehicle he was driving. Duncan's injured passengers filed suit against him in underlying actions. The instant suit was commenced by the driver's insurer, Farm Bureau, seeking a declaratory judgment that it had no obligation to defend or indemnify Duncan in those underlying actions. Farm Bureau relied on a single provision of its insurance policy excluding coverage for "using a vehicle without permission to do so." The vehicle had actually been rented by passenger Larry Cochrane pursuant to a rental agreement that prohibited any other person from driving. It is undisputed that the legal title owner of the vehicle, National Car Rental, did not in any way approve, or even know about, Duncan driving the vehicle. It is equally undisputed that Cochrane expressly permitted Duncan to drive because they were on a trip back from Alabama and Cochrane had become too ill to drive the vehicle himself.

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<sup>1</sup> For convenience and clarity, we will refer to the parties by their names.

The only issue to be decided is whether, on the above facts, Duncan was “using [the] vehicle without permission to do so” within the meaning of the policy.<sup>2</sup> Farm Bureau contends that Duncan was driving the van “without permission to do so” because he did not have permission or authorization from National Car Rental. The other parties contend that Duncan was driving the van *with* “permission to do so” because Cochrane, who had rented the vehicle, gave Duncan permission to drive it. The trial court agreed with Farm Bureau’s interpretation.

Rulings on motions for summary disposition and questions of statutory and contract interpretation are reviewed *de novo*. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). If a contract provision is unambiguous, the proper role of the courts is to enforce and apply the provision as it is written. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200; 747 NW2d 811 (2008). Contracts must be construed to harmonize and give effect to all words and phrases to the extent practicable, but a provision is considered ambiguous if it irreconcilably conflicts with another provision or is susceptible to multiple interpretations. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469-469; 663 NW2d 447 (2003). Insurance contracts and any coverage exclusions found therein are generally construed in favor of the insured, but only as a last resort; any ambiguous terms are given their plain and commonly understood meanings as much as possible, and an insurer cannot be held liable for risks it did not contract to assume. *Id.*, 469-471; *South Macomb Disposal Authority v American Ins Co*, 225 Mich App 635, 653; 572 NW2d 686 (1997). Summary disposition pursuant to MCR 2.116(C)(10) is appropriate where all the evidence and all legitimate inferences therefrom, when viewed in the light most favorable to the nonmoving party, shows no genuine issue regarding any material fact and that the moving party is entitled to judgment as a matter of law. *Coblentz, supra* at 567-568.

Again, the rental agreement between National Car Rental and Cochrane provided that only Cochrane was authorized to drive the vehicle. However, neither Farm Bureau nor Duncan were a party to the rental agreement. Furthermore, neither National Car Rental nor Cochrane were parties to the insurance policy between Farm Bureau and Duncan. Finally, we have found no assertion in the record that Duncan knew or should have known that the rental agreement forbade any driver other than Cochrane. The relevant exclusion in the insurance policy provides:

E. Exclusions

1. We do not provide liability coverage for any insured:

\* \* \*

- i. Using a vehicle without permission to do so. The use must fall within the scope of that permission. This exclusion does not apply to a family member using your covered auto which is owned by you.

“Permission” is not defined in the policy, so we may rely on a dictionary definition. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 504; 741 NW2d 539 (2007). “Permission” means

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<sup>2</sup> Farm Bureau also asserted in the trial court that, even if Duncan was driving “with permission,” Cochrane revoked that permission prior to the accident. The trial court found a genuine question of fact precluding summary disposition on that basis, and because neither party has appealed that portion of the trial court’s decision, it is not before us and we express no view thereon.

“authorization granted to do something; formal consent.” *Random House Webster’s College Dictionary* (2001). The plain language of the policy therefore excludes coverage if the insured uses a vehicle without some kind of formal authorization. The problem in this case is that the policy does not explicitly specify from whom the permission must be given.

This omission makes the trial court’s reliance on *Allstate v McDonald*, unpublished opinion per curiam of the Court of Appeals (Docket No. 259938, issued July 25, 2006), inappropriate. The trial court properly did not regard *Allstate* as binding, MCR 7.215(C)(1), but it incorrectly concluded that the facts were so “remarkably similar” and the reasoning sufficiently sound that “you can substitute the names of the parties involved in this litigation and you would come to the same conclusion.” In *Allstate*, this Court repeatedly emphasized its reliance on a term in the insurance policy that coverage was only provided for vehicles used “with the owner’s permission” (emphasis added by the *Allstate* Court). Farm Bureau cites no similar language in this insurance policy specifying that the permission must be the *vehicle owner’s* permission. Therefore, unlike the situation in *Allstate*, whether Duncan received permission from the *owner* of the vehicle – National Car Rental – is not necessarily dispositive.

Because the insurance policy does not specify from whom the insured must have permission, any analysis of the significance of that clause should likewise not be based on from whom the insured had permission. Rather, the most rational inquiry is whether the insurance policy required: (1) actual authorization from the owner, viewed from an objective standpoint; or (2) a belief of authorization, as viewed from the insured’s standpoint.<sup>3</sup> The policy requires only the latter, because the plain language of the exclusion refers to *permission received by the insured*, rather than *permission granted by any particular party*. Therefore, the plain language of the policy strongly suggests that the focus is on *the standpoint of the insured*.

This is consistent with Michigan case law holding that when the term “accident” is not defined in an insurance policy, whether one occurred is evaluated from the standpoint of the insured. *Allstate Ins Co v McCarn*, 466 Mich 277, 281-282; 645 NW2d 20 (2002). It is also consistent with the most obvious reason for having this kind of exclusion: that the insurer did not intend to assume any risks arising out of an insured’s wrongful exercise of control over the vehicle. In the absence of an explicit requirement that the insured must obtain permission directly from the owner (or any other specified individual), and additionally considering the exception’s other requirement that the “use must fall within the scope of [the] permission,” the rational inference is that this exception constitutes a refusal to cover any such exercise of control that the insured actually knows, or should have reason to know, is wrongful.

Finally, where a contract is genuinely ambiguous as to whether an objective or a subjective perspective should be applied, any such ambiguity should be resolved in the insured’s favor. *South Macomb Disposal Authority, supra* at 656-658. Had Farm Bureau, the drafter of the policy, intended to require its insured to obtain permission *from the vehicle’s owner*, as opposed to just “permission,” such a term would have been easy to add. In that case, the result

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<sup>3</sup> Although we presume that any such belief should be not only genuine, but also reasonable.

would have been the same as in *Allstate v McDonald, supra*. But the insurance policy that Farm Bureau drafted does not contain any such requirement, and so the courts may not rewrite the parties' contract to add it.

Under the plainest interpretation of the insurance policy, the fact that James Duncan did not receive permission from National Car Rental – the owner – does not automatically trigger the coverage exception upon which Farm Bureau relies. *From Duncan's perspective*, he had been given permission to drive the van, so he was not driving the vehicle “without permission to do so” within the meaning of the insurance policy. The policy exclusion therefore does not apply.

The trial court's grant of summary disposition in favor of Farm Bureau on this issue is reversed, and the matter is remanded for further proceedings. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello