

STATE OF MICHIGAN
COURT OF APPEALS

NASSAR MAKKI,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE and
ROUDTHA MAKKI, Personal Representative of
the Estate of ALEX MAKKI, Deceased, and Next
Friend for NISSRINE MAKKI, AMANDA
MAKKI, and MOHAMMED MAKKI, Minors,

Defendants-Appellees.

UNPUBLISHED

January 6, 2005

No. 249547

Wayne Circuit Court

LC No. 02-236857-CK

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order denying his motion for summary disposition, and granting summary disposition in favor of defendant Farmers Insurance Exchange (“defendant”) pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff accidentally struck and killed his one-year-old child while operating his own automobile. At the time, plaintiff had an automobile insurance policy with defendant with policy limits of \$250,000/\$500,000. Plaintiff also had a “*Special Personal Umbrella Policy*” for excess coverage of one million dollars.

The personal representative of the child’s estate brought an action against plaintiff. Defendant denied coverage under the umbrella policy, relying on an exclusion. Plaintiff subsequently filed this declaratory judgment action, seeking a ruling that defendant was obligated to provide a defense and indemnification in excess of the underlying policy limits. Both parties moved for summary disposition. In granting defendant’s motion, the trial court relied on an exclusion cited by defendant. On appeal, the parties agree that the exclusion is inapplicable. Instead, they contend that the dispositive issue is whether plaintiff is an “insured” within the meaning of the umbrella policy when operating his own automobile.

We review the trial court’s ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The construction and interpretation of an insurance policy and whether the policy language is ambiguous are questions

of law that we also review de novo. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). The general rules of construction are applied in interpreting insurance policies. See *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). If the insurance contract sets forth definitions, the policy language must be interpreted according to those definitions. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997).

The umbrella policy defines “insured” in part I, § 7, as follows:

a. you and the following residents of your household except as respects **autos** and **watercraft**:

- (1) Your relatives; and
- (2) Any person under age 21 in the care of a named person above.

b. as respects **autos** and **watercraft**,

- (1) any person using . . . a **watercraft** . . . ; or
- (2) *you and any person in 7.a. (1) and (2) above, using autos* (with a reasonable belief that they are entitled to do so) *not owned by you* or furnished for your regular use. [Emphasis added.]

It is undisputed that plaintiff was using his own automobile at the time of the accident. In light of the plain language that a policyholder is not an “insured” when using his own automobile, defendant is not obligated to defend and indemnify plaintiff in excess of the underlying policy. Although the trial court relied on an inapplicable exclusion in granting defendant’s motion, this Court will not reverse when the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Consequently, we affirm the grant of summary disposition to defendant.

We reject plaintiff’s claim that defendant is estopped from asserting the defense that plaintiff is not an “insured.” Generally, after an insurance company denies coverage to an insured and states its defenses, it is estopped from raising new defenses. *Smit v State Farm Ins Co*, 207 Mich App 674, 679-680; 525 NW2d 528 (1994). But an insurance company is not estopped from raising defenses where the effect of estoppel would require the insurance company to cover a loss it never agreed to cover. *Id.* at 680. While there are two exceptions to this precept, *id.* at 680-681, neither is applicable here.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens