

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS WALWORTH and MARY
WALWORTH, Individually and as Co-Personal
Representatives of the Estate of VICTOR
WALWORTH, Deceased,

UNPUBLISHED
October 3, 2006

Plaintiffs-Appellees,

v

AUTO-OWNERS INSURANCE COMPANY,

No. 266957
Lenawee Circuit Court
LC No. 04-041721-NF

Defendant-Appellant.

Before: Borrello, P.J., and Jansen and Cooper, JJ.

MEMORANDUM.

In this action for underinsured motorist coverage, defendant appeals as of right the trial court's grant of summary disposition in favor of plaintiffs and the trial court's order entering judgment in the amount of \$300,000. We reverse and remand for entry of judgment in favor of defendant. This appeal is being decided without oral argument. MCR 7.214(E).

While riding a bicycle, plaintiffs' son was struck and killed by a motor vehicle. The driver of the motor vehicle was insured in the amount of \$100,000. Plaintiffs sought underinsured motorist coverage pursuant to their insurance policy, which also covered their son. Plaintiffs' policy provided in relevant part:

a. We will pay compensatory damages you are legally entitled to recover:

(1) from the owner or operator of any underinsured automobile;

(2) for bodily injury you accidentally sustain and which arises out of the ownership, maintenance or use of the underinsured automobile when you are a pedestrian or while occupying an automobile you do not own

b. The coverage extended in 6.a. above is also afforded to a relative who does not own an automobile. [Emphasis omitted.]

Accordingly, the question of coverage in this case depends on whether plaintiff's decedent, who was riding a bicycle at the time of the accident, qualifies as a "pedestrian" for purposes of the policy.

We review de novo a trial court's decision on a motion for summary disposition and matters involving the interpretation of contracts. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

The word "pedestrian" is not defined in the insurance policy. However, this Court recently examined a functionally identical insurance provision in the context of uninsured motorist coverage. *Cole v Auto Owners Ins Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 258002, issued August 10, 2006). Relying on a dictionary definition of "pedestrian" as "a person who goes or travels on foot," this Court concluded that the term was unambiguous and that the plaintiff in that case was not a "pedestrian" because he was riding a bicycle.

In this case, it is undisputed that plaintiff's decedent was riding a bicycle at the time of the accident. Therefore, plaintiff's decedent was not a "pedestrian." In light of *Cole*, the trial court erred in denying defendant's motion for summary disposition. We reverse and remand for entry of judgment in favor of defendant. In light of our decision, we need not address defendant's remaining arguments on appeal.

Reversed and remanded. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

I concur in result only.

/s/ Jessica R. Cooper