STATE OF MICHIGAN

COURT OF APPEALS

LIZ PATMON,

Plaintiff-Appellee,

and

MENDELSON ORTHOPEDICS, P.C.,

Intervening Plaintiff-Appellee,

v

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 23, 2014

No. 318307
Wayne Circuit Court
LC No. 12-012378-NF

Before: O'CONNELL, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

Is a stepchild "related by marriage" to her stepfather even after the child's mother dies? We confront that question in this first-party no-fault insurance case. The insurance policy language at issue affords first-party no-fault coverage to "relatives" residing with the insured. A "relative" includes a person related to the insured "by blood, marriage or adoption[.]" The circuit court held this language ambiguous, and ordered coverage by applying the doctrine of *contra proferentem*. We conclude that the common understanding of the term "related by marriage" incorporates a stepparent relationship that continues even after the death of the biological parent, and affirm on that basis.

I. FACTS AND PROCEEDINGS

Plaintiff Liz Patmon sought first-party no-fault benefits under an insurance policy issued to Melvin Jordan by defendant Nationwide Mutual Fire Insurance Company. The facts surrounding the accident and the nature of Patmon's injuries are of no consequence to the legal issue presented, so we will ignore them. Plaintiff Mendelson Orthopedics, P.C., provided medical services to Patmon, and was permitted to intervene as a party plaintiff in the litigation Patmon initiated.

Patmon is 39 years old. Her parents divorced when she was a child, and her mother married Jordan when Patmon was approximately five years old.[1] Jordan and Patmon's mother were married for approximately 28 years, until Patmon's mother's death in 2009. Patmon lived with Jordan and her mother for most of that time. Patmon's biological father is alive and lives in Cleveland. Patmon has resided with Jordan since her mother's death, and currently pays him $150 a month in rent.

Michigan's No-Fault Insurance Act, MCL 500.3101 *et seq*., provides that personal protection insurance (PIP) benefits under a Michigan no-fault policy apply to "the person named in the policy, the person's spouse, and a relative of either domiciled in the same household[.]" MCL 500.3114(1). Nationwide does not dispute that Patmon is domiciled in the same household as Jordan. Rather, the parties disagree about whether Patmon is entitled to first-party no-fault benefits as a "relative" under Jordan's policy, which defines that term as follows:

> "**RELATIVE**" means one who regularly lives in **your** household and who is related to **you** by blood, marriage or adoption (including a ward or foster child). A **relative** may live temporarily outside **your** household. In the No-Fault coverage, a **relative** includes **spouse**. [Bold in original.]

When Nationwide denied coverage, Patmon commenced this lawsuit, and Mendelson intervened.

Following discovery, Nationwide sought summary disposition under MCR 2.116(C)(8) and (10), arguing that the death of Patmon's mother terminated Patmon's status as Jordan's stepdaughter.[2] Counsel for Nationwide admitted at the circuit court hearing that she could find no published decisions construing similar language. She premised her argument on *In re Combs Estate*, 257 Mich App 622; 669 NW2d 313 (2003), a case arising under MCL 600.2922(3), a provision of the Wrongful Death Act (WDA). Mendelson's counsel emphasized that although *Combs* marked the end of a stepchild's rights under the WDA with the death of his or her natural parent, this was not true in other contexts, such as entitlement to Social Security benefits.

The circuit court acknowledged that under *Combs* "death ends the marriage," but declined to find *Combs* dispositive of this no-fault insurance case. The court then ruled that the "relative" provision in Jordan's no-fault policy was ambiguous, reasoning:

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[1] We recite the facts as alleged in the parties' briefs, which we presume to be correct since they are undisputed. Because neither party filed Patmon's deposition transcript or any portion of the transcript in the circuit court, factual details (such as Patmon's mother's name and exact dates) are not available to us. Ordinarily, we would dismiss Nationwide's appeal on that ground. See MCR 2.116(G). But because the parties have agreed to the facts relevant to the legal issue presented, we treat this as a matter submitted under stipulated facts pursuant to MCR 2.116(A)(2).

[2] The circuit court granted defendant's motion for summary disposition as to Patmon's uninsured motorist claim. That claim is not before this Court.

> I know the argument is death ends the marriage here, but he remains her stepfather because of the marriage. There's no denying that they were married a lengthy period of time, and she regularly lives in his household. So I'm going to construe against the drafter and deny the motion.

Nationwide filed an interlocutory application for leave to appeal, which this Court granted. *Patmon v Nationwide Mut Fire Ins Co*, unpublished order of the Court of Appeals, entered February 27, 2014 (Docket No. 318307).

II. ANALYSIS

We review de novo both the circuit court's summary disposition ruling and its interpretation and application of the insurance policy's contractual language. *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 599, 611; 792 NW2d 344 (2010). Because a no-fault insurance policy is a contract, the general rules of contract interpretation apply. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). When considering the meaning of policy terms, we must read the whole instrument with the goal of enforcing the parties' intent. *Fresard v Mich Millers Mut Ins Co*, 414 Mich 686, 694; 327 NW2d 286 (1982).

Clear and unambiguous provisions of an insurance policy must be enforced according to their plain meanings. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). A contract's failure to define a relevant term does not necessarily render the contract ambiguous. *Terrien v Zwit*, 467 Mich 56, 76; 648 NW2d 602 (2002). "Rather, if a term is not defined in a contract, we will interpret such term in accordance with its 'commonly used meaning.'" *Id*. at 76-77 (citation omitted). The words in question should not be parsed in isolation but read in context as they may convey a different meaning when used in conjunction with other words. *Henderson*, 460 Mich at 355. Only when the provisions of an insurance policy are capable of "conflicting interpretations" is the contract properly considered ambiguous. *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999).

The insurance policy language defines a "relative" as a person "who regularly lives in [the named insured's] household and who is related to [the named insured] by blood, marriage, or adoption[.]" Although the policy defines the word "relative," it does not further elucidate the meaning of the phrase "related . . . by marriage." This deficit does not necessarily equate with ambiguity, however. *Terrien*, 467 Mich at 76. Before declaring the phrase capable of conflicting interpretations, we must strive to ascertain its ordinary and commonly used meaning. "The tools available to a court in seeking to establish the meaning of such phrases include common understandings of which the court can take notice, as well as other sources such as specialized dictionaries or publications." *Henderson*, 460 Mich at 357.

Nationwide does not dispute that if Patmon's mother were still alive, Patmon would be "related by marriage" to Jordan as his stepdaughter. Thus, by common understanding the term "related to you by . . . marriage" encompasses the stepparent/stepchild relationship, at least while the biological parent remains alive. See *Boone v Safeway Ins Co of Alabama, Inc*, 690 So 2d 404, 406 (Ala Civ App, 1997); *Sigel v New Jersey Mfrs Ins Co*, 328 NJ Super 293, 298; 745 A2d 602 (2000). Standing alone, the policy language offers no guidance in determining whether the death of the biological parent terminates the "relation . . . by marriage" between the stepchild and

the surviving stepparent. Our task then is to discern the common meaning of the term "related . . . by marriage" in that context.

Like counsel, we have found no Michigan case law interpreting the phrase "related . . . by marriage." Several other courts, however, have analyzed whether the same or strikingly similar insurance policy language subsumes a stepparent relationship even when the biological parent is no longer present. Virtually all of them have concluded that it does. Thus, we find the term "related . . . by marriage" unambiguous and susceptible of a common understanding as inclusive of a stepparent relationship that endures the death of the biological parent.

In one leading case on the subject, *Sjogren v Metro Prop & Cas Ins Co*, 703 A2d 608 (RI, 1997), the Rhode Island Supreme Court examined whether the phrase "related by marriage" applied to a stepson who remained within his stepmother's household following the parents' divorce. The insurance policy at issue extended uninsured motorist coverage under certain circumstances to "you or a relative." *Id.* at 610. The policy defined "relative" as "'a person related to you by blood, marriage or adoption, and who also resides in your household.'" *Id.* In construing this language, the Rhode Island Supreme Court began by observing that "[a]s commonly understood, a relative is '[a] kinsman; a person connected with another by blood or affinity.'" *Id.* at 611 (citation omitted). "'Affinity' in turn is 'the connection existing in consequence of marriage between each of the married persons and the kindred of the other.'" *Id.* (citations omitted). The policy language "clearly contemplates coverage" of stepchildren, the Court expressed. The "more challenging task," *Sjogren* continued, is sorting out whether "affinal relationships persist after the dissolution of the relevant marriage." *Id.*

After canvassing cases from other states, the Rhode Island Supreme Court determined that "[t]he law in this field is unsettled, and the authorities in other jurisdictions that have addressed this question are divided." *Id.*[3] One case, the Court elucidated, was "most similar" to *Sjogren*: *Remington v Aetna Cas & Surety Co*, 35 Conn App 581; 646 A2d 266 (1994), rev'd on other grounds 240 Conn 309; 692 A2d 399 (1997). *Sjogren*, 703 A2d at 611. In *Remington*, the Connecticut Court of Appeals sitting en banc "unanimously held that a stepson would be covered as a relative for uninsured motorists purposes if the proper showing of a continuing familial relationship was made as a matter of fact, even though his natural father had died sometime earlier." *Id.*

[3] *Sjogren* cites two cases supporting the proposition that a "bright-line rule" terminates relationships by affinity when a marriage dissolves. In one case, *Demaio v State Farm Mut Auto Ins Co*, 534 So 2d 1244 (Fla Ct App, 1988), the Court held in a three-paragraph opinion that the insured's "uncle-nephew" relationship terminated with the insured's divorce from the nephew's aunt by blood. Another case, *Zimmerer v Prudential Ins Co of America*, 150 Neb 351; 34 NW2d 750 (1948), involves whether a judge must be disqualified because of a relationship to a party, specifically the judge's deceased wife's brother. The Court noted that "[i]n general, the cases that have held that steprelatives do not remain related in such circumstances involved situations in which being related would effect a *penalty* upon the individuals in question." *Sjogren*, 703 A2d at 611 (emphasis in original).

In *Remington*, the deceased was the stepson of the policy holder. *Remington*, 35 Conn App at 582. The policy afforded underinsured motorist coverage for "you or any family member." *Id.* A "family member" was defined by the policy as "'a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.'" *Id.* This policy language is virtually identical to Jordan's Nationwide policy.

The plaintiff in *Remington* alleged that the decedent, her stepson, was covered under her policy. The defendant raised several objections to coverage, including that that the decedent was no longer related to the plaintiff because the decedent's father had died. *Id.* The Connecticut Court of Appeals rejected the argument that the stepparent relationship terminates "with the end of the marriage that created it." *Id* at 587. The Court commenced its lengthy analysis with a discussion of *In re Bordeaux's Estate*, 37 Wash 2d 561; 225 P2d 433 (1950), in which the Washington Supreme Court "demonstrated that there was no absolute principle, nor had one ever existed at common law, that affinity was broken on the death of the spouse whose marriage created it." *Remington*, 35 Conn App at 587. The *Remington* Court continued: "Rather, the survival of affinal relationships depends on the context in which they are asserted." *Id*.[4]

In *Bordeaux's Estate*, the Court presented an encyclopedic collection of case law examining relationship by affinity in a variety of legal contexts. That case involved a tax statute. After deeply scrutinizing a dozen or more cases, the Court observed, "the modern tendency has been, and rightly so, to assimilate the stepchild to the natural child." *Bordeaux's Estate*, 37 Wash 2d at 594. Although the death of a spouse terminates that affinity relationship, the Court held, it did not limit the meaning of the term "stepchild" as used in the tax statute at issue. *Id.* In *In re Estate of Blessing*, 174 Wash 2d 228; 73 P3d 975 (2012), the Washington Supreme Court forcefully reaffirmed *Bordeaux's Estate*, holding that under the Washington wrongful death act, the decedent's stepchildren were entitled to participate in the wrongful death action.

Although not a no-fault insurance case, this Court's decision in *Hilliker v Dowell*, 54 Mich App 249; 220 NW2d 712 (1974), comports with the decisions in *Sjogren*, *Remington*, and *Bordeaux's Estate*. Nolan Walter Dowell, the decedent in *Hilliker*, was married to Charlie Mae Dowell. Charlie Mae brought two children to the marriage who became Nolan's stepchildren. *Id.* at 250. "For some 17 years following their mother's marriage, these two children, although never adopted by the deceased, were brought up in his home and not only treated as his children but during this time the decedent held himself out to be their father." *Id*. Charlie Mae and Nolan divorced. When Nolan later died, Charlie Mae and his stepchildren survived him. Nolan's life insurance policy named "Charlie Mae Dowell, wife" as his primary beneficiary, and "children" as contingent beneficiaries. *Id.* at 251. The parties conceded that under MCL 552.101, Charlie Mae was not entitled to the proceeds of the policy. *Id.* This Court adopted the trial court's factual findings and affirmed the trial court's ruling that the stepchildren were properly

[4] A concurring judge in *Remington* wrote: "I would . . . hold that once a stepchild, always a stepchild, in all contexts, regardless of how a marriage between the biological parent and stepparent has terminated, unless the statute, contract or other vehicle being examined provides otherwise." *Id.* at 593-594.

considered the contingent beneficiaries. This Court did not engage in any independent legal analysis on this issue, however. *Id*. at 252.

Finally, we find noteworthy a 1935 opinion of the United States Court of Appeals for the Seventh Circuit, *Steele v Suwalski*, 75 F2d 885 (CA 7, 1935). *Steele* involved the interpretation of a "war risk" insurance policy. The Court was tasked with determining whether the policy included the deceased's sister-in-law within the class of allowable beneficiaries. *Id.* at 886. *Steele* discusses many of the cases that would later be reviewed in *Bordeaux's Estate*, and reaches the same conclusion: relationships by affinity do not terminate with the death or divorce of one of the married parties. The Court focused on context:

> Where the relationship by affinity is in fact, as it was in this case, continued beyond the death of one of the parties to the marriage which created the relationship, and where the parties continue to maintain the same family ties and relationships, considering themselves morally bound to care for each other, the District Court properly found that the relationship continued to exist and that appellee, in this case, was the sister-in-law of the deceased veteran within the meaning of 38 USCA § 511. As was so aptly stated in the case of *Bennett v Van Riper*, 47 N J Eq 563, 22 A 1055, 1056, 14 L R A 342, 24 Am St Rep 416: "The ties of affinity are often stronger than those between collateral, or even lineal, kinsmen by blood; and there is nothing unreasonable in saying that this certificate was made payable to one whom the holder supposed was properly classed among his relatives, and that the council so intended. Where there is no fixed legal or technical meaning with the court must follow in the construction of a contract, then 'the best construction,' . . . 'is that which is made by viewing the subject of the contract as the mass of mankind would view it; for it may be safely assumed that such was the aspect in which the parties themselves viewed it. A result thus obtained is exactly what is obtained from the cardinal rule of intention.' . . . It seems that the objects of this association will be best attained by the adoption of a common, though it may be an inexact, interpretation of the words 'related to' as used in the article above referred to, rather than by a restricted meaning that may not have been known, and is certain to defeat the purpose of this deceased member; and that no rule of legal construction will be violated by giving it such meaning." [*Id*. at 888.]

The weight of this authority persuades us that the common understanding of the term "related by marriage" can encompass a stepparent relationship even absent the biological parent.[5]

[5] We have located but one case decided during the last 75 years reaching a different conclusion, *Randolph v Nationwide Mut Fire Ins Co*, 242 AD2d 889 (NY S Ct, App Div, 1997). There, the insured and a stepchild died in a fire at the insured's home. The insured's wife had died a year before the fire. The homeowner's policy excluded coverage for "bodily injury to you, and to the following who live in your household: your spouse, your relatives or any other person under age 21 and in the care of you or your relatives." *Id.* at 889. The New York court held that "[t]o the extent that the stepchild was a relative by affinity of plaintiff's decedent, that relationship

Heeding *Henderson*'s admonition that we must place the words in context before interpreting them further convinces us that the Nationwide policy affords coverage to a stepchild who continues to reside with a stepparent, even after the death of the stepparent's spouse.

The No-Fault Act requires that insurers provide PIP benefits to "relative[s]" domiciled in the same household as the named policy holder. MCL 500.3114(1). The insurance policy extends first-party coverage to those "regularly liv[ing]" with the insured who are "related to [the insured] by . . . marriage." The statute and the policy look to the domiciliaries of a "household" as candidates for coverage. Patmon was domiciled with Jordan for most of her life. They maintained a close familial, "household" relationship even after Patmon's mother's death. Given that the common use and understanding of the term "stepchildren" encompasses a relationship that persists even after the biological parent's death, the policy affords coverage when a stepchild's domicile remains with the named insured, as here.

Domicile is central to the policy language governing relatives, and it is central to our analysis. In addition to a relationship "by marriage," the policy requires residence within the insured's household. When fulfilled, this condition for coverage bespeaks an intent to continue a relationship that began with a marriage, even after the marriage has ended. Such relationships are commonly believed to endure beyond a marriage. For example, where a married couple invites one spouse's parent to share their home and that spouse subsequently dies, no one would question the continuing description of the parent as the surviving spouse's "in-law." Nor would it seem at all unusual or uncommon for a stepparent to continue to house and raise a minor stepchild, even after the death of the stepchild's natural parent. Context is key. Here, the relationship by marriage persists because the parties remain connected at a minimum by their decision to share a residence.[6]

We respectfully reject Nationwide's argument that *Combs*, 257 Mich App 622, controls the outcome of this case. *Combs* arose from disputed claims to the proceeds of a wrongful death settlement. Ellen Combs died as a result of injuries sustained in an automobile accident. She was survived by four biological children. Combs's prior husband, Arlie Combs, predeceased her. Ellen was the stepmother of Arlie's two children. Arlie's children sought a share of the settlement proceeds, pursuant to MCL 600.2922. *Id*. at 623.

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terminated upon the death of the spouse of plaintiff's decedent," thereby mandating that the insurance company defend and indemnify the plaintiff's decedent in the underlying personal case. *Id.* at 890. This ruling fits within the *Sjogren* category of cases that would exact a "penalty" should a relationship be found.

[6] The dissent observes that the policy includes "ward[s]" and "foster child[ren]" of the insured within the definition of "relative," and finds that this creates "an ambiguity." We discern no ambiguity. Rather, as commonly understood, wards and foster children living in the same home as an insured are domiciliaries of that home. The same is true of a stepchild whose parent has died.

MCL 600.2922(3) provides:

> (3) Subject to sections 2802 to 2805 of the estates and protected individuals code, 1998 PA 386, MCL 700.2802 to MCL 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:
>
> (a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.
>
> (b) The children of the deceased's spouse.

Arlie's children argued that they were entitled to damages as children of Combs' spouse (Arlie). This Court determined that when Arlie died, his marriage to Combs ended. Therefore, at the time of Combs' death, Arlie was not her spouse and his children were not entitled to damages under MCR 600.2922(3)(b).[7] *Combs*, 257 Mich App at 625.

We respectfully disagree with our dissenting colleague's view that *Combs* and this case present "substantially similar issues."[8] In MCL 600.2922(3)(b), the Legislature used the term: "children of the deceased's spouse." Were we interpreting and applying that same language today, we would find *Combs* instructive. And were we considering whether a marriage terminates with death, our common sense would guide us to the obvious answer. The insurance policy before us does not use the term "children" to delimit the sphere of insureds. The words used—"related by marriage"—are far broader. By common understanding, that phrase envisages an insured's stepchildren, regardless of whether the biological parent survives. As the Washington Supreme Court observed almost 65 years ago, "the modern tendency has been, and rightly so, to assimilate the stepchild to the natural child." *Bordeaux's Estate*, 37 Wash 2d at 594.

[7] Judge Helene N. White dissented in *Combs*. She opined that the statute is ambiguous, because the language does not clarify whether "the children of the deceased's spouse" refers the children of a surviving spouse, or of the deceased. *Id*. at 625.

[8] We similarly disagree with the dissent's interpretation of our holding as rooted in ambiguity. We have stated, and emphasize, that the common understanding of the phrase "related by marriage" unambiguously includes stepchildren of a deceased spouse.

Because the commonly understood meaning of the phrase "related by marriage" embraces the children of a deceased spouse, *Combs* is inapplicable.

We affirm.

/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher