

STATE OF MICHIGAN
COURT OF APPEALS

AMERISURE INSURANCE COMPANY (as
designated by the State of Michigan Assigned
Claims Facility),

Plaintiff-Appellee,

v

REGINALD COLEMAN,

Defendant,

and

TITAN INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
February 27, 2007
9:25 a.m.

No. 270948
Oakland Circuit Court
LC No. 05-068822-CK

Before: Donofrio, P.J., and Bandstra and Zahra, JJ.

BANDSTRA, J.

Defendant Titan Insurance Company appeals as of right the grant of summary disposition and judgment entered in favor of plaintiff in this no-fault case. We conclude that the trial court correctly determined that, under the terms of the insurance policy at issue here, Titan was the insurer of the operator of the motor vehicle involved in the accident and therefore liable to provide no-fault benefits under MCL 500.3114(4)(b). We affirm.

BASIC FACTS AND PROCEEDINGS BELOW

The facts in this case are not in dispute. Bernard Coleman (Bernard), Tonya Paige Coleman (Tonya) and Reginald (Reginald) Coleman were involved in a car accident. Bernard and Tonya were married and living together at the time of the accident. Reginald is Bernard's nephew and was not living with Bernard and Tonya at the time of the accident. During the accident, Bernard was driving a Plymouth Spirit which Tonya had borrowed from Agnes Fleming, Tonya's mother. Fleming was the owner and registrant of the Plymouth Spirit, which was uninsured. On the date of the accident, Tonya had a Michigan no-fault insurance policy with defendant for an Oldsmobile Achieva which was being repaired.

Reginald was injured in the accident and submitted a claim for Personal Injury Protection (PIP) benefits with defendant. When this was denied, Reginald submitted a claim to the

Michigan Assigned Claims Facility (ACF), which assigned it to plaintiff. On August 30, 2005, plaintiff filed a complaint against defendant and Reginald in Oakland Circuit Court. Plaintiff asserted that defendant was the insurer in higher priority than plaintiff for payment of PIP benefits to Reginald pursuant to MCL 500.3114 and sought reimbursement for payments plaintiff paid to Reginald. Following motions for summary disposition, the trial court entered judgment in favor of plaintiff in the amount of \$106,116.74, and defendant appealed.

ANALYSIS

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Additionally, statutory interpretation is a question of law that we consider de novo on appeal. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

The rules of statutory interpretation require the courts to give effect to the Legislature's intent. *Universal Underwriter Ins Group v Auto Club Ins Assoc*, 256 Mich App 541, 544; 666 NW2d 294 (2003). The first criterion in determining the Legislature's intent is the specific language of the statute. *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004). The fair and natural import of the terms employed, in view of the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). Further, we cannot read into a statute terms or conditions not encompassed by its language. *Halloran, supra*; *Omni Financial Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).

A person who suffers bodily injury while the occupant of a motor vehicle and who has no available insurance policy of his own or through his family must claim PIP benefits from the insurer of the owner of the vehicle, the registrant of the vehicle or the insurer of the operator of the vehicle occupied. MCL 500.3114(4). In this case, Reginald had no available insurance of his own or through his family and the owner and registrant of the occupied vehicle, Fleming, was also uninsured. MCL 500.3114(4)(a). MCL 500.3114(4)(b) provides that, when there are no insurers with a higher priority, a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim PIP benefits from "[t]he insurer of the operator of the vehicle occupied." The term "insurer" is not defined in the no-fault act. Black's Law Dictionary defines "insurer" as "[o]ne who agrees, by contract, to assume the risk of another's loss and to compensate for that loss." Black's Law Dictionary (7th ed). Accordingly, we must determine whether, under the terms of the Titan insurance contract, it was the insurer of Bernard, who was the operator of the vehicle at the time of the accident.¹

¹ We disagree with Titan's argument that, under *Rednour v Hastings Mut Ins Co*, 468 Mich 241; 661 NW2d 562 (2003), the provisions of its insurance contract are irrelevant in determining whether Titan is liable to pay no-fault benefits under the statute, for a number of reasons. First,
(continued...)

We conclude that, under the clear terms of the policy, Titan was Bernard's insurer. Although Tonya (not Bernard) was the "named insured" in the policy, the policy states that "[i]n return for your premium payment, we agree to insure you subject to all the terms of this policy" and broadly defines "you" and "your" to mean "the 'named insured' shown in the declarations and the spouse if a resident of the same household." Further, in its part relating to no-fault coverages, the policy defines "insured" as including "you or any family member." Bernard qualified as a person insured by Titan under the policy pursuant to both of these definitional sections as he was the spouse of Tonya residing in her household and, therefore, one of her family members at the time of the accident. Thus we conclude that, for purposes of MCL 500.3114(4)(b), Titan was "the insurer of the operator of the vehicle occupied" by Reginald at the time of the accident and therefore liable for the payment of PIP benefits.

Titan argues that this Court has determined that the language of MCL 500.3114(4) requires that the owner, registrant or operator of the occupied vehicle must be a "named insured," citing *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10; 684 NW2d 391 (2004). We disagree. In *Amerisure*, an uninsured passenger named Michael Anthony was injured while occupying a Ford Explorer operated by Jeremy Whitworth. While Whitworth owned the Explorer, it had been insured by Auto-Owners under a policy issued to Whitworth Borta, Incorporated and Whitworth was not a named insured. *Amerisure, supra* at 13. The trial court granted summary disposition in favor of Auto-Owners, reasoning that the named insured, Whitworth Borta, Inc., did not have an insurable interest in the Explorer. *Amerisure, supra* at 13-14. This Court affirmed the trial court's decision in *Amerisure, supra*, on a different ground:

MCL 500.3114(4) provides that a person who suffers bodily injury while the occupant of a motor vehicle and who has no available insurance policy of his own or in his family shall claim PIP benefits from "[t]he insurer of the owner or registrant of the vehicle occupied[]" or "[t]he insurer of the operator of the vehicle occupied." MCL 500.3114(4)(a) and (b). The owner, registrant, and operator of the Ford Explorer was Whitworth, and he did not have a policy of insurance with Auto-Owners. Accordingly, Anthony could not claim PIP benefits from Auto-Owners by virtue of this plainly worded statute. [*Amerisure, supra* at 15.]

(...continued)

Titan's argument rests on its conclusion that a no-fault policy cannot provide coverage broader than that required by the no-fault act, but that question was specifically "left open" by *Rednour*. *Rednour, supra* at 249. Further, the *Rednour* court relied upon the explication of the relevant insurance contract language at issue there, i.e., the term "occupying," as it had been provided in a prior case, *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520; 502 NW2d 310 (1993). *Id.* at 248-249. Further, *Rednour* itself specifically construed the insurance contract as part of its analysis and specifically determined that "[p]laintiff was not 'occupying' the vehicle under the policy definition of that term." *Id.* at 249. Finally, while the term "occupant" in the no-fault act has a "primary and generally understood meaning" apart from any insurance contract, *Id.* at 247, citing *Rohlman, supra* at 531-532, the same is not true of the statutory term "insurer" at issue here. Rather, whether an insurance company is an "insurer" of the operator of the vehicle necessarily depends on the language of the relevant insurance policy.

Thus, in contrast to the present case, *Amerisure* did not consider whether the operator of the motor vehicle, Jeremy Whitworth, was within the category of persons insured by Auto-Owners under the terms of its policy. There was no argument that, while the policy named only Whitworth Borta, Incorporated, as the “named insured,” Auto-Owners was nonetheless Jeremy Whitworth’s “insurer” for purposes of MCL 500.3114(4) under the policy. *Amerisure* is simply inapposite to this case where the policy does not limit its coverage only to the “named insured” but, instead, through its plain wording extends coverage to Bernard, the resident spouse of the named insured.

Titan points to a statement in *Amerisure* that “there is simply no authority for the proposition that the insurer of a *vehicle* involved in an accident must pay PIP benefits under the circumstances present in the instant case, when no named insureds were involved in the accident.” *Id.* at 16. (Emphasis in original). However, that statement was made in response to the argument that, “even if MCL 500.3114(4) [was] inapplicable,” Auto-Owners was required to provide PIP benefits because of wording in its policy regarding benefits for accidental bodily injury arising out of the “use of a motor vehicle.” *Id.* at 15-16. As is demonstrated by the emphasis on the word “vehicle” in the passage relied upon by Titan, the panel there was merely applying the well-established rule that “PIP coverage applies to the insured person, and not to the motor vehicle.” *Id.* at 16, citing *Madar v League Gen Ins Co*, 152 Mich App 734, 742-743; 394 NW2d 90 (1986). The panel’s use of the term “named insureds” was thus inconsequential. It certainly cannot be read as an interpretation of MCL 500.3114(4); as already noted, that section was “inapplicable” to the argument addressed.

We further note that, to adopt Titan’s view of the statute would require reading into it a qualification that simply does not exist. The statute states that “the insurer of the operator of the vehicle occupied” is liable to pay benefits; it does not impose that requirement only in cases where the operator is a “named insured” under the insurer’s policy. While Titan argues that, in the absence of a limitation of that sort, insurers will be subjected to no-fault-liability in far too many situations, that is a policy argument that should be addressed to the Legislature for possible amendment of the statute. *Cervantes v Farm Bureau General Ins Co*, 272 Mich App 410, 418; ___ NW2d ___ (2006); *Hauser v Reilly*, 212 Mich App 184, 191; 536 NW2d 865 (1995).

In light of our conclusion that Titan was liable for the payment of benefits under MCL 500.3114(4)(3), we need not consider plaintiff’s argument that Titan was liable because the Plymouth Spirit was a “temporary substitute” vehicle under the Titan policy. We affirm.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Brian K. Zahra