STATE OF MICHIGAN

COURT OF APPEALS

EDWIN HOLLENBECK and BRENDA HOLLENBECK, Plaintiffs-Appellants, v FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN, Defendant-Appellee.	UNPUBLISHED June 30, 2011 No. 297900 Ingham Circuit Court LC No. 09-000166-CK

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

In this action for declaratory relief, plaintiffs, Edwin Hollenbeck and Brenda Hollenbeck, appeal as of right from the trial court's order granting summary disposition in favor of defendant, Farm Bureau Insurance Company of Michigan. Plaintiffs contend that the trial court erred in concluding that their claims for bodily injury and loss of consortium fell under an unambiguous exclusion clause in their no-fault automobile insurance contract and, as a result, plaintiffs were limited to the statutory minimum coverage of $20,000 per person and $40,000 per occurrence. Because we conclude that the trial court correctly decided that the exclusionary clause was unambiguous and prevented plaintiffs from obtaining coverage beyond the statutory minimum, we affirm.

I. BASIC FACTS AND PROCEDURAL BACKGROUND

On February 10, 2008, Edwin Hollenbeck was involved in a car accident. He was the passenger in a truck driven by plaintiffs' son, Devin Pearse Hollenback. Devin Hollenbeck was operating the truck under the influence of alcohol when he lost control of the vehicle causing it to veer off the road and roll over. As a result of the accident, Edwin Hollenbeck suffered "[m]assive injuries to his cervical spine and spinal cord resulting in permanent quadriplegia." Brenda Hollenbeck was not involved or injured in the car accident.

At the time of the accident, defendant insured the truck driven by Devin Hollenbeck under Edwin Hollenbeck's policy, A-400986. Defendant also separately insured Devin Hollenbeck under policy number A-428939. Plaintiffs made claims for $120,000 under the two policies for Edwin Hollenbeck's bodily injuries and Brenda Hollenbeck's loss of consortium. On May 8, 2008, defendant advised plaintiffs that their claims fell under an exclusion clause in

Edwin Hollenbeck's policy which limited liability coverage for bodily injury to the insured or the insured's family member.

In February 2009, plaintiffs filed a declaratory action against defendant to clarify that their claims were not excluded under their policies with defendant and they were entitled to coverage in the amount of $120,000. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that its liability exclusion clause was valid and effective and applied to limit plaintiffs' claims under Edwin Hollenbeck's policy. The trial court concluded that the exclusion was unambiguous and enforceable and applied to limit plaintiffs' claims to the statutory minimum. It entered an order granting defendant's motion for summary disposition and limiting coverage under Edwin Hollenbeck's policy to $20,000. Plaintiffs now appeal.

II. DECLARATORY RELIEF

A. STANDARD OF REVIEW

Plaintiffs argue that the trial court erred in granting summary disposition under MCR 2.116(C)(10) in favor of defendant. We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). In doing so, "we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion" to determine whether no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). "Whether contract language is ambiguous is . . . a question of law that we review de novo." *Casey v Auto Owners Ins Co*, 273 Mich App 388, 394; 729 NW2d 277 (2006). The determination of whether an insurance contract violates public policy is also a question of law that is reviewed de novo. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708; 706 NW2d 426 (2005).

B. ANALYSIS

The policy at issue provides liability coverage for bodily injury in the amount of $100,000 per person and $300,000 per occurrence. However, the policy contains exclusions which limit or deny liability coverage in certain situations. One such exclusion exists to limit liability coverage "for **bodily injury** to you[, the insured,] or to any family member that exceeds the minimum statutory limits of the financial responsibility law of any similar laws of the State of Michigan or any other state or province in which an otherwise covered auto accident occurs."

Plaintiffs contend that the exclusion is ambiguous and should be construed to provide broader coverage to plaintiffs. We disagree. "An insurance policy is much the same as any other contract; it is an agreement between the parties." *Zurich-American Ins Co v Amerisure Ins Co*, 215 Mich App 526, 530; 547 NW2d 52 (1996). "An insurer is free to define or limit the scope of coverage as long as the policy language fairly leads to only one reasonable interpretation and is not in contravention of public policy." *Id.* A court will determine what the agreement was and implement the intent of the parties. *Id.* An insurance contract should be read as a whole, with meaning given to all terms. *Sherman-Nadiv v Farm Bureau Gen Ins Co*, 282

Mich App 75, 78; 761 NW2d 872 (2008). A clear contractual provision is to be enforced as written, and a court must not read an ambiguity into a policy when none exists. *Dancey v Travelers Prop Cas Co of America*, 288 Mich App 1, 8; 792 NW2d 372 (2010).

The exclusion clause in this case is not ambiguous. A contract is ambiguous "when its words may reasonably be understood in different ways." *Mich Mut Ins Co v Dowell*, 204 Mich App 81, 87; 514 NW2d 185 (1994). Plaintiffs do not argue that that the words in the exclusion clause are subject to multiple meanings. They contend, instead, that the exclusion clause limiting coverage to the statutory minimum does not comport with the declaration of coverage, and a reasonable insured would not understand what the exclusion means without the policy' expressly stating the applicable coverage limits. An insurance contract often contains a general statement of coverage and exclusions or limitations that reduce or deny that coverage in certain situations. The mere existence of an exclusion clause does not render the insurance contract ambiguous. Moreover, the fact that a contract clause contains a reference to a statute or other legal terms does not make the clause ambiguous. Citizens are generally "presumed to know the law." *Mudge v Macomb Co*, 458 Mich 87, 109 n 22; 580 NW2d 845 (1998).

The language of this exclusion clause is clear. Coverage in excess of the statutory minimum, that which is required by Michigan law, is excluded when a bodily injury is suffered by the insured or an insured's family member. Even though the exclusion clause neither expressly states in monetary amounts what the statutory minimum is nor gives a statutory cite, an insured is on notice that the coverage provided in the event that a bodily injury is suffered by the insured or his or her family member is the statutory minimum. In fact, as defendant highlights in its brief, the language in the exclusion clause is similar to Michigan's residual liability statute: "This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance *under the financial responsibility laws* of the place in which in the injury or damage occurs." MCL 500.3131(1) (emphasis added). Accordingly, plaintiffs' contention that the exclusion clause is ambiguous is without merit.

Plaintiffs further claim that the exclusion violates public policy and should not be enforced for that reason. We disagree. This Court has already determined that household-related exclusions limiting coverage to the statutory minimum, such as that which is at issue here, do not violate public policy. See *Manier v MIC Gen Ins Corp*, 281 Mich App 485, 491-492; 760 NW2d 293 (2008).[1] As a result, we cannot conclude that the exclusion violates public policy.[2]

[1] We reject plaintiffs' assertion that this holding in *Manier* regarding household-related exclusions is dicta and is not binding on this Court. *Manier* concerned whether an insurer could reform an insurance contract on the basis of a misrepresentation. *Manier*, 281 Mich App at 487. This Court held that reformation of the contract was proper. *Id.* at 490. The insurer, however, did not reform the contract to reduce coverage levels, but instead relied upon the household-related exclusion to restrict liability coverage. *Id.* at 487, 491-492. Consequently, to resolve all issues, this Court was required to determine whether the household-related exclusion was valid, and its decision has "precedential effect[.]" MCR. 7.215(C)(2).

Plaintiffs next claim that even if the exclusion clause is valid, they did not receive adequate notice of the change in coverage and, therefore, the exclusion clause should not apply. An insured is generally obligated to read his or her insurance policy and raise any issues regarding coverage within a reasonable time period after the policy is issued. *Casey*, 273 Mich App at 394-395. Upon renewal of an insurance policy, however, the insurer must provide actual notice of any changes or reductions in the policy. *Id.* at 395. If adequate notice is not given, then the previous policy controls. *Id.* In this case, plaintiffs concede that they received a notice letter informing them of the changes in their insurance policy including the addition of the exclusion at issue. Nonetheless, they argue that the notice was inadequate because, like the exclusion itself, the notice did not expressly indicate the dollar amount of the coverage limits if the household-related exclusion applied. The fact that the notice did not expressly state the monetary amount of the coverage did not render the notice inadequate. We conclude that plaintiffs were given adequate notice of the change in coverage because they were informed that the exclusion concerning bodily injury to the insured or his or her family member had been altered and liability coverage would not exceed the statutory minimum when a bodily injury to the insured or an insured's family member occurred.

Finally, plaintiffs argue that, even if the exclusion clause was valid and enforceable, it should not have been used to limit Brenda Hollenbeck's loss of consortium claim, a claim that was not for bodily injury. We disagree. This Court has held that a loss of consortium claim under a no-fault automobile insurance contract is not a claim for bodily injury, but this Court concluded that it is derivative of a claim for bodily injury. See *State Farm Mut Aut Ins Co v Descheemaeker*, 178 Mich App 729, 732-733; 444 NW2d 153 (1989); *Farm Bureau Mut Ins Co of Michigan v Moore*, 190 Mich App 115, 119; 475 NW2d 375 (1991). As a result, any claim for loss of consortium based on the bodily injury of someone is not a separate claim under the insurance contract, but must be combined with the claim for bodily injury and subject to the per person coverage limits for the person who suffered the bodily injury. *Descheemaeker*, 178 Mich App at 733. For example, if an insured has a policy with coverage in the amount of $100,000 per person and $300,000 per occurrence, the loss of consortium claim and the bodily injury claim together will be entitled to coverage in the amount of $100,000 for the person who suffered the bodily injury. Furthermore, if an exclusion limits the per person coverage for the bodily injury claim, the loss of consortium claim is similarly reduced. Because Brenda Hollenbeck's loss of consortium claim was derivative of Edwin Hollenbeck's bodily injury claim, we conclude that the exclusion at issue here limited the recovery for both claims to the statutory minimum of $20,000.[3]

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[2] We need not address plaintiffs' argument that similar provisions have been struck down in other states on the basis of public policy concerns because those decisions have no binding effect on this Court. See *Holland v Trinity Health Care Corp*, 287 Mich App 524, 529 n 2; 791 NW2d 724 (2010).

[3] Plaintiffs' reliance on *Wesche v Mecosta Co Rd Comm*, 480 Mich 75; 746 NW2d 847 (2008), to argue that Brenda Hollenbeck's loss of consortium claim is not a bodily injury and is not covered under the exclusion is misplaced. *Wesche* concerned whether a loss of consortium claim fell under the motor vehicle exception to governmental immunity. *Wesche*, 480 Mich at 85. The Michigan Supreme Court determined that a loss of consortium claim is an "independent cause of

The trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

action" distinct from a claim for bodily injury or a claim for property damage and is subject to governmental immunity. *Id.* at 84-85. If plaintiffs are correct and a loss of consortium claim is separate from a claim for bodily injury in this context, then the claim would not be covered under Edwin Hollenbeck's insurance policy anyway because the policy only provides liability coverage for "**bodily injury** or **property damage** for which any **Insured** becomes legally responsible because of an auto accident." Moreover, if a loss of consortium claim is not a bodily injury or property damage, an insurer is not required to provide the statutory minimum coverage. MCL 500.3131(1) ("Residual liability insurance shall cover bodily injury and property damage[.]"). We reject plaintiffs' argument and conclude that, with regard to automobile liability insurance coverage, a loss of consortium claim is derivative of a claim for bodily injury and is subject to the same exclusions and limitations as the bodily injury claim.