

STATE OF MICHIGAN
COURT OF APPEALS

TITAN INSURANCE COMPANY,

Plaintiff,

v

CINCINNATI INSURANCE COMPANY,

Defendant-Appellant,

and

FRANKENMUTH MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

June 24, 2004

No. 245940

Saginaw Circuit Court

LC No. 01-041845-NF

Before: Neff, P.J., and Zahra and Murray, JJ.

PER CURIAM.

Defendant Cincinnati Insurance Company appeals as of right the trial court's order denying its motion for summary disposition and granting summary disposition in favor of defendant Frankenmuth Mutual Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Richard Bonk sustained injuries while occupying a vehicle insured by Cincinnati. Bonk, an employee of Hamilton Electric, drove a vehicle leased by Hamilton and insured by Frankenmuth. Bonk sought personal injury protection (PIP) benefits from Cincinnati and Frankenmuth. Both insurers denied Bonk's claim. Plaintiff Titan Insurance Company, the insurer to which the Assigned Claims Facility assigned the claim, paid Bonk PIP benefits.

Titan filed suit against Cincinnati and Frankenmuth, seeking reimbursement of PIP benefits. Both Cincinnati and Frankenmuth moved for summary disposition. Cincinnati argued that Bonk was an additional insured under Frankenmuth's policy and that, pursuant to MCL 500.3114(1), Frankenmuth was liable for payment of PIP benefits. Frankenmuth moved for summary disposition pursuant to MCR 2.116(C)(10). Frankenmuth argued that because Bonk was not occupying a vehicle insured under its policy when he was injured, Cincinnati was first in priority for payment of PIP benefits. The trial court denied Cincinnati's motion and granted summary disposition in favor of Frankenmuth, finding that MCL 500.3114(4)(a) controlled and

made Cincinnati liable for payment of PIP benefits to Bonk. Therefore, the trial court concluded, Cincinnati was obligated to reimburse Titan.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The trial court ruled that Cincinnati was liable for payment of the PIP benefits because it was the primary insurer under MCL 500.3114(4). Cincinnati argues that this case is governed by MCL 500.3114(1) and the unambiguous language of the Frankenmuth policy. We disagree and conclude that the trial court properly granted summary disposition to Frankenmuth.

MCL 500.3114(1) sets forth the primary rule regarding the applicability of personal protection insurance liability, and provided as follows at the time of the injury:

Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer.

MCL 500.3114(4), the provision relied upon by the trial court, sets the priority between certain insurers when a person is injured while an occupant of a vehicle:

Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

- (a) The insurer of the owner or registrant of the vehicle occupied;
- (b) The insurer of the operator of the vehicle occupied.

As the above language makes clear, MCL 500.3114(1) has only three exceptions, and subsection (4) is not one of them. Moreover, subsection (4) explicitly states that "except as provided in" subsection (1), its provisions apply. Thus, the general terms of MCL 500.3114(1), if they apply to the case, control over MCL 500.3114(4). However, as detailed below, because Bonk was not an insured under the plain terms of the personal protection insurance policy issued by Frankenmuth, MCL 500.3114(1) does not apply, and MCL 500.3114(4) does.

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably understood in different ways. *Nikkel, supra*, 566-567. Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

Frankenmuth's policy identifies Hamilton Electric, Bonk's employer, as the "named insured." The amended declarations page specifically lists Bonk under the designation "additional insured auto #: 20." The document also states that the reason for the amended page was "additional insured added", but does not indicate who or what is the additional insured. In general, designation of a person as a driver of a vehicle does not make a person a named insured under a policy. *Harwood v Auto-Owners Ins Co*, 211 Mich App 249, 253; 535 NW2d 207 (1995). Here, the Frankenmuth policy provides that Frankenmuth "will pay personal injury protection benefits to or for an 'insured' who sustains 'bodily injury' caused by an 'accident' and resulting from the ownership, maintenance or use of an 'auto' as an 'auto.'" The policy defines an "insured" as

1. You^[1] or any "family member."
2. Anyone else who sustains "bodily injury:"
 - a. While "occupying" a covered "auto," or
 - b. As the result of an "accident" involving any other "auto" operated by you or a "family member" if that "auto" is a covered "auto" under the policy's Liability Coverage, or
 - c. While not "occupying" any "auto" as a result of an "accident" involving a covered "auto."

Under these plain terms, section one applies to Hamilton Electric or any family member, which does not include Bonk. Section 2 likewise does not apply because Bonk was not injured in a covered auto.

Because Bonk was not an insured under Frankenmuth's policy, and was not injured while utilizing a covered auto, he was not entitled to PIP benefits from Frankenmuth, and Frankenmuth is not obligated to reimburse Titan. MCL 500.3114(1). Rather, as the trial court determined, under MCL 500.3114(4), Cincinnatti, as insurer of the vehicle occupied by Bonk at the time of

¹ The policy further states that the word "you" refers to the Named Insured, which is Hamilton Electric.

the accident, is responsible for the PIP benefits. Therefore, the trial court did not err by granting summary disposition in favor of Frankenmuth.

Affirmed.

/s/ Janet T. Neff

/s/ Brian K. Zahra

/s/ Christopher M. Murray