STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY VAUGHAN,

Plaintiff-Appellant,

v

JOHN DOE,

Defendant,

and

21ST CENTURY CENTENNIAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
July 29, 2014

No. 315313
Wayne Circuit Court
LC No. 12-000781-NI

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting reconsideration and summary disposition in favor of defendant,[1] 21st Century Centennial Insurance Company, in this insurance coverage dispute. We affirm.

I. BASIC FACTS

This appeal arose from a hit-and-run automobile accident in which plaintiff was injured while driving a 2010 Chrysler Sebring owned by her father, William Vaughan. At the time of the accident, plaintiff was not living with her father. The 2010 Chrysler Sebring was insured under a policy with defendant, along with a 2008 Chrysler PT Cruiser, also owned by William Vaughan. The policy declarations page provided that William Vaughan is the "named insured" and that plaintiff and William Vaughan are listed as "drivers" of the vehicles. The policy

[1] Because John Doe is not a party to this appeal, we will use the term "defendant" to exclusively refer to 21st Century Centennial Insurance Company.

declarations page also assigned a classification code to each vehicle and allocated a separate premium for uninsured motorist benefits for each vehicle.

The policy states the following with respect to uninsured motorist coverage:

> ***[W]e*** will pay compensatory damages that an ***insured*** is legally entitled to recover from the ***owner*** or operator of an ***uninsured*** motor vehicle . . . because of ***bodily injury***:
>
> A. Sustained by an ***insured***; and
>
> B. Caused by an auto ***accident*** with an ***uninsured motor vehicle*** . . . ."

The policy then defines the term "insured" as "you" or "any family member." It defines "you," in relevant part, as "[t]he person or persons shown as a named insured on the ***Declarations Page***." The term "family member" is defined as, "a person related to ***you*** by blood, marriage or adoption and who is a resident of ***your*** household."

After defendant denied plaintiff's claim for uninsured motorist benefits, plaintiff filed a complaint for negligence against John Doe and failure to pay uninsured motorist benefits against defendant. After filing an answer and affirmative defenses, defendant filed a motion for summary disposition under MCR 2.116(C)(10) and argued that it was entitled to judgment as a matter of law because plaintiff was not an insured entitled to uninsured motorist benefits under the terms of the policy. In response, plaintiff asserted that she was an insured under the terms of the policy or, alternatively, the policy declarations page and policy itself conflict, creating an ambiguity that should be construed against the drafter. Plaintiff also asserted that the coverage was illusory if the court determined that she is not covered by the policy. The trial court denied the motion for summary disposition without providing reasons on the record. Subsequently, the trial court granted defendant's motion for reconsideration and summary disposition, and entered an order to this effect.

II. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A motion based on MCR 2.116(C)(10) is appropriately granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013). Moreover, the construction and interpretation of an insurance contract presents a question of law that this Court reviews de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

III. ANALYSIS

Plaintiff contends that the trial court erred in granting summary disposition in favor of defendant because she is an insured under the terms of the policy. We disagree.

In Michigan, uninsured motorist coverage is not required, and thus, the provisions of the no-fault act, MCL 500.3101, *et seq.*, do not apply. *Bianchi v Auto Club of Mich*, 437 Mich 65, 68; 467 NW2d 17 (1991). Given that uninsured motorist benefits are not required by statute, the contract of insurance determines under what circumstances the uninsured benefits will be awarded, and the policy definitions in the insurance contract control. *Berry v State Farm Mut Auto Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996). Insurance policies are like contracts, and in the absence of an applicable statute, they are construed in accordance with the principles of contract construction. *Titan Ins Co v Hyten*, 491 Mich 547, 554; 817 NW2d 562 (2012). An insurance policy must be read as a whole and meaning given to all terms, and the language of the policy "is to be given its ordinary, plain meaning and technical, constrained constructions should be avoided." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). "An insurance policy that is clear and unambiguous must be enforced in accordance with its terms." *Stoddard v Citizens Ins Co of America*, 249 Mich App 457, 460; 643 NW2d 265 (2002).

The uninsured coverage policy at issue provides that only an "insured" is able to recover benefits. The uninsured motorist portion of the policy defines the term "insured" as "you" or "any family member." The policy defines "you" as "[t]he person or persons shown as a named insured on the ***Declarations Page***." The term "family member" is defined as, "a person related to ***you*** by blood, marriage or adoption and who is a resident of ***your*** household." Thus, according to the plain language in the uninsured motorist coverage section of the policy, only those shown as the "named insured" on the declarations page, and related persons who reside in the same household as the named insured, are entitled to recover uninsured motorist benefits.

Our appellate courts have repeatedly held that an unambiguous contractual provision is to be enforced unless the provision violates law or public policy, and a mere judicial assessment of "reasonableness" is an invalid basis upon which to refuse the enforcement of the contractual provision. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 373; 817 NW2d 504 (2012), citing *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). Here, it is clear that the only person named as an insured on the declarations page was plaintiff's father. While plaintiff was listed in another section as a "driver," she was not listed on the first page, where it listed the "named insured." There also is no dispute that plaintiff did not reside with her father. Therefore, plaintiff is not entitled to uninsured motorist benefits under the clear and unambiguous policy language, and the trial court properly granted summary disposition in favor of defendant.

In addition, it is irrelevant whether plaintiff acted as an insured under the policy in paying the premiums and reporting the accident. The rule of reasonable expectations has been abolished in Michigan, and the courts are to enforce clear and unambiguous contracts as written. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62; 664 NW2d 776 (2003). Given that the policy clearly and unambiguously provides who is entitled to uninsured motorist benefits, and plaintiff does not fall

within the scope of covered individuals, plaintiff allegedly acting as an insured under the terms of the policy is not a basis for the court to refuse to enforce the contract as written.

Alternatively, plaintiff contends that the policy is ambiguous because the policy declarations page conflicts with the language in other sections of the insurance policy. We disagree.

Courts will not create an ambiguity where the terms of the contract are clear. *City of Grosse Pointe Park v Mich Municipal Liability & Prop Pool*, 473 Mich 188, 198; 702 NW2d 106 (2005). A contract is ambiguous when two provisions "irreconcilably conflict with each other," *Klapp*, 468 Mich at 467, or "when it is equally susceptible to more than a single meaning," *Mayor of City of Lansing v Mich Pub Serv Comm'n*, 470 Mich 154, 166; 680 NW2d 840 (2004). As discussed earlier, the language in the policy clearly and unambiguously provides for who is entitled to uninsured motorist benefits.

Plaintiff claims that the policy is ambiguous because it provides that she is a driver and one of the classification codes used for one of the insured vehicles refers to her. However, plaintiff's reliance on the classification codes used for the two automobiles is misplaced. On the policy declarations page, under the category, "**DESCRIPTION OF YOUR COVERED AUTO(S)**," a classification code is assigned to each vehicle. The 2008 Chrysler PT Cruiser, "Auto 1," was assigned the classification code "IHNE01," and the 2010 Chrysler Sebring, "Auto 2," was assigned the classification code "IMRG01." Two separate premiums for uninsured motorist coverage were assigned for each respective automobile, $31.52 for Auto 1, and $37.52 for Auto 2. The ratings information sheet describes how the classification codes are designed for each automobile and provided:

> The classification is one of the elements we use in developing your premiums for the following coverages: Bodily Injury and Property Damage Liability, Personal Injury Protection, Collision and Other Than Collision.

Although the classification codes for Auto 1 and Auto 2 on the policy declarations page pertain to plaintiff and her father respectively,[2] the policy itself provides that the classifications are not used in developing the premiums for uninsured motorist benefits. Instead, the classifications were one of the elements used in developing the premiums for "Bodily Injury and Property Damage Liability, Personal Injury Protection, Collision and Other Than Collision." Accordingly, the policy declarations page does not conflict with the specific uninsured motorist policy. Therefore, no ambiguity exists, and plaintiff's contention is without merit. Moreover, assuming arguendo that the classification codes were relevant in determining uninsured coverage, the classification code that pertains to plaintiff is identified with the 2008 Chrysler PT Cruiser—not the 2010 Chrysler Sebring that was involved in the accident. Hence, even if the

[2] Code IHNE01 unquestionably refers to plaintiff because it relates to a female driver who is between the ages of 35 and 39, while code IMRG01 refers to her father because it relates to a male driver who is between the ages of 60 and 64.

classification codes were pertinent, it would only show that plaintiff was covered on the 2008 PT Cruiser, and not the vehicle that was involved in the accident.

Plaintiff lastly contends that the uninsured motorist coverage was illusory because defendant received two premiums for uninsured motorist benefits but allegedly provided uninsured motorist benefits only for one of the vehicles. We disagree.

Plaintiff relies on the decision in *Ile v Foremost Ins Co*, 293 Mich App 309; 809 NW2d 617 (2011) (*Ile I*), rev'd 493 Mich 915 (2012) (*Ile II*), where this Court applied the "doctrine of illusory coverage" to an insurance policy for underinsured motorist coverage. The doctrine of illusory coverage is "'[a] rule requiring an insurance policy to be interpreted so that it is not merely a delusion to the insured. Courts avoid interpreting insurance policies in such a way that an insured's coverage is never triggered and the insurer bears no risk.'" *Ile I*, 293 Mich App at 315-316, quoting *Black's Law Dictionary* (9th ed).

In *Ile I*, the plaintiff's decedent paid $26 for bundled uninsured and underinsured motorist coverage with a $20,000/$40,000 minimum coverage for each. *Id.* at 311. The *Ile I* Court held that because the decedent's policy limits equaled the statutory minimum, the coverage was illusory because the insured could never collect the full limits for both the uninsured and underinsured benefits. *Id.* at 322. However, in *Ile II*, 493 Mich at 915, our Supreme Court reversed this Court's decision in *Ile I* and remanded the case for entry of summary disposition in favor of the defendant. The Supreme Court held:

> [W]hen read as a whole, the clear language of the policy provides for combined uninsured and underinsured motorist coverage that, as promised, would have operated to supplement any recovery by Ile to ensure that he received a total recovery of up to $20,000/$40,000 (the policy limit) had the other vehicle involved in the crash been either uninsured or insured in an amount less than $20,000/$40,000. That such coverage would, under the terms of the policy, always be labeled "uninsured," as opposed to "underinsured," does not make the policy illusory. [*Id.*]

Plaintiff's contention that the policy provides illusory coverage fails for several reasons. First, William Vaughan has an insurable interest in the 2010 Chrysler Sebring. He was the owner of the vehicle and the named insured. The fact that plaintiff regularly drove this vehicle did not extinguish William Vaughan's insurable interest. Second, this Court's decision in *Ile I* was reversed. The holding and application of the doctrine of illusory coverage do not apply to this case. Third, and most significantly, defendant was not receiving two premiums for uninsured motorist coverage, while only providing uninsured motorist coverage for one of his vehicles. William Vaughan was the named insured for both vehicles under the insurance policy and was entitled to uninsured motorist benefits for both vehicles. Had William Vaughan been driving the 2010 Chrysler Sebring when the accident occurred, he would have been entitled to receive uninsured motorist benefits. Also, had plaintiff been living with William Vaughan at the time of the accident, she would have been entitled to collect uninsured motorist benefits under the policy. Therefore, the insurance policy is not being interpreted in such a way that the insured's coverage is never triggered and the insurer bears no risk. Accordingly, the doctrine of illusory coverage simply is inapplicable to the present case.

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio