STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellant,

v

STEVEN MACDONALD, ROBERT RAUCHMAN and JOHN RAUCHMAN,

Defendants-Appellees.

UNPUBLISHED
July 25, 2006

No. 259938
Wayne Circuit Court
LC No. 04-414636-CK

Before: Donofrio, P.J., and O'Connell and Servitto, JJ.

PER CURIAM.

Plaintiff, Allstate Insurance Company (Allstate), appeals as of right an order denying its motion for summary disposition and granting summary disposition to defendants, Steven MacDonald, Robert Rauchman (Robert), and John Rauchman (John). Because the automobile involved in the accident was a non-owned auto at the time of the accident, and because the owner of the automobile, National Car Rental Systems (National), did not consent to Robert driving it, the automobile was not a covered auto under Allstate's policy, we reverse and remand.

Allstate issued an auto insurance policy to Carolyn Rauchman, the mother of defendants John and Robert. John rented a Caravan owned by National, and entrusted the Caravan to his brother Robert, who fell asleep while driving it. As a result, Steven MacDonald, a passenger in the Caravan, was injured and brought suit against John, Robert, and National. Allstate brought this declaratory judgment action seeking a declaration that there is no coverage under Allstate's policy for MacDonald's claims against John and Robert. John and Robert seek coverage as "resident relatives" and under Allstate's policy term providing that a non-owned vehicle is a "covered auto" if it was driven with the owner's permission.

Allstate argues that Robert did not have National's permission to operate the Caravan, and that the trial court erred in granting summary disposition to defendants. A motion made under MCR 2.116(C)(10) tests the factual support for a claim, *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003), and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, *Miller v Purcell*, 246 Mich App 244, 246; 631 NW2d 760 (2001). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003). When the burden of proof at trial would rest on the nonmoving party, the

nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

"[W]here contract language is neither ambiguous nor contrary to the no-fault statute, the will of the parties, as reflected in their agreement, is to be carried out, and thus the contract is enforced as written." *Muci v State Farm Ins*, 267 Mich App 431, 435; 705 NW2d 151 (2005). Courts generally do not assess the reasonableness of contractual provisions, but apply unambiguous insurance contract provisions as written unless the provisions violate law or public policy. See *Rory v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). "When the terms of a contract are unambiguous, their construction is for this Court to determine as a matter of law." *Hubbell, R&C v J D Contractors*, 249 Mich App 288, 291; 642 NW2d 700 (2001).

Allstate's policy contains a section listing "Insured Autos," which includes: "4. A non-owned **private passenger** or **utility auto** used by **you** or a **resident relative** *with the owner's permission*." (Bold in original; italics added.) To determine whether the Caravan was an "insured auto," the question is whether the Caravan was "used . . . with the owner's permission." Defendants rely on MCL 257.401. MCL 257.401, subsection (1), provides, in pertinent part:

> The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. *It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family*. [Emphasis added.]

Thus, when a person injured by the negligent operation of a vehicle asserts liability against the owner of the vehicle, the owner may not deflect such liability by arguing that the driver did not have the owner's consent where the driver was an immediate family member of the owner. MCL 257.401(1).

Subsection (3) of MCL 257.401 governs the liability of a vehicle owner who leases the vehicle:

> Notwithstanding subsection (1), *a person engaged in the business of leasing motor vehicles* who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period of 30 days or less *is liable for an injury caused by the negligent operation of the leased motor vehicle only if the injury occurred while the leased motor vehicle was being operated by an authorized driver under the lease agreement or by the lessee's* spouse, father, mother, *brother*, sister, son, daughter, or other immediate family member. Unless the lessor, or his or her agent, was negligent in the leasing of the motor vehicle, the lessor's liability under this subsection is limited to $20,000.00 because of bodily injury to or death of 1 person in any 1 accident and $40,000.00 because of bodily injury to or death of 2 or more persons in any 1 accident. [Emphasis added.]

Accordingly, a lessor is liable, up to certain limits, for injury caused by negligent operation of a motor vehicle where the driver was the brother of the lessee.

But whether there is insurance coverage for the liability of John and Robert to MacDonald is not an owner liability issue. The potential liability of John and Robert is liability of persons who allegedly engaged in negligent entrustment and negligent operation. Thus, MCL 257.401(1) and its provisions stating that a brother who drove a vehicle is presumed to have the consent of the other brother when the other brother is an owner, and the provisions of subsection (3) stating that a lessor is liable where the brother of a lessee causes injury, are inapplicable. And, there is no owner liability issue.

"The primary rule of statutory construction is that, where the statutory language is clear and unambiguous, the statute must be applied as written." *Muci, supra*, p 435. Here, the statute cannot be read to provide that in circumstances other than determining the liability of the lessor/owner to the injured person, a brother is presumed to have the consent of another brother when driving a leased vehicle. MCL 257.401, subsections (1) and (3), are simply inapplicable because the issue here is not the liability of the owner.

Since MCL 257.401 is inapplicable, the question then becomes whether, under the terms of Allstate's policy, Robert had the consent of the owner to drive the vehicle. The record evidence displays that the rental agreement listed John as the renter. Again, the policy stated as follows: "4. A non-owned **private passenger** or **utility auto** used by **you** or a **resident relative** *with the owner's permission*." (Bold in original; italics added.) The rental agreement also stated: "NO ADDITIONAL DRIVERS ARE AUTHORIZED TO DRIVE THE VEHICLE." And, on the back of the rental agreement appears the following paragraph:

> Authorized Drivers: I am the authorized driver if I have a valid driver's license, am named on the front of the rental agreement and meet all of your rental requirements. An additional authorized driver is authorized only if they pay an additional driver charge and that person has a valid driver's license and is named on the front. ALL OTHER DRIVERS ARE UNAUTHORIZED. . . .

This language is positive, unequivocal evidence that National, the owner of the Caravan, did not consent to Robert driving the vehicle. Because the rental agreement unmistakably stated that *only* the renter, John, was authorized to drive the vehicle, the trial court erred in holding that Robert drove the Caravan with the consent of the owner, National.

In sum, because Robert was driving a non-owned auto at the time of the accident, and because National, the owner of the Caravan, did not consent to Robert driving it, the Caravan was not a covered auto under Allstate's policy, and the trial court erred in holding that coverage exists for John's and Robert's liability to MacDonald under Allstate's policy. In light of our resolution of the foregoing issue in Allstate's favor, Allstate's remaining arguments are moot. *Ewing v Bolden*, 194 Mich App 95, 104; 486 NW2d 96 (1992).

Reversed and remanded for entry of a declaratory judgment stating that Allstate's policy does not provide coverage for MacDonald's claims against John and Robert. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto