STATE OF MICHIGAN

COURT OF APPEALS

HOME-OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

DOUGLAS CRAIG BROWN and ROBERT KIMBRO, Personal Representative of the Estate of LAWRENCE GRAND, Deceased,

Defendants-Appellees.

UNPUBLISHED
July 27, 2006

No. 259233
Van Buren Circuit Court
LC No. 04-051971-CK

Before: Talbot, P.J., and Owens and Murray, JJ.

PER CURIAM.

In this action for declaratory relief, plaintiff, Home-Owners Insurance Company, appeals as of right the trial court order denying its motion for summary disposition and granting summary disposition in favor of defendants, Douglas Brown and Robert Kimbro. We reverse and remand.

I. Background

In the underlying action, Kimbro, as personal representative of the estate of Lawrence Grand, filed suit against Brown alleging that, while Brown and Grand were hunting in a field located at 59754 48th Avenue, Brown negligently fired a gun in Grand's direction. Grand died as a result of his injuries. Brown lived at 59754 48th Avenue. His parents insured the premises under a homeowners insurance policy issued by plaintiff. Brown was not a named insured, and his parents, the named insureds, established their primary residence in Illinois.

Plaintiff initiated this action for declaratory relief seeking a determination of whether it had a duty to defend and provide coverage for Brown in the underlying action. Plaintiff filed a motion for summary disposition under MCR 2.116(C)(10), asserting that it did not have a duty to defend or indemnify Brown because he did not reside with the named insureds and, therefore, was not an "insured" under the policy. In response, defendants moved for summary disposition under MCR 2.116(I)(2), arguing that Brown "resided" with the named insureds and, therefore, was an "insured." The trial court denied plaintiff's motion and granted summary disposition in favor of defendants.

II. Analysis

Plaintiff contends that the trial court erred in granting summary disposition in favor of defendants because Brown was not an "insured." We agree.

We review de novo the grant or denial of a motion for summary disposition in a declaratory judgment action. *Citizens Ins Co v Pro-Seal Service Group, Inc*, 268 Mich App 542, 546; 710 NW2d 547 (2005), citing *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999). Further, the construction and interpretation of an insurance policy and, whether the policy language is ambiguous, are questions of law that are reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

In *Heath v State Farm Mut Auto Ins Co*, 255 Mich App 217, 218; 659 NW2d 698 (2002), this Court set forth the following principles regarding the interpretation of insurance contracts:

> An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. When determining what the parties' agreement is, the court should read the contract as a whole and give meaning to all the terms contained within the policy. If the insurance contract sets forth definitions, the policy language must be interpreted according to those definitions. If a term is not defined in the policy, it is to be interpreted in accordance with its commonly used meaning. Clear and unambiguous language may not be rewritten under the guise of interpretation. [Citations omitted.]

"If, after reading the entire contract, the language can reasonably be understood in different ways—one providing and the other excluding coverage—the ambiguity is to be liberally construed against the insurer." *Farm Bureau Mut Ins Co of Michigan v Moore*, 190 Mich App 115, 118; 475 NW2d 375 (1991), citing *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982).

The personal liability protection section of the policy provides, in relevant part:

> We will pay all sums any *insured* becomes legally obligated to pay as damages because of or arising out of bodily injury or property damage caused by an occurrence to which this coverage applies. . . . [Emphasis added.]

According to this language, only those individuals that satisfy the definition of an "insured" are covered under the personal liability protection section of the policy. The term "insured" is defined in the definitions section of the policy:

> Insured means:
>
> a. you;
>
> b. your relatives; and
>
> c. any other person under the age of 21 residing with you who is in your care or the care of a relative.

"You" or "your" refers to Brown's parents, the named insureds. The policy defines "relative" as "a person who resides with you and who is related to you by blood, marriage or adoption. Relative includes a ward or foster child who resides with you."

Plaintiff argues that because the named insureds live in Illinois, they cannot "reside" at 59754 48th Avenue. And, because Brown does not live under the same roof as the named insureds, he does not "reside" with them. Defendants counter plaintiff's argument claiming that "reside" should be defined according to the policy's definition of "residence premises."

According to the definitions section of the policy,

> Residence premises means:
>
> a. the one or two family dwelling *where you reside*, including the building, the grounds and other structures on the grounds; or
>
> b. that part of any other building *where you reside*, including grounds and structures;
>
> which is described in the Declarations. [Emphasis added.]

Thus, defendants contend that, under the policy's definition of "residence premises," the named insureds were considered to "reside" in the dwelling located at 59754 48th Avenue. And, because Brown lived at 59754 48th Avenue, he resided with the named insureds.

We agree with plaintiff that this line of argument improperly equates "reside" with the definition of "residence premises." While 59754 48th Avenue may be considered the "residence premises" for purposes of property protection coverage under the policy, it does not necessarily follow that Brown "resides" with the named insureds. The policy does not expressly define the term "reside." According to *Random House Webster's College Dictionary* (2000), "reside" means "to dwell permanently or for a considerable time, live." It appears undisputed that Brown's parents did not live or "reside" at 59754 48th Avenue at the time of the occurrence. Moreover, according to the declarations section of the policy, Brown's parents occupy the Michigan premises on a "seasonal" basis. Thus, their occasional occupancy of the premises at issue cannot equal the generally understood definition of the term "reside."

Furthermore, plaintiff appropriately cites *Meridian Mut Ins Co v Hunt*, 168 Mich App 672; 425 NW2d 111 (1988), for the proposition that this Court should not define "reside" by reference to the policy's definition of "residence premises." In *Hunt*, the plaintiff insurance company issued two homeowners insurance policies to Carl and Thelma Nichols, one for a home on Raeburn Drive and one for a home on Nye Highway. *Id*. at 674. The defendant, Eric Hunt, lived at the Raeburn address with his mother, Thelma, and his stepfather, Carl. *Id*. The plaintiff filed an action for declaratory relief seeking a declaration that it did not have a duty to defend or indemnify Carl with respect to claims made by Eric and Thelma in a separate action in which they sought damages for alleged injuries inflicted on Eric by Carl. *Id*. The homeowner's policy contained an exclusion for "bodily injury to you or a family member residing in your household." *Id*. The trial court concluded that Eric was a "family member" because he was the stepson of the insured and was residing in the insured's household on Raeburn. *Id*. at 675. On

appeal, the defendant argued that the term "household" should be defined according to the policy's definition of "residence premises." *Id*. at 679. The *Hunt* Court rejected such a reading of the policy. *Id*. "'Residence premises' applies only to the property protection coverage portion of the policy, § II. Moreover, the term 'residence premises' does not appear in the insuring language of § II which provides personal liability protection, the policy section under which defendants claim coverage." *Id*. at 679-680. Furthermore, "'[r]esidence premises' refers to a type of physical structure while 'household' refers to a distinct type of living arrangement in the sense of a social unit." *Id*. at 680-681, citing *Thomas v Vigilant Ins Co*, 156 Mich App 280, 282-283; 401 NW2d 351 (1986).

Defendants properly note that, unlike the defendant in *Hunt*, defendants are not asking this Court to equate the term "household" with the definition of "residence premises." Nevertheless, we find the reasoning in *Hunt* relevant. Here, the term "residence premises" appears in the definitions section of the policy. However, defendants' reference to the term "residence premises" is to the property coverage portion of the policy, not to the personal liability protection section from which coverage allegedly arises. See *id*. at 679-680. While the reference to "insured" as a blood relative who "resides" with a named insured appears to relate to a type of living arrangement, the term "residence premises" clearly relates to the type of physical structure that is insured. See *id*. at 680-681. As noted, the living arrangement existing at the time of the accident was one in which Brown lived separately from his parents in another state. Because the terms "reside" and "residence premises" are distinct concepts, we will not equate the two for definitional purposes. Therefore, we conclude that Brown is not an "insured" under the unambiguous terms of the insurance policy, and plaintiff has no duty to defend or indemnify Brown in the underlying lawsuit.[1]

Reversed and remanded for entry of an order granting summary disposition in favor of plaintiff. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Donald S. Owens
/s/ Christopher M. Murray

[1] Our conclusion that there is no coverage under these circumstances does not render the policy illusory. The policy provides benefits to the named insureds and does not improperly limit plaintiff's liability. See *Auto Club Group Ins Co v Daniel*, 254 Mich App 1, 4; 658 NW2d 193 (2002), citing *Allstate Ins Co v Fick*, 226 Mich App 197, 201; 572 NW2d 265 (1997) (stating that an insurance company is permitted to limit its coverage as long as it does so clearly and unambiguously).