STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY GRAY and WILLIAM GRAY, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED March 24, 2009
v	No. 280392 Wayne Circuit Court
MEEMIC INSURANCE COMPANY, Defendant/Counter-Plaintiff-Appellant.	LC No. 06-605623-NI

Before: Fort Hood, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

Defendant/counter-plaintiff ("defendant") appeals as of right the order of dismissal in favor of plaintiffs/counter-defendants ("plaintiffs") in this uninsured motorist insurance benefits action. Defendant argues that in denying its motion for summary disposition, the trial court erred in concluding that the policy exclusion precluding coverage for accidents caused by an intentional act did not apply, and further erred in concluding that there was insurance coverage on the basis of physical contact between plaintiffs' vehicle and the uninsured driver's vehicle. We reverse.

Defendant argues that it was entitled to summary disposition because the trial court should have applied the uninsured motorist policy exclusion precluding coverage for injuries "caused intentionally by or at the direction of another person" to plaintiff Kimberly Gray's ("Gray") unequivocal testimony that the hit-and-run driver intentionally caused the accident and Gray's resulting injuries. We agree.

This Court reviews a trial court's decision to grant or deny a motion for summary disposition de novo. *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). Pursuant to a motion brought under MCR 2.116(C)(10), this Court construes the pleadings, admissions and other evidence submitted by the parties in a light most favorable to the non-moving party. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial." *Id*., citing *Singerman v Municipal Service Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997).

Because a "mere promise" to offer factual support for a party's position at trial is insufficient to overcome a motion brought under MCR 2.116(C)(10), this Court considers "the substantively admissible evidence actually proffered in opposition to the motion." *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

Issues regarding the proper interpretation and application of an insurance contract are subject to de novo review. *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 528; 620 NW2d 840 (2001). Insurance policies are subject to the same rules of contract interpretation that apply to contracts in general. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Because uninsured motorist insurance coverage is optional, "the rights and limitations of such coverage are purely contractual and are construed without reference to the no-fault act." *Id*. at 465-466. An insurance policy is "an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992), citing *Eghotz v Creech*, 365 Mich 527, 530; 113 NW2d 815 (1962). A court must construe and apply unambiguous insurance policy provisions as written provided the contract is not in contravention of public policy. *Churchman, supra* at 567. An insurance policy is read as a whole, and meaning should be attributed to all of the terms. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 715; 706 NW2d 426 (2005). "The contractual language is to be given its ordinary and plain meaning." *Id*., citing *Hall v Equitable Life Assur Soc of US*, 295 Mich 404, 408; 295 NW 204 (1940). The insurance policy must be enforced according to its terms, which if not defined in the policy, are given their commonly used meaning. *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 112-114; 595 NW2d 832 (1999). A word can be given its commonly understood meaning by referencing its dictionary definition. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 534-535; 676 NW2d 616 (2004). Although exclusionary clauses in insurance policies are strictly construed in the insured's favor, unambiguously expressed exclusions are enforced as written because liability may not be imposed on an insurer for a risk it did not intend to assume. *Churchman, supra* at 567.

It is undisputed by the parties that the operative policy language at issue provides that uninsured motorist coverage does not apply to bodily injury sustained by an insured person "which is caused intentionally by or at the direction of another person[.]" The word intentional is defined as "done with intention or on purpose." Random House Webster's College Dictionary (2000), p 687. In deposition, Gray testified that an unknown female in a blue truck approached from behind at a high rate of speed, directing profanity and hand gestures at her. Gray was in the middle lane, but could not move to the other lane of traffic. This female moved to the left lane of traffic, traveling alongside of Gray, and continued to yell at Gray to move out of the way. Then, the female "played chicken" with Gray, staggered between the two lanes, "hit the front driver's side" of Gray's car, and Gray was unable to maintain control of her vehicle. Specifically, Gray testified as follows:

> *Q*. When you say [that the hit-and-run driver] was playing chicken and she was running over, did you believe that she did this intentionally?
>
> *A*. Yes.
>
> *Q*. Okay. And she hit you on purpose?

A. I believe so. I wouldn't have hit a wall on my own.

Under these circumstances, defendant was entitled to summary disposition on the question of whether the intentional act exclusion bars coverage in this case. The policy exclusion clearly and unambiguously excludes coverage for bodily injury caused by the intentional act of another person. Further, Gray unequivocally testified that the other person, the hit-and-run driver, intentionally hit her, and that the hit-and-run driver's intentional act of hitting Gray was what caused the accident and Gray's resultant injuries. In deposition, Gray established that her injuries were caused by the purposeful actions of the driver of the hit-and-run vehicle; the clear language of the policy applies, precluding coverage in this case. Consequently, because there was no genuine issue of material fact regarding the question of whether the accident was caused by an intentional act of another person, the trial court erred when it denied defendant summary disposition. MCR 2.116(C)(10).

In deciding defendant's motion for summary disposition, the trial court should have applied the unambiguous policy exclusion barring coverage to the uncontested evidence in this case, Gray's unequivocal deposition testimony, and did not; therefore, we conclude that the trial court erred in denying defendant summary disposition. In light of our conclusion that the exclusion precluding coverage applies under the circumstances of this case, we need not reach the question of whether the trial court improperly denied defendant summary disposition on the basis of its conclusion that the policy provision requiring physical contact between the insured's and uninsured's vehicles did not apply.

We reverse the trial court's order denying defendant summary disposition and remand with instructions to enter judgment in defendant's favor. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Kurtis T. Wilder
/s/ Stephen L. Borrello