

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL HALEY, Personal Representative of
the Estate of ROBERT L. WOODCOCK, II,

UNPUBLISHED
August 1, 2006

Plaintiff-Appellee,

v

No. 265794
Midland Circuit Court
LC No. 03-006892-NO

WILLIAM NAHIKIAN, Personal Representative
of the Estate of BRIAN EILF, and DAVID
GOEMAN,

Defendants,

and

DANIELLE TAYLOR, Personal Representative of
the Estate of BRIAN J. TAYLOR,

Defendant/Cross-Plaintiff-
Appellant,

and

EMPLOYERS MUTUAL CASUALTY
COMPANY,

Defendant/Cross-Defendant-
Appellee.

Before: Meter, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this action seeking a declaration of rights under a policy of insurance, defendant and cross-plaintiff Danielle Taylor appeals as of right the trial court's order denying her motion for summary disposition and granting summary disposition in favor of plaintiff Michael Haley. We affirm.

The facts relevant to this appeal are not in dispute. The parties' decedents were killed in an automobile accident in which a vehicle crossed the median and crashed into a Pontiac Bonneville owned by defendant and being operated by her decedent, Brian Taylor. At the time

of the accident Taylor and plaintiff's decedent, Robert Woodcock, were en route to retrieve a Cadillac insured through Woodcock's company, Ultra Modular, Inc., by defendant Employers Mutual Casualty Company (EMCC). According to defendant, Woodcock had asked Taylor to drive him to the service station where the Cadillac was being repaired, and Taylor agreed. The EMCC policy issued to Ultra Modular, Inc., which listed the Cadillac as a "covered auto," contains a \$500,000 underinsured motorist (UIM) endorsement. Plaintiff and defendant both sought to recover against the limited UIM benefits provided for under the EMCC policy, as well as a declaration from the trial court regarding their rights in this regard. Plaintiff alleged that he alone was entitled to recover UIM benefits under the policy. Defendant, however, asserted that because Woodcock was using Taylor's Bonneville as a temporary substitute for an out of service automobile covered under the policy, i.e., the Cadillac, she too was entitled to benefits under a section of the UIM endorsement that provides:

If the Named Insured is designated in the Declaration as:

* * *

2. A partnership, limited liability company, corporation or any other form of organization, then the following are "insureds":

a. *Anyone "occupying" a covered "auto" or a temporary substitute for a covered "auto"*. The covered "auto" must be out of service because of its breakdown, repair, serving, "loss" or destruction. [Emphasis added.]¹

After a hearing on the parties' cross-motions for summary disposition, the trial court entered an order of declaratory judgment granting summary disposition in favor of plaintiff. On appeal, defendant renews her assertion that she is entitled to UIM benefits under the EMCC policy because Taylor was occupying a "temporary substitute for a covered 'auto'" within the meaning of the UIM endorsement. On review de novo, we disagree. See *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001) (a trial court's ruling on motion for summary disposition is reviewed de novo); see also *Cohen v Auto Club Ins Ass'n*, 463 Mich 525, 528; 620 NW2d 840 (2001) (the proper interpretation and application of an insurance policy is a question of law that is reviewed de novo).

An insurance policy must be enforced in accordance with its terms, which are to be given their commonly used meanings unless clearly defined in the policy. *Allstate Ins Co v McCarn*, 466 Mich 277, 280; 645 NW2d 20 (2002). Although the policy at issue here does not define the phrase "temporary substitute for a covered "auto,"" a commonly used dictionary defines the term "substitute" as "a person or thing acting or serving in place of another," and "to put (a person or

¹ Although the EMCC policy also provides that an automobile not owned by the named insured, but "used with the permission of its owners as a temporary substitute for [an out of service] covered 'auto'" is also a "covered 'auto,'" we do not find this separate provision regarding liability coverage relevant to the determination whether the vehicle at issue here was a "temporary substitute" vehicle within the meaning of the UIM endorsement.

thing) in the place of another” or “to take the place of; replace.” *Random House Webster’s College Dictionary* (1992), p 1332-1333. In this case, there is no indication that Woodcock had unlimited access to the Bonneville or could otherwise have used that vehicle for all of his regularly scheduled activities. The Bonneville did not, therefore, replace or otherwise assume the function of the Cadillac. See *id.* at 1142 (defining “replace” as “to assume the function of”); see also, e.g., *Tanner v Pennsylvania Threshermen & Farmers’ Mut Casualty Ins Co*, 226 F2d 498, 500 (CA 6, 1955) (construing the term “‘substitute car’ to mean a car which was in the possession or under the control of the insured to the same extent and effect as the disabled car of the insured would have been except for the disablement”). As stated above, courts must interpret the terms of a contract in accordance with their commonly used meanings. *Allstate Ins Co, supra*. Doing so here, we conclude that the Bonneville was not a “substitute” for the Cadillac within the meaning of the UIM endorsement. Accordingly, because at the time of the accident Taylor occupied neither a “covered ‘auto’” nor a “temporary substitute for a covered ‘auto,’” defendant is not entitled to the benefits provided for under the EMCC policy UIM endorsement. Summary disposition in favor of plaintiff was, therefore, proper.²

Affirmed.

/s/ Patrick M. Meter

/s/ Joel P. Hoekstra

I concur in result only.

/s/ Jane E. Markey

² Because the above analysis is dispositive, we need not address additional arguments made by the parties.