STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM FIRE & CASUALTY COMPANY,

Plaintiff-Appellee/
Cross-Appellant,

v

KEITH MALEC, Personal Representative of the ESTATE OF TROY DAVID FOURNIER, Deceased,

Defendant-Appellant/
Cross-Appellee,

and

RICHARD BALOGH,

Defendant.

UNPUBLISHED
April 20, 2010

No. 289929
Macomb Circuit Court
LC No. 2008-002044-NO

Before: MARKEY, P.J., and ZAHRA, and GLEICHER, JJ.

PER CURIAM.

Plaintiff filed a declaratory judgment action to determine whether it was liable for coverage under a homeowner's insurance policy issued by it to defendant Richard Balogh's parents following an incident resulting in the death of Troy David Fournier on September 26, 2005. Defendant Balogh was insured under the homeowner's policy issued to his parents. Defendant Malec,[1] as personal representative of the decedent's estate, appeals as of right from the trial court order granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10) based on the motor vehicle exclusion of the homeowner's policy. Plaintiff cross-appeals the trial court's ruling that summary disposition was not appropriate based on the

[1] References to "defendant" in the singular throughout this opinion are to defendant Malec only.

business pursuits exclusion of the policy. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS AND PROCEEDINGS

The facts in this case are not in dispute. The decedent was electrocuted to death when a crane mounted to a truck and operated by defendant Balogh came in contact with a live DTE power line. The decedent's estate originally filed a wrongful death claim against Bruce D. Blondo (as owner of the truck), Blondo Roofing Company, and defendant Balogh on December 1, 2006. The decedent filed a partial motion for summary disposition in that action, which was granted by the trial court. In the order, Balogh was found to be negligent and the decedent was found to be free of negligence in the events surrounding his death. That action was settled by the filing of a release and settlement agreement between the decedent's estate, plaintiff State Farm, and defendant Balogh. Plaintiff State Farm agreed to pay the monetary policy limit for the underlying wrongful death claim if the court ruled that it owes coverage and indemnification to defendant Balogh. If no coverage was owed to defendant Balogh, the decedent's estate would receive nothing.

Defendant Balogh and the decedent were roofers who had been laid off from work by Blondo Roofing Company at the time of the accident. On that day, they arrived at Blondo Roofing and were told that no work was available. Defendant Balogh and the decedent received permission from the owner, Bruce Blondo, to take steel joists from the Blondo Roofing storage yard to sell as scrap metal for money. The two men cut up some of the joists, and then decided to use a crane truck in the storage yard to move the joists to a better area in order to cut them up more easily. The key was in the truck but it would not start. Either the decedent or defendant Balogh had to take a battery from another truck to start the crane truck. While defendant Balogh was operating the crane, it touched a live Detroit Edison utility wire. The decedent, who was standing to the rear and left of the truck, was electrocuted at some point, resulting in his death.

II. Summary Disposition

Defendant argues on appeal that the trial court erred by granting summary disposition in favor of plaintiff based on the motor vehicle exclusion in the policy. We disagree.

A. Standard of Review

This Court reviews the grant or denial of a motion for summary disposition de novo. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007); *City of Taylor v Detroit Edison Co*, 475 Mich 109, 115; 715 NW2d 28 (2006). When reviewing a motion brought under MCR 2.116(C)(10), we consider the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Brown*, 478 Mich at 552. A grant of summary disposition is appropriate if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006); *Lee v Detroit Medical Center*, 285 Mich App 51, 59; 775 NW2d 326 (2009). The construction and interpretation of the language in an insurance contract is a question of law that is also reviewed de novo on appeal. *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 80; 730 NW2d 682 (2007); *Allstate Ins Co v McCarn (After Remand)*,

471 Mich 283, 288; 683 NW2d 656 (2004); *Brown v Farm Bureau Gen Ins Co of Michigan*, 273 Mich App 658, 660-661; 730 NW2d 518 (2007).

B. ANALYSIS

Insurance exclusionary clauses are strictly construed in favor of the insured. There is no coverage if any exclusion in the policy applies to the particular claims of an insured. Clear exclusions are given affect because an insurance company cannot be held liable for a risk it did not assume. *Brown*, 273 Mich App at 661, quoting *Century Surety Co v Charron*, 230 Mich App 79, 83; 583 NW2d 486 (1998); *Hayley vAllstate Ins Co*, 262 Mich App 571, 574; 686 NW2d 273 (2005). To effectuate the overall intent of the parties, this Court must read the policy as a whole when reviewing an exclusionary clause. *Pacific Employers Ins Co v Michigan Mutual Ins Co*, 452 Mich 218, 224; 549 NW2d 872 (1996). The insurance contract must be enforced as written if the language is clear and unambiguous. *Brown*, 273 Mich App at 661; *Century Surety Co*, 230 Mich App at 82-83.

The homeowner's policy issued to defendant Balogh's parents contains the following exclusion from coverage:

> 1. Coverage L and Coverage M do not apply to:
>
> * * *
>
> e. bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of:
>
> * * *
>
> (2) a motor vehicle owned or operated by or rented or loaned to any insured . . .

The policy defines "motor vehicle" as "a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle"

This motor vehicle exclusion language is clear and unambiguous and must be enforced as written. *Brown*, 273 Mich App at 661; *Century Surety Co*, 230 Mich App at 82-83. The crane was attached to the truck and was designed to travel on roads. In fact, Blondo Roofing had allowed a subcontractor to use it in the construction of the Somerset Mall. The registration was kept current on the truck until a decision was made to not utilize it for the business. The crane was not operated independently from the truck, and it could not be used until the truck was started. That the truck was never physically moved from its location is irrelevant. *Vanguard Ins Co v Clarke*, 438 Mich 463, 472-473; 475 NW2d 48 (1991). The decedent or defendant Balogh put an operable battery in the truck and the truck was started so that the crane was operable. The crane truck clearly constitutes a "motor vehicle" for purposes of the homeowner policy. *Brown*, 273 Mich App at 661; *Century Surety Co*, 230 Mich App at 83; *Hayley*, 262 Mich App at 574. Accordingly, the trial court properly determined the motor vehicle exclusion of the policy

applied and coverage for defendant Balogh's negligent operation of the crane was excluded under the homeowner's policy. *Vanguard Ins Co*, 438 Mich 463, 472-473.

Defendant next claims that the crane truck was not a "motorized vehicle" for purposes of the exclusion because the truck was in dead storage at the time of the accident. However, as mentioned, the policy states that, "A motorized land vehicle in dead storage on an insured location is not a motor vehicle." The policy further states that:

> 5. "insured location" means:
>
> a. The residence premises;
>
> b. The part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
>
> c. Any premises used by you in connection with the premises included in 5.a. or 5.b.;
>
> d. Any part of a premises not owned by an insured but where an insured is temporarily residing:
>
> e. Land owned by or rented to an insured on which a one or two family dwelling is being constructed as a residence for an insured;
>
> f. Individual or family cemetery plots or burial vaults owned by an insured;
>
> g. Any part of a premises occasionally rented to an insured for other than business purposes;
>
> h. Vacant land owned by or rented to an insured. This does not include farm land; and
>
> i. Farmland (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

Defendant's claim is without merit. Even if the crane truck was not a "motorized vehicle," this section of the homeowner's policy does not apply because the crane truck was not located in a covered, "insured location" at the time of the accident. Rather, plaintiff issued the homeowner's insurance policy to defendant's parents at a Roseville address while Blondo Roofing Company is located in Centerline. Clearly, Blondo Roofing Company is not located in an insured location.

The trial court properly determined that the motor vehicle exclusion of the homeowner's policy barred coverage in the underlying action. A declaratory judgment in plaintiff's favor, finding that plaintiff had no duty to defend or indemnify defendant Balogh under the homeowner's policy, was correctly entered. *Brown*, 478 Mich at 552; *Greene*, 475 Mich at 507; *Lee*, 285 Mich App at 59.

Because coverage is barred based on the motor vehicle exclusion in the policy, it is unnecessary to address plaintiff's issue on cross-appeal. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

Affirmed.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher