2017 IL App (1st) 170392-U

FIRST DIVISION
December 26, 2017

No. 1-17-0392

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STONEGATE INSURANCE COMPANY, Plaintiff-Appellant, v. WILLIAM SIMON, DAN McGINNIS, and STATE FARM MUTUAL AUTO INSURANCE COMPANY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, No. 15 CH 15162 Honorable Rodolfo Garcia, Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's grant of summary judgment in favor of the insured on the issue of coverage is affirmed where the facts of the accident at issue bring it within the insurance policy's uninsured motorist coverage.

¶ 2 Plaintiff Stonegate Insurance Company sought a declaration in the circuit court that it had no coverage obligation to its insured, William Simon, as a result of an incident in which a golf cart Mr. Simon was riding in, owned and driven by Dan McGinnis, flipped over, causing bodily injury to Mr. Simon. Mr. Simon submitted a claim to Stonegate pursuant to the uninsured

motorist coverage provision of his personal auto policy with Stonegate. Stonegate denied coverage on the basis that, under the policy, the golf cart did not qualify as an uninsured motor vehicle. On appeal, Stonegate challenges the circuit court's grant of summary judgment in favor of the defendants, Mr. Simon, Mr. McGinnis, and Mr. McGinnis's home insurer, State Farm Mutual Auto Insurance Company. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 A. The Incident

¶ 5 On August 28, 2012, Mr. McGinnis was driving an E-Z Go Club Car golf cart on M-152—a two-lane roadway in Benton Harbor, Michigan. Mr. Simon was in the front passenger seat while his wife, Cynthia Simon, and Mrs. Simon's friend, Patti Franklin, were seated in the back seat of the golf cart.

¶ 6 In an affidavit submitted in support of summary judgment, Mr. McGinnis described M-152 as a two-lane road with "fog lines and paved shoulders." Mr. McGinnis was driving the golf cart east on M-152, on the paved shoulder that bordered the road's eastbound lane, and stated that he kept the "left wheels of the golf cart *** along the fog line (sometimes just left of it, on it, or just to the right of it)." Mr. McGinnis drove the golf cart past an elementary school that had two driveway entrances. As the golf cart was approaching the second driveway entrance, Mr. McGinnis steered the golf cart slightly to the right, so the "right wheels of the golf cart were on the dirt or grassy area abutting the paved shoulder."

¶ 7 In his deposition, Mr. McGinnis explained that he was on "the blacktop part" of the road when the accident occurred and to the right side of the white line, with the main part of the road to his left and the shoulder to his right. Mr. Simon also attached photographs that showed the fog

line separating the main part of M-152 from the shoulder. It is clear in these photographs that the shoulder is paved. According to Mr. McGinnis's affidavit:

> "The crash occurred when the right front wheel hit the perpendicular edge of the driveway entrance to the school. It was a large enough change in elevation between the dirt/grass and the paved driveway entrance to cause the golf cart to flip. The golf cart flipped over onto its right side, causing the right side of [Mr. Simon's] body to hit the ground."

¶ 8 Mr. Simon's testimony at his deposition was that "we were just driving down the road and I noticed that [Mr. McGinnis] was starting to edge over a bit." He also testified that when the golf cart flipped, Mr. McGinnis and the roof of the golf cart landed on top of him, and he was pinned beneath the golf cart. Mr. Simon broke his shoulder in five or six places and broke his arm as a result of the accident. Mr. McGinnis filed a claim with State Farm under his home insurance policy, but was denied coverage.

¶ 9 B. The Policy

¶ 10 Mr. Simon's personal auto policy with Stonegate at the time of the golf cart accident covered four specific vehicles owned or operated by Mr. Simon and members of his family. The policy also provided for uninsured motorist coverage under certain specific circumstances:

> "PART C – UNINSURED MOTORISTS COVERAGE INSURING AGREEMENT
>
> A. We will pay compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of 'bodily injury':
>
> 1. Sustained by an 'insured'; and

2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the 'uninsured motor vehicle.'

B. 'Insured' as used in this Part means:

1. You or any 'family member.'

2. Any other person 'occupying' 'your covered auto.'

3. Any person for damages that person is entitled to recover because of 'bodily injury' to which this coverage applies sustained by a person described in 1. or 2. above.

C. 'Uninsured motor vehicle' means a land or motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.

* * *

However, 'uninsured motor vehicle' does not include any vehicle or equipment:

* * *

5. Designed mainly for use off public roads while not on public roads."

¶ 11 An endorsement to the policy amended Part C "as follows":

"A. Section 2. Of the definition of 'insured' is replaced by the following: 'insured' as used in this Part means:

2. Any other person 'occupying':

a. 'Your covered auto'; except where that vehicle is taken unauthoritatively then no coverage shall attach to operator or passengers occupying said vehicle.

b. Any other auto operated by you.

B. Section 3. Of the definition of 'uninsured motor Vehicle' [is] replaced by the following:

'Uninsured motor vehicle' means a land motor vehicle or trailer of any type:

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which, through physical contact, hits or causes an object to hit:

a. You or any 'family member' resulting in 'bodily injury';

b. A vehicle which you or any 'family member' are 'occupying'; or

c. "Your covered auto."

¶ 12 C. Procedural Background

¶ 13 Because Mr. McGinnis did not have insurance coverage for the golf cart, Mr. Simon filed a lawsuit against Mr. McGinnis in Michigan and an uninsured motorist claim with Stonegate. In response, Stonegate filed this declaratory action against Mr. Simon, Mr. McGinnis, and State Farm. Stonegate sought declarations that Mr. Simon's policy did not provide coverage in this instance, that Stonegate had no duty to defend or indemnify Mr. Simon, and that Stonegate was "not obligated by its policy of insurance to pay out any sums to defendants or for the use of defendants."

¶ 14 The parties filed cross-motions for summary judgment. In its motion, Stonegate argued that the golf cart was not an uninsured motor vehicle under the policy and that Mr. Simon was not an insured under the policy "since he neither owned nor operated the golf cart." Mr. Simon argued that he was covered by the uninsured motorist coverage provision of the policy.

¶ 15 On January 31, 2017, the circuit court denied Stonegate's motion for summary judgment and granted summary judgment in favor of defendants, declaring that Stonegate owed Mr. Simon coverage under the uninsured motorist coverage provision because Mr. Simon was an insured and the golf cart was an uninsured motor vehicle under the policy.

¶ 16 II. JURISDICTION

¶ 17 Stonegate timely filed its notice of appeal on February 14, 2017. This court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 18 III. ANALYSIS

¶ 19 On appeal, Stonegate makes three arguments in support of its contention that defendants were not entitled to summary judgment or coverage for the golf cart accident pursuant to Mr. Simon's personal auto policy: (1) that Mr. Simon was not an "insured" under the policy when he was a passenger in Mr. McGinnis's golf cart; (2) that the golf cart was not an "uninsured motor vehicle" under the policy; and (3) that this accident comes within an exclusion in the policy's definition of an uninsured motor vehicle for any vehicle "designed mainly for use off public roads while not on public roads." Stonegate also makes an argument that we should read this coverage narrowly because Illinois law does not require insurance coverage for golf carts. We find that summary judgment in favor of defendants was proper.

¶ 20 "Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). Where, as here, the parties have filed cross-motions for summary judgment, "they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. "A circuit court's ruling on a motion for summary judgment is reviewed *de novo*." *Pekin Insurance Co. v. Centex Homes*, 2017 IL App (1st) 153601, ¶ 18 (citing *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, ¶ 22).

¶ 21 The construction of an insurance policy is also subject to *de novo* review. *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292-93 (2001). The primary objective is "to ascertain and give effect to the intentions of the parties as expressed in their agreement." (Internal quotation marks omitted.) *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). And if unambiguous, the terms of the policy must be given their "plain and ordinary meaning." *Id.* "An insurance policy will be liberally construed in favor of the insured." *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 455 (2009).

¶ 22 Part C of Mr. Simon's personal auto policy with Stonegate provides that Stonegate will "pay compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of 'bodily injury' *** [s]ustained by an 'insured' " and "[c]aused by an accident." As Mr. Simon points out in his response brief, "Stonegate does not challenge that [Mr.] Simon sustained bodily injuries, that his injuries were caused by the accident, or that he was legally entitled to recover from [Mr.] McGinnis as the owner/operator of the golf cart." The questions before us are only whether Mr. Simon qualifies as an "insured" and whether the golf cart qualifies as an "uninsured motor vehicle."

¶ 23 A. Mr. Simon is an "Insured" Under the Policy

¶ 24 Part C, section B, of the policy defines an "insured" for purposes of uninsured motor vehicle coverage. Section 1 of section B defines an "insured" as "[y]ou or any 'family member.' " The general "Definitions" section of the policy further states that "[t]hroughout this policy, 'you' and 'your' refer to *** [t]he 'named insured' shown in the Declarations." Mr. Simon is listed as a named insured in the policy's "Declarations." Because the policy's named insureds qualify as an "insured" for the purposes of part C, Mr. Simon qualifies as an insured under part C by the plain language of the policy.

¶ 25 Stonegate, however, argues that the entire definition of an "insured" under part C was replaced by an endorsement modifying part C, which provides as follows:

> "A. Section 2. Of the definition of 'insured' is replaced by the following:
>
> 'insured' as used in this Part means:
>
> 2. Any other person 'occupying':
>
> a. 'Your covered auto'; except where that vehicle is taken unauthoritatively then no coverage shall attach to operator or passengers occupying said vehicle.
>
> b. Any other auto operated by you."

According to Stonegate, Mr. Simon would only be covered under the uninsured motorist coverage portion of the policy if he was injured in an accident in which one of his four covered vehicles was involved or while he was driving.

¶ 26 But the plain language of the endorsement makes clear that it modifies only the second section of the definition of insured, rather than replacing the definition in its entirety. The endorsement states that it replaces "Section 2. Of the definition of 'insured.' " If the endorsement

replaced the entire definition of an "insured" for part C of the policy, then part C of would exclude coverage for the named insured, since section 2 only covers any "other" person. While Stonegate is correct that there is an unusually placed period and capital "O" in the phrase "Section 2. Of the definition" in the endorsement, it is clear to us that the only part of the definition of insured that is being altered is section 2. So the endorsement leaves section 1 of the definition of an insured untouched. Section 1 of the definition includes "you," meaning Mr. Simon and his family members. As a named insured on the policy, Mr. Simon qualifies as an insured under section 1, regardless of what motor vehicle was involved, and the amendment in the endorsement to section 2 is simply irrelevant.

¶ 27 B. The Golf Cart is an "Uninsured Motor Vehicle" Under the Policy

¶ 28 Stonegate argues that the golf cart at issue in this case is not an "uninsured motor vehicle" under the policy, both because it does not fall within the plain meaning of the term "land motor vehicle," and because it falls within an exclusion under the definition of "uninsured motor vehicle" for a vehicle that is not "on public roads" at the time of the accident. We reject both arguments.

¶ 29 1. The Golf Cart is an Uninsured "Land Motor Vehicle"

¶ 30 Part C, section C, section 1, of the policy defines an "uninsured motor vehicle" as "a land motor vehicle or trailer of any type" "[t]o which no bodily injury liability bond or policy applies at the time of the accident." Because the policy does not define "land motor vehicle," we look to its plain, ordinary meaning. *Wilson*, 237 Ill. 2d at 455. A "motor vehicle" is defined as "an automotive vehicle not operated on rails" (Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/motor%20vehicle (last visited November 21, 2017)) and "automotive" is defined as "self-propelled" (Merriam-Webster Dictionary,

http://www.merriam-webster.com/dictionary/automotive (last visited November 21, 2017)). See also 625 ILCS 5/1-146 (West 2016) (Illinois Vehicle Code section defining a "motor vehicle" as "[e]very vehicle which is self-propelled *** but not operated upon rails, except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles").

¶ 31 The golf cart at issue here falls within the plain meaning of the term "land motor vehicle." It was operated on land, was self-propelled, and was not operated on rails. In addition, it is undisputed that the golf cart was not insured at the time of the accident. Thus, Mr. McGinnis's golf cart falls squarely within the definition of an uninsured motor vehicle under part C, section C, section 1.

¶ 32 Stonegate again argues that a policy endorsement replaces the relevant definition in this case, causing the golf cart to fall outside the definition of an "uninsured motor vehicle." The endorsement in question indicates again how part C, regarding uninsured motorist coverage, is amended:

> "B. Section 3. Of the definition of 'uninsured motor Vehicle' I [*sic*] replaced by the following:
>
> 'Uninsured motor vehicle' means a land motor vehicle or trailer or any type:
>
> 3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which, through physical contact, hits or causes an object to hit:
>
> a. You or any 'family member' resulting in 'bodily injury';
>
> b. A vehicle which you are any 'family member' are

'occupying'; or

c. 'Your covered auto.' "

¶ 33 Again Stonegate reads the endorsement to supersede the entire definition—meaning that Mr. Simon would only be covered by the uninsured motorist provision of his policy if an unidentified driver committed a hit-and-run. We must again reject this argument, despite the period and capital letter appearing in what otherwise reads as a single sentence. The endorsement provides that it replaces only the third part—"Section 3"—of the definition of an "uninsured motor Vehicle." As a land motor vehicle to which no policy applied at the time of the accident, the golf cart qualifies as an uninsured motor vehicle under the *first* part of that definition.

¶ 34 2. The Exclusion for Vehicles "Not On Public Roads" Does Not Apply

¶ 35 Stonegate also argues that Mr. Simon is not entitled to coverage based on the policy's exclusion—from the definition of an "uninsured motor vehicle"—of "any vehicle" that is "[d]esigned mainly for use off public roads while not on public roads." The parties do not dispute that the golf cart was a vehicle designed mainly for use off public roads. But to fall within the exclusion, the motor vehicle must also be "not on public roads" at the time of the accident.

¶ 36 Stonegate argues that there is a factual issue as to whether Mr. McGinnis was driving the golf cart on "public roads" at the time of the accident. Stonegate claims that, at the time of the accident, Mr. McGinnis was driving the golf cart "on the grassy 'culvert' off the road" and that the "grassy ditch at the side of the road is where the golf cart was, and where the incident occurred," is not a public road. However, the evidence is undisputed that the golf cart was at least partially on either the main part of the roadway or on the shoulder at the time of the accident.

¶ 37 Mr. McGinnis testified that he was traveling on the paved portion of M-152 and on the "blacktop part" of the road when the accident occurred. In his affidavit, Mr. McGinnis attested that he drove the golf cart east along the paved shoulder of M-152 with the left wheels of the golf cart along the road's fog line. Although Mr. McGinnis moved the golf cart slightly to the right just before the accident, he stated that he was "still largely on the paved shoulder," with just the right wheels of the cart on the "grassy area abutting the paved shoulder." Mr. McGinnis stated in his deposition that the accident occurred when the golf cart's tires "caught" the "culvert." Mr. Simon's testimony was only that they were driving down the road when Mr. McGinnis started to edge over a bit.

¶ 38 Stonegate does not suggest that any contradictory evidence exists that could be presented at trial. Instead, it argues—based on the fact that the golf cart was partially on the grassy culvert and that the other part of the golf cart may have been on the shoulder rather than the main part of M-152—that there is an issue of fact as to whether the golf cart was "on public roads." But even if some part of the golf cart was on the grassy culvert, this does not mean that the golf cart was not "on public roads." The exclusion in the policy does not exclude any vehicle that is not operating 100% "on public roads." If, as Stonegate concedes, at most two of the four wheels of the golf cart were on the grassy culvert, then the golf cart was "on public roads" if the shoulder is part of the public road.

¶ 39 The issue then is whether the phrase "on public roads" in this policy includes being on the shoulder of public roads. In support of its argument that the paved shoulder is not part of a public road Stonegate cites *Boub v. Township of Wayne*, 183 Ill. 2d 520 (1998). In *Boub*, our supreme court noted that the Illinois Vehicle Code defined "highway" as "[t]he entire width between the boundary lines of every way publicly maintained when any part thereof is open to

the use of the public for purposes of vehicular travel," and "roadway" as "[t]hat portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder." (Internal quotation marks omitted.) *Boub*, 183 Ill. 2d at 530 (quoting 625 ILCS 5/1-126, 1-179 (West 1996)). Mr. Simon relies on *Baumgartner v. Ziessow*, 169 Ill. App. 3d 647, 654 (1988), where this court stated that "the [gravel] shoulder of the road [in that case] was as much a part of the public road as the paved portion of the road on which vehicles normally travel." Neither case is particularly instructive.

¶ 40 In *Boub*, the issue was whether, for purposes of tort immunity, a bicyclist was an intended user of the defendant municipality's roads. *Boub*, 183 Ill. 2d at 529. Although the court in that case considered statutory provisions relied on by both parties, it made clear that it was the intent of the municipality that controlled, and "the intent of another public body, whether it [wa]s the state, a county, or other local entity, should be irrelevant." *Id.* And in *Baumgartner*, a minor involved in a collision argued that he should be held to a lower standard of care because he was operating his minibike on the shoulder of the road. *Baumgartner*, 169 Ill. App. 3d at 653. The court concluded that, "[f]or purposes of determining the proper standard of care," it did not matter whether the plaintiff drove the minibike on the shoulder or on the main part of the road.

¶ 41 As the vehicle code cited in *Boub* makes clear, a "highway" is different than a "roadway." *Boub*, 183 Ill. 2d at 530. A "public road" may mean something else entirely, as the dictionary definition of "road" is far broader than either of these definitions. See Merriam-Webster Dictionary, http://www.merriam-webster.com/dictionary/motor%20vehicle (last visited December 14, 2017) (defining "road" broadly as "an open way for vehicles, persons, and animals").

¶ 42 Here, the term "on public roads" is not defined in the insurance policy and there is no

other authoritative or even persuasive definition that assists us in determining whether a shoulder is or is not part of a public road. If a term in an insurance policy is ambiguous, that term is "construed strictly against the drafter of the policy and in favor of coverage." *Outboard Marine*, 154 Ill. 2d at 119. This means that when a term used in a coverage exclusion is susceptible of more than one definition we must favor the definition that narrows the exclusion in favor of coverage. Here, we therefore construe the term "on public roads" to include being on the shoulder of public roads, and find that the exclusion does not preclude coverage in this case.

¶ 43 As a final matter, Stonegate points out both that Illinois does not require liability insurance coverage for golf carts, and that the purpose of uninsured motorist coverage is to put the insured in "approximately the same position he would have been in" had the driver of an uninsured motor vehicle carried such insurance. It is true that Illinois does not require liability insurance for golf carts. See 625 ILCS 5/7-601(a) (West 2012) (requiring it only for any "motor vehicle designed to be used on a public highway"). But statutory requirements do not dictate what parties may agree to in an insurance contract. Parties are free to contract for coverage in excess of the minimum amount contemplated by the legislature when it mandated that drivers of "motor vehicle[s] designed for use on public highways and required to be registered" carry coverage protecting them in the event they are injured or damaged by the drivers of uninsured motor vehicles. See 215 ILCS 5/143a (West 2012). Here, Mr. Simon's insurance policy affords him coverage for his injuries resulting from the golf cart accident. Because Mr. Simon meets the requirements of the uninsured motorist provision of his policy, he is entitled to coverage from Stonegate and the circuit court did not err in granting summary judgment in favor of Mr. Simon.

¶ 44 IV. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 46 Affirmed.