SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2323-16T3

DANIELLE BARNES,

Plaintiff-Appellant,

v.

USAA CASUALTY INSURANCE COMPANY,
USAA LIMITED,

Defendants-Respondents.

Argued February 6, 2018 – Decided June 1, 2018

Before Judges Fasciale and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-3755-15.

Jose D. Roman argued the cause for appellant (Powell & Roman, LLC, attorneys; Jose D. Roman, on the brief).

Barbara J. Davis argued the cause for respondent (Marshall, Dennehey, Warner, Coleman & Goggin, attorneys; Barbara J. Davis, of counsel and on the brief).

PER CURIAM

In this appeal, we are asked to determine whether the motion judge erred in granting summary judgment to defendant by finding

that plaintiff was not entitled to coverage under the uninsured and underinsured (UIM) provision of her parents' insurance policy for injuries she sustained while a passenger on an all-terrain vehicle (ATV) that crashed when it was being driven off-road. Because there was no genuine dispute of the facts and we agree with the judge's interpretation of the policy, we affirm.

The standard governing our review of a trial court's summary judgment decision is long standing. Our review is de novo, applying the same standard governing the trial court. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014). Thus, we consider, as the motion judge did, "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 406 (citation omitted).

If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citation omitted). "As a general proposition, '[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" Polarome Int'l, Inc. v. Greenwich Ins. Co., 404 N.J. Super. 241, 259-60 (App. Div. 2008)

(alteration in original), (quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). "The interpretation of an insurance contract is a question of law which we decide independently of a trial court's conclusions." Id. at 260. Since the issue in this appeal involves the interpretation of an insurance contract, we review the matter de novo.

An insurance policy must be read as a whole, Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009), and will be enforced as written when its terms are clear, Mem'l Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 525 (2012). "In assessing the meaning of provisions in an insurance contract, courts first look to the plain meaning of the language at issue." Oxford Realty Grp. Cedar v. Travelers Excess & Surplus Lines Co., 229 N.J. 196, 207 (2017) (citing Chubb Custom Ins. Co. v. Prudential Ins. Co. of Am., 195 N.J. 231, 238 (2008)). "If the language is clear, that is the end of the inquiry." Ibid. (citations omitted). "An insurance policy is not ambiguous merely because two conflicting interpretations of it are suggested by the litigants." Ibid. (citations omitted). "[C]ourts 'should not write for the insured a better policy of insurance than the one purchased.'" Boddy v. Cigna Prop. & Cas. Cos., 334 N.J. Super. 649, 658 (App. Div. 2000) (quoting Walker Rogge, Inc. v. Chelsea Title & Guar. Co., 116 N.J. 517, 529 (1989)).

If a policy provision is ambiguous, we construe the provision in favor of the insured, considering the insured's reasonable expectations. Shotmeyer v. N.J. Realty Title Ins. Co., 195 N.J. 72, 82 (2008). Language in a policy of insurance is genuinely ambiguous when "the phrasing of the policy is so confusing that the average policyholder cannot make out the boundaries of coverage." Weedo v. Stone-E-Brick, Inc., 81 N.J. 233, 247 (1979). However, if a provision is not ambiguous or otherwise misleading, we need not consider the "objectively reasonable expectation" of the average policyholder in interpreting the policy. Ibid.

Applying these principles to defendant's policy, we find no ambiguity. Paragraph E (4) of the policy states that: "Uninsured Motor Vehicle and Underinsured Motor Vehicle do not include any vehicle or equipment: . . . 4. Designed mainly for use off public roads while not on public roads." We agree with judge that the clear language of the policy's UIM coverage excludes coverage for off-road vehicles. In his oral decision, the judge stated:

> [G]iv[ing] the insured every reasonable inference[,] in addition to liberally construing the policy in favor of the insured, I conclude that the term, "while not on a public road," is unambiguous. I believe that if I were to find otherwise, it would amount to . . . rewriting this contract and providing terms that are far more favorable to the insured than those that were bargained for.

We therefore address whether the policy's coverage exclusion applies to plaintiff's accident. The essential facts are brief and not disputed. The ATV's owner's manual makes it clear that the vehicle is meant for off-road use; warning riders to "[n]ever operate an ATV on a public street, road or highway, including a dirt or gravel road" because "ATV tires are designed for off-road use."[1] Plaintiff, a minor, was a passenger on the back of the ATV that was driven by her friend and owned by her friend's parents. The ATV was speeding on a public road and then went up and over a berm at the end of a drainage basin, which was utilized as a ramp. The vehicle became airborne resulting in plaintiff's ejection from the vehicle on to the ground. Plaintiff sustained injuries, and filed a UIM claim under her parent's insurance policy with defendant.

Plaintiff reiterates the argument made before the judge that the accident resulted from public road use, or alternatively, that the issue of whether the accident occurred on a public road was a disputed material fact that should have been determined by a fact-finder at trial. We are unpersuaded.

[1] The manual also warns against carrying a passenger on the ATV because it "greatly reduces the operator's ability to balance and control" the vehicle. It further states the vehicle "is not intended for carrying passengers."

The matter was ripe for summary judgment, as the essential facts are not in dispute. The fact that the ATV was operated on a public road prior to the accident does not dictate UIM coverage for plaintiff's accident. We agree with the judge's explanation that plaintiff's accident was not covered under defendant's policy:

> There's no dispute that this accident did not happen on a public road. It happened very clearly after two young individuals were on an ATV, were driving at excessive speeds down a roadway, made a conscious decision to leave that roadway, and hit an obstruction off-road. . . . [T]hose facts simply do not provide coverage under this policy, under the language contained and cited by the [c]ourt and cited by the parties.
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> . . . .
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> Perhaps different circumstances would exist here if there was some relationship to what occurred on the road, such as an obstruction, such as an individual or . . . another vehicle that caused . . . the ATV to leave the road and then an injury occurring off the road, in other words that the operative event occurred on the road. That's not what happened here. Simply put, the accident was caused by events that happened off-road by a vehicle that was not to be operated on a road, so therefore the language within the . . . exception. . . . [T]he exclusionary language in the definition does not apply here because it was not being operated on a public road.

Plaintiff's reliance on her expert's report to defeat summary judgment is misplaced. The expert opined that the accident resulted from the ATV's high-speed public road use. He asserted:

> [T]he loss of control of the ATV at the berm . . . and the resulting injury to [plaintiff] were the direct result of the use of the berm as a jump/ramp, which was only possible through the use of the public road, as well as the unsafe speed that could only be achieved by operating the ATV on the public road.

Again, we agree with the judge's analysis when he reasoned that the expert's opinion is not an obstacle to summary judgment:

> I don't believe that there are any genuine material questions of fact that prevent that. I think even considering the expert report[] of plaintiff[,] I would submit . . . it's undisputed that this accident happened off-road.
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> And it's further undisputed from a fair interpretation of the policy that the facts that are alleged that there was a continuous driving of the road, nevertheless happening off-road, . . . is an insufficient nexus as required by the policy, even if I were to consider the insuring agreement language, the policy that you've cited.
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> Any other interpretation I think perverts the policy and turns that exclusion upside down and essentially nullifies the language in the exclusion and would be in the [c]ourt's view a[n] example of a [c]ourt rewriting an insuring agreement to make it better than it is currently drafted. And to do that I think is inconsistent with applicable . . . law.

Consequently, under the circumstances of this case, the granting of summary judgment to defendant was appropriate.

Affirmed.