

STATE OF MICHIGAN
IN THE SUPREME COURT

DAWN MARIE MILLER,
Plaintiff-Appellant,

UNPUBLISHED

Open July 20, 2006

and

DEPARTMENT OF COMMUNITY HEALTH,
Intervening Plaintiff,

v

No. 259504
Washtenaw Circuit Court
LC No. 02-000284-NF

PROGRESSIVE CORPORATION,
PROGRESSIVE CASUALTY INSURANCE
COMPANY, PROGRESSIVE CLASSIC
INSURANCE COMPANY and PROGRESSIVE
MICHIGAN INSURANCE COMPANY,

T. Connors

Defendants,

and

CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendant-Appellee.

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PLAINTIFF-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

FILED

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CERTIFICATE OF SERVICE

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MARK GRANZOTTO, P.C.

LAW OFFICES OF BARRY J. GATES

CORBIN R. DAVIS
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MICHIGAN SUPREME COURT

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MARK GRANZOTTO (P31492)
Attorney for Plaintiff-Appellant
414 West Fifth Street
Royal Oak, Michigan 48067
(248) 546-4649

BARRY J. GATES (P25904)
Attorney for Plaintiff-Appellant
2017 Marra Drive
Ann Arbor, Michigan 48103
(734) 769-5855

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ORDER BEING APPEALED FROM AND RELIEF REQUESTED

Plaintiff-Appellant, Dawn Marie Miller, seeks leave to appeal from the Michigan Court of Appeals decision dated July 20, 2006. A copy of that Opinion is attached hereto as Exhibit F. That opinion affirmed a circuit court decision granting summary disposition to the defendant, Citizens Insurance Company of America.

Plaintiff requests that this Court grant leave to appeal to consider the important legal questions presented in this case. Alternatively, plaintiff requests that this Court summarily reverse the Court of Appeals' July 20, 2006, decision and remand this matter to the Washtenaw County Circuit Court for further proceedings.

STATEMENT REGARDING QUESTIONS PRESENTED

- I. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER WHETHER A PERSON WHO WAS INCLUDED IN AN INSURANCE POLICY AS AN “OCCASIONAL” DRIVER WAS A “PERSON NAMED IN THE POLICY” FOR PURPOSES OF MCL 500.3114(1)?

Plaintiff-Appellants says “Yes”.

Defendant-Appellee says “No”.

- II. SHOULD THIS COURT GRANT LEAVE TO APPEAL TO CONSIDER THE QUESTION OF WHETHER, UNDER THE FACTS OF THIS CASE, THE DEFENDANT SHOULD BE ESTOPPED FROM DENYING COVERAGE ASSUMING THAT THE POLICY DOES NOT INCLUDE PLAINTIFF?

Plaintiff-Appellants says “Yes”.

Defendant-Appellee says “No”.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

On March 8, 2001, Dawn Miller, who was then nineteen years old, sustained catastrophic injuries in a vehicular accident which occurred near her parents' home in Riga, Michigan. On that date, Ms. Miller was a passenger in a pick-up truck owned and driven by her fiancé, Richard O'Palco, Jr. Mr. O'Palco lost control of the truck and it flipped over. Ms. Miller was rendered a quadriplegic in the accident.

For a number of years prior to the accident, Ms. Miller's parents, Steven and Sallie Miller, had an automobile insurance policy with Citizens Insurance Company of America (hereinafter: "Citizens"). In 1998, over two years before the accident, Dawn Miller was added to the policy at the insistence of her parents. Attached hereto as Exhibit A is a copy of the policy in existence at the time of Dawn Miller's accident. Attached hereto as Exhibit B is the two page Declaration which accompanied the policy. The policy used the expression "named insured." *See e.g.* Policy (Exhibit A), p. 1. The "named insured" identified in the policy were as Steven and Sallie Miller. Declaration (Exhibit B), p. 1. After 1998, when the Millers asked that their daughter be included on the policy, Dawn Miller was listed as an "occasional" driver of the Millers' vehicle. Declaration (Exhibit B), p. 2. Both Mr. and Mrs. Miller believed that this designation meant that their daughter was insured by Citizens. *See* Affidavit of Steven Miller, attached hereto as Exhibit C; Affidavit of Sallie Miller, attached hereto as Exhibit D.

After 1998, when Dawn Miller was identified in the policy documents as an occasional driver of the Millers' vehicle, the price of the Miller's Citizens' insurance policy was based on four factors: (1) the type of vehicle which Steven and Sallie Miller owned, a 1992 Chevrolet Corsica; (2) the amount of coverage purchased; (3) the territory; and (4) Dawn Miller's status as a 19-20 year old

single female with a good driving record, who was an occasional driver, but not the owner of the Corsica. Because Dawn Miller's status as a 19-20 year old single female made her the highest rated of the drivers in the Miller family, the policy premiums paid by Mr. and Mrs. Miller beginning in 1998 were substantially higher than they would otherwise have been. (Martin Dep., pp. 28-29). Mr. and Mrs. Miller were aware of the fact that the premiums they had to pay had increased, but they were willing to pay the increased amount because of the insurance coverage this policy provided to their daughter.

The policy premium which Mr. and Mrs. Miller paid for the Citizens policy was also *not* based on where their daughter lived. Pamela Martin, Citizen's Processing Manager, testified in a deposition which she provided in this case:

- Q. If I understood you correctly, the policy in effect at the time of the crash, the premium for that policy was determined based upon Dawn Miller's age and driving record and the type of vehicle involved?
- A. And the territory.
- Q. And the territory. And it has nothing to do at all . and the coverages . and it has nothing to do at all with whether or not she was a member of the household?
- A. Correct.

Martin Dep., p. 56.

In July 1999, Dawn Miller moved herself and most of her belongings to Maryland where she lived with her boyfriend, Mr. O'Palco. In August 2000, Ms. Miller obtained a Maryland drivers license and turned in her Michigan license. Periodically, Ms. Miller would return to Michigan to visit her parents. It was on one of these periodic visits to her parents home that the March 8, 2001 accident occurred.

After Dawn Miller moved out of her parents' house, Mr. and Mrs. Miller made a conscious decision to retain her on their Citizens insurance policy as an "occasional" driver of their vehicle. *See* Affidavits (Exhibits C and D). The Millers, therefore, agreed to pay the additional premiums associated with Dawn Millers inclusion in the policy because they assumed that she would be covered by that policy. *Id.*

Following the March 8, 2001 accident, the Millers made a timely application to Citizens for personal injury protection benefits owed under the policy. Citizens denied that request on the ground that Dawn Miller was neither a "named insured" in the contract or a resident relative at the time of the crash. In March 2002, Dawn Miller filed suit against Citizens in the Washtenaw County Circuit Court.¹ In that case, Ms. Miller raised both statutory and contractual claims against Citizens for personal injury protection benefits and for benefits under the underinsured motorist coverage provisions of the policy. Ms. Miller further agreed that if her statutory and contractual claims failed, Citizens should nonetheless be estopped from denying coverage for Dawn Miller's benefits.

Citizens filed motions for summary disposition in the circuit court, claiming that Ms. Miller was not entitled to personal injury protection benefits or underinsured motorist coverage. In their motions, Citizens contended that because Ms. Miller was not a "named insured" or a resident relative of Steven and Sallie Miller at the time of the accident, she was not entitled to personal protection benefits or underinsured motorist coverage.

In response to these motions, Ms. Miller argued that she was entitled to benefits as a "person

¹Also named as defendants in the case were insurance companies associated with Progressive Classic Insurance Company, the company which insured Mr. O'Palco's vehicle. Progressive Classic does not sell automobile insurance in Michigan and, as of March 8, 2001, did not have a certificate or file with the Insurance Commissioner under MCL 500.3163. The claims against these defendants are no longer a part of this case.

named in the policy” under MCL 500.3114. Additionally, Ms. Miller contended that, under the unique facts of this case, Citizens should be estopped from denying coverage.

At a hearing held on the defendant’s motions on August 1, 2004, the circuit court orally ruled that Citizen’s motion would be granted. (Tr. 8/1/04, pp. 19-24, attached hereto as Exhibit E).

Following the entry of a final judgment in the circuit court in November 2004, Dawn Miller appealed the circuit court’s decision dismissing her claim against Citizens to the Michigan Court of Appeals.

On July 20, 2006, the Michigan Court of Appeals issued an unpublished decision affirming the circuit court’s decision granting summary disposition to Citizens. Attached hereto as Exhibit F is a copy of that Opinion.

ARGUMENT

I. THIS COURT SHOULD GRANT LEAVE TO APPEAL TO CONSIDER THE QUESTION OF WHETHER DAWN MILLER WAS ENTITLED TO PERSONAL INJURY PROTECTION BENEFITS BECAUSE SHE WAS A “PERSON NAMED IN THE POLICY” FOR PURPOSES OF MCL 500.3114(1).

The facts presented in this case raise an important question with respect to the appropriate interpretation of a Michigan statute, MCL 500.3114(1). That statute provides in pertinent part:

Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to *the person named in the policy*, the person’s spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

MCL 500.3114(1) (emphasis added).

In this case, the rather simple question presented by this statutory language is whether Dawn Miller was a “person named in the policy.” A literal reading of that statute, applied to the policy at issue herein renders the conclusion that Ms. Miller was, in fact, a person named in the policy, since she was listed therein by name as an occasional driver of the Millers’ vehicle.

In its July 20, 2006 Opinion, the Court of Appeals rejected plaintiff’s arguments based on MCL 500.3114(1). In reaching that conclusion, the panel relied on three prior Court of Appeals’ opinions, *Cvengros v Farm Bureau Ins.*, 216 Mich App 261, 264; 548 NW2d 698 (1996); *Transamerica Insurance Corp of America v Hastings Mutual Insurance Company*, 185 Mich App 249, 255; 460 NW2d 291 (1990); *Dairyland Insurance Company v Auto-Owners Insurance Company*, 123 Mich App 675, 686; 333 NW2d 322 (1983). See Opinion (Exhibit F), p. 2. In these three prior cases, the Court of Appeals had ruled that MCL 500.3114(1)’s reference to “person named in the policy, was to be treated as synonymous with the expression “named insured.” And,

since the “named insured” in the policy involved herein were Steven and Sallie Miller, the Court of Appeals concluded in its July 20, 2006 Opinion that Dawn Miller was not a person named in the policy for purposes of MCL 500.3114(1). Opinion (Exhibit F), pp. 2-3.

The interpretation of MCL 500.3114(1) provided by the Court of Appeals in its previous decisions in *Cvengros*, *Transamerica* and *Dairyland* and applied herein must be reexamined in light of recent pronouncements of this Court on the subject of statutory interpretation. A review of the Michigan No-Fault Act reveals that there are a number of Michigan statutes, including MCL 500.3114(1), which use the expression: “person named in the policy.” See e.g. MCL 500.3103; MCL 500.3109; MCL 500.3109a; MCL 500.8123. In addition, there are a number of provisions in that act which refer specifically to the “named insured.” See MCL 500.2123; MCL 500.3137; MCL 500.3111; MCL 500.3208; MCL 500.3220; MCL 500.3425.

This Court has repeatedly stressed in the last several years that, “a clear and unambiguous statute requires full compliance with its provisions as written.” *Roberts v Mecosta County General Hospital*, 466 Mich 57, 66; 642 NW2d 663 (2002). Thus, if a statute’s language is clear, “we assume that the Legislature intended its plain meaning, and we enforce the statute as written.” *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). Courts and litigants in this state have also been regularly reminded by this Court that the role of the judiciary is not to engage in legislation, *Tyler v Livonia Schools*, 459 Mich 382, 392-393, n. 10; 590 NW2d 560 (1999), and that, “because the proper role of the judiciary is to interpret, not write the law, Courts do not have the authority to venture beyond the unambiguous text of a statute.” *State Farm Fire & Casualty Company v Old Republic Insurance Company*, 466 Mich 142, 146; 644 NW2d 715 (2002). Moreover, in an admonition which is particularly appropriate in the context of this case, this Court

stated in *Robinson v City of Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000), that “the Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another.

Since a court cannot conclude that the Legislature inadvertently added language to a statute, the premise underlying the Court of Appeals’ decisions in *Cvengros*, *Transamerica* and *Dairyland*, is open to serious question. The basic thrust of these three Court of Appeals’ decisions is that when the Michigan Legislature used the phrase “person named in the policy” in §3114(1), it really meant to employ the phrase, “named insured”.

The Michigan Legislature has chosen to use two phrases in the No-Fault Act, “person named in the policy” and “named insured.” This Court’s decision in *Robinson* instructs that if the Michigan Legislature had intended to have the term “person named in the policy” to be interpreted as synonymous with “named insured”, it would have specifically said so by using *that phrase* in §3114(1). But, it is entirely improper under the decisions of this Court to conclude that the Michigan Legislature inadvertently used two different phrases which, in actuality, mean exactly the same thing.

The recent decisions of this Court demand that the text of §3114(1) be applied literally. Applying the statute in that way reveals a significant potential difference between the phrase “named insured” and a “person named in the policy.” In policies of this type, the “named insured” is identified in the policy documents themselves. Thus, the “named insured” will be expressly defined by the policy.

As this case demonstrates, however, the phrase “person named in the policy” can have a significantly broader scope. A person can be “named in the policy”, without being a “named insured” under the terms of that policy. Applying the text of §3114(1) literally, that statute applies to Dawn Miller’s situation in this particular case. Since she was a person who was named in the

policy, §3114(1) applies to her here.

In rejecting plaintiff's argument based on the literal text of §3114(1), the Court of Appeals reliable reasoning employed in its prior decision in *Cvengros*. See Opinion (Exhibit F), pp. 2-3. In that case, the Court of Appeals denied personal injury protection benefits to the plaintiff, who claimed such benefits on the basis of a minor who was listed in one of the defendant's policies as a future driver. According to the Court of Appeals in its July 20, 2006 Opinion, the panel in *Cvengros* reached this conclusion because, "if any listed driver could qualify as 'a person named in the policy' under MCL 500.3114(1), then the insurer would be subject to near limitless liability." Opinion (Exhibit F), p. 3.

This reasoning adapted from the Court of Appeals' prior decision in *Cvengros* simply cannot result in a repudiation of the literal text chosen by the Michigan Legislature in §3114(1). To the extent that listing a driver in an insurance policy beyond those identified as the "named insured" serves to create "limitless liability", that is a problem which insurance companies could address in two different ways. They could stop writing contracts which include naming individuals on the policy beyond those specifically identified as the "named insured". Alternatively, they could take their arguments regarding "limitless liability" to the Michigan Legislature and petition that body to amend §3114(1). But, what the defendant in this case cannot do is to suggest that a hypothetical evil associated with "limitless liability" should prevent a Michigan court from applying the literal text of a statute which the Michigan Legislature has passed.

Finally, there is one other aspect of this argument which must be addressed. Dawn Miller was named in a section of the declaration page of the policy. That section of the policy indicated that the policy premium was to be based on information which is not part of the policy, including the

information that Dawn Miller was an occasional driver of the Millers' vehicle. See Exhibit B, p. 2. The defendant has relied upon this language to indicate that Ms. Miller's listing in the contract is not part of the policy.

However, there is another section of the policy which specifically indicates that the declaration page *is* a part of the policy. The very beginning of the policy itself specifies that, "the Declarations, Endorsements and Application are hereby incorporated into and made a party of this policy." Policy (Exhibit A), p. 1. There is, therefore, an ambiguity in the contract as to the contents of the declaration page. Obviously, this ambiguity has not yet been resolved.

II. THIS COURT SHOULD GRANT LEAVE TO APPEAL TO CONSIDER THE QUESTION OF WHETHER, ASSUMING THAT MS. MILLER WAS NOT ENTITLED TO PERSONAL INJURY PROTECTION BENEFITS UNDER MCL 500.3114(1), CITIZENS SHOULD HAVE BEEN EQUITABLY ESTOPPED FROM DENYING COVERAGE.

Assuming for the moment that the Court of Appeals were correct in concluding that Dawn Miller was not entitled to personal injury protection benefits in this matter, there remains one important legal issue presented by this case which should be reviewed by this Court. That issue involves the concept of equitable estoppel and whether that concept applies to these facts. Equitable estoppel is "an equitable defense that prevents one party to a contract from enforcing a specific provision contained in the contract." *Morales v Auto-Owners Insurance Company*, 458 Mich 288, 295; 582 NW2d 776 (1998). This Court identified in *Morales* the three elements necessary to establish equitable estoppel:

Therefore, for equitable estoppel to apply, plaintiff must establish (1) that the defendant's acts or representations induced plaintiff to believe that the policy was in effect at the time of the accident, (2) that the plaintiff justifiably relied on this belief, and (3) that plaintiff was prejudiced as a result of his belief that the policy was still in

effect.

Id. at 296-297.

This case represents a classic example of when the doctrine of equitable estoppel outlined in *Morales* should be applied. Here, prior to 1998, Steven and Sallie Miller had a policy of insurance with Citizens for which they paid a premium, which was based on their ages. In 1998, Mr. and Mrs. Miller wanted to add their daughter to that policy. Thus, at their request their insurance agent added Dawn Miller to the policy with the designation “occasional” driver.

Mr. and Mrs. Miller realized that in taking this step, the amount of the premium which they would be compelled to pay for the policy would increase, since that premium would be based on Dawn Miller’s status as a young, single driver. But, Mr. and Mrs. Miller undertook to pay this increased premium because they wanted their daughter covered by insurance. When their daughter moved out of their home in 1999, Mr. and Mrs. Miller continued to have Dawn Miller listed on the policy and they continued to pay the increased insurance premium occasioned by her inclusion on that policy. The Millers did so because they again wanted to insure that she was still covered by the policy. *See* Affidavits of Steven and Sallie Miller (Exhibits C and D), ¶4.

Thus, for years, Citizens accepted the increased premiums associated with Dawn Miller’s inclusion as an occasional driver under her parents’ policy. Under these circumstances, the Millers had a legitimate right to believe that the increased premiums which they voluntarily agreed to pay actually meant something. However, what has become apparent during the course of this case is that, if Citizens is correct in its conclusion that Dawn Miller was not entitled to personal injury protection benefits under MCL 500.3114(1), the additional premiums paid for years by the Millers and accepted by Citizens *provided nothing in terms of additional coverage*. In other words, if Citizens is correct

in its position in this case, the Millers paid (and Citizens accepted) increased premiums for nothing.

The policy as written provided for personal injury protection benefits to be paid for any person injured while driving the only car which the Millers owned, a 1992 Chevy Corsica. *See* Policy (Exhibit A), p. 13. Thus, whether Dawn Miller was listed on the policy as an “occasional driver” of the vehicle or not, she would have been entitled to recovery personal injury protection benefits under the terms of that policy for any accident that occurred while driving her parents’ vehicle.

By listing Dawn Miller as an occasional driver in the policy and paying the additional premiums associated with that designation, the Millers have a legitimate right to believe that they were actually getting something in exchange for the increased premiums which they paid and which Citizens accepted over a period of years. What they believed they were getting was an insurance policy which covered their daughter.

This case, therefore, involves a situation in which an insurance company gladly accepted increased premiums from one of its insureds, secure in the knowledge that if its insured ever attempted to argue that these increased premiums actually provided some additional insurance coverage, the insurer would squelch such a claim. Plaintiff would suggest that this scenario presents a particularly appropriate case for the application of equitable estoppel principles.

Here, the three elements of equitable estoppel were satisfied. First, the defendant, by accepting increased premiums from the Millers after Dawn Miller’s name was included in the policy, induced them to believe that the policy actually insured their daughter. Moreover, in light of the fact that the Millers were paying an additional premium for their daughter’s inclusion on the contract, it was entirely reasonable for them to believe that they were getting this additional coverage. Finally,

there can be no question that Dawn Miller has been seriously prejudiced by the denial of coverage here.

The Court of Appeals ruled in its July 20, 2006 Opinion that the elements of equitable estoppel were not met in this case. The Court of Appeals began its discussion of this question by noting that “Citizens had no duty to advise plaintiff of the adequacy of coverage . . .” Opinion (Exhibit F), p. 5. While, in the abstract, it may well be true that Citizens had no duty to advise the plaintiff of the *adequacy* of the insurance coverage being purchased, where the plaintiff was paying an additional amount for coverage, it is entirely reasonable for the plaintiff to conclude that this coverage actually meant *something*. And, it is improper for an insurance company to leave one of its insureds with the mistaken impression that they were purchasing some additional coverage with the additional premiums that they were paying and which their insurer was accepting.

The Court of Appeals also noted in their opinion a number of facts regarding Citizen’s lack of knowledge concerning the fact that Dawn Miller had moved out of her parents’ home. Opinion (Exhibit F), p. 5. The significance of these facts relating to Ms. Miller’s move to Maryland is substantially undermined by the testimony of Citizens’ own processing manager, Pamela Martin, who confirmed in her deposition that the premium charged for the policy in question had nothing to do with whether Dawn Miller was a member of her parents’ household or not. Martin Dep., p. 56.

Under the unusual facts of this case, the Court of Appeals’ decision rejecting plaintiff’s claim to equitable estoppel should be reviewed and reversed.²

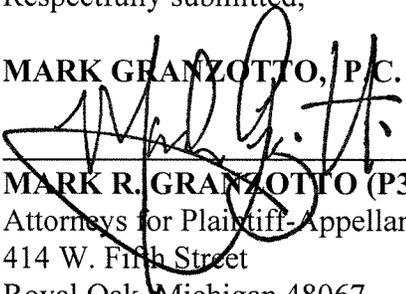
²Plaintiff’s equitable estoppel argument applies to two claims made in this case. Plaintiff has argued that she is entitled to both personal injury protection benefits as well as underinsured motorist coverage under the Citizen’s policy.

RELIEF REQUESTED

Based on the foregoing, Plaintiff-Appellant, Dawn Marie Miller, respectfully requests that this Court grant her Application for Leave to Appeal and give full consideration to the legal issues presented herein. In the alternative, plaintiff-appellant requests that this Court summarily reverse the Court of Appeals' July 20, 2006 decision and remand this case to the Washtenaw County Circuit Court for further proceedings.

Respectfully submitted,

MARK GRANZOTTO, P/C.



MARK R. GRANZOTTO (P31492)

Attorneys for Plaintiff-Appellant
414 W. Fifth Street
Royal Oak, Michigan 48067
(248) 546-4649

LAW OFFICES OF BARRY J. GATES



BARRY J. GATES (P25904)

Attorney for Plaintiff-Appellant
2017 Marra Drive
Ann Arbor, Michigan 48103
(734) 769-5855

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