

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

MELISA ABT,	:	APPEAL NO. C-090478
Plaintiff-Appellant,	:	TRIAL NO. A-0711167
vs.	:	<i>JUDGMENT ENTRY.</i>
STEPHANIE TEMPLETON,	:	
ERIE INSURANCE COMPANY,	:	
and	:	
STEVEN ROSS,	:	
Defendants,	:	
and	:	
STATE FARM INSURANCE	:	
COMPANY	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Melisa Abt appeals the summary judgment entered for defendant-appellee State Farm Insurance Company (“SFIC”). In entering judgment as a matter of law for State Farm, the trial court concluded that Abt’s motor-vehicle insurance policy did not cover the injuries she had sustained in a motorcycle accident. On appeal, Abt contends that the insurance contract is unclear and ambiguous. We disagree, and affirm the trial court’s judgment.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Factual Background

In 2007, Abt was seriously injured in a motorcycle accident. At the time of the accident, her live-in fiancé, Scott Flynn, was the driver and owner of the motorcycle, and she rode behind him as a passenger. The medical bills for Abt's injuries exceeded \$90,000, and she sought coverage for these expenses under her SFIC policy. SFIC refused coverage on the basis that the policy did not cover two-wheeled vehicles such as motorcycles. Abt then sued.

Cross-motions for summary judgment were filed: SFIC argued that the terms of the policy unambiguously excluded Abt from coverage; and Abt asserted that she was entitled to coverage because of an apparent ambiguity in the policy with respect to who was covered in the "Medical Payments" section. The trial court entered judgment for SFIC. In her appeal, Abt once again contends that the SFIC policy is ambiguous, thus precluding a judgment for SFIC.

Standard of Review

We review an entry of summary judgment de novo.² Summary judgment is appropriately granted when there exists no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and the evidence, when viewed in favor of the nonmoving party, permits only one reasonable conclusion that is adverse to the nonmoving party.³

Analysis

An insurer must make exclusions from liability clear and exact before such provisions may be given effect.⁴ Ambiguous insurance policies are liberally construed in favor of the insured.⁵

² *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241.

³ *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

⁴ *Am. Financial Corp. v. Fireman's Fund Ins. Co.* (1968), 15 Ohio St.2d 171, 174, 239 N.E.2d 33.

⁵ *Lane v. Grange Mut. Cos.* (1989), 45 Ohio St.3d 63, 65, 543 N.E.2d 488.

The policy language at issue reads as follows:

“Persons for Whom Medical Expenses are Payable. We will pay medical expenses for bodily injury sustained by: 1.a. The first person named in the declarations; b. his or her spouse; and c. their relatives. These persons have to sustain the bodily injury: a. while they operate or occupy a vehicle covered under the liability section.”

Abt claims that the policy language can be read to exclude her from the subsequent limiting clause denying coverage to those who do not “operate or occupy a vehicle covered in the liability section.” Under the liability section, the insured is covered for motor-vehicle injuries that take place in a car. The policy defines a car as a vehicle having four or more wheels, thus excluding Abt’s motorcycle accident from coverage. Abt asserts that only her spouse and relatives are subject to the requirement that the accident occur in a vehicle covered in the liability section. Abt suggests that the phrase “these persons” modifies only “his or her spouse” and “their relatives,” but that it does not apply to her as the “first person named in the declaration.” We are not persuaded.

Under *Lane v. Grange Mutual Cos.*, only “[w]here provisions * * * are *reasonably susceptible* of more than one interpretation, will [they] be construed strictly against the insurer and liberally in favor of the insured.”⁶ In this policy, “these persons” is not reasonably susceptible to more than one meaning. Its meaning is straightforward—it applies to all of the previously mentioned parties including the “first person named in the declaration” (Abt), “[Abt’s] spouse,” and “[her] relatives.” Moreover, the semicolon acting as a serial comma supports our conclusion that the limiting language applies to Abt, her spouse, and her relatives.

⁶ *Lane*, supra, at 65 (emphasis added).

Each insured under subsections 1.a., 1.b., and 1.c. is followed by a semicolon, with the final semicolon functioning as a serial comma. Under this grammatical structure, the serial comma requires that each insured be subject to the same limitation, which means that the policy is unambiguous and not reasonably susceptible to Abt's interpretation. Parsing the language to derive an ambiguity where there is none goes far beyond the rule of reasonable susceptibility.⁷

Because Abt's policy is unambiguous, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 10, 2010

per order of the Court _____
Presiding Judge

⁷ *Hacker v. Dickman*, 75 Ohio St.3d 118, 119-120, 1996-Ohio-98, 661 N.E.2d 1005.