STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0917
A21-0918

American Family Mutual Insurance Company, S.I.,
Appellant,

vs.

Progressive Direct Insurance Company,
Respondent (A21-0917),

Progressive Casualty Insurance Company,
Respondent (A21-0918).

Filed January 31, 2022
Affirmed
Ross, Judge

Ramsey County District Court
File No. 62-CV-20-5487

Michelle D. Hurley, Yost & Baill, LLP, Minneapolis, Minnesota (for appellant)

Paul J. Rocheford, Stephen M. Warner, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota; and

Cindy L. Butler, Pranschke, Seeger & Fox, Shoreview, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Smith, John, Judge.[*]

SYLLABUS

In an action by an insurer seeking commercial-vehicle indemnity under Minnesota Statutes section 65B.53, subdivision 1 (2020), trucks that do not meet the definition of

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

"pickup truck" but are motor vehicles designed and used for carrying not more than 15 individuals are passenger vehicles, not commercial vehicles.

OPINION

ROSS, Judge

After paying benefits to its insureds related to two car collisions, American Family Mutual Insurance Company commenced an arbitration action seeking indemnity from the at-fault drivers' insurers under the Minnesota No-Fault Automobile Insurance Act. Minn. Stat. §§ 65B.41–71 (2020). Two arbitrators determined, and the district court agreed, that the at-fault drivers were not operating "commercial vehicles" and that American Family is therefore not entitled to indemnity. Because the statute unambiguously defines "passenger automobiles" and the disputed vehicles fall within that definition, they are not commercial vehicles under the no-fault act. We therefore affirm the district court's judgment confirming the arbitration decisions.

FACTS

These consolidated appeals arise from two motor-vehicle collisions. In both, trucks insured by Progressive Direct Insurance Company and Progressive Casualty Insurance Company (collectively, Progressive) struck cars insured by American Family Mutual Insurance Company. In the first collision, Progressive's insured was driving his 2015 Ram 2500 Crew Short truck in Sauk Rapids when he hit a car insured by American Family. American Family paid $20,000 in no-fault benefits for an injured passenger in its insured's vehicle. In the second collision, Progressive's insured ran a red light in Waite Park in her 2014 Ford F-150, hitting and injuring the driver of a car insured by American Family.

American Family paid $4,413.45 in no-fault benefits. Progressive did not dispute the fact that its insureds were at fault in both collisions.

American Family initiated arbitration proceedings, demanding that Progressive indemnify it for its payments to the injured persons under the Minnesota No-Fault Automobile Insurance Act. The arbitrator in each case refused American Family's indemnity demand. American Family moved the district court to vacate the awards. The district court denied the motions and confirmed both awards.

American Family appealed, and we consolidated the appeals. We now decide them both.

ISSUE

Were the trucks being operated by the at-fault drivers "commercial vehicles" under section 65B.53, subdivision 1's indemnity provision?

ANALYSIS

American Family asks us to reverse the district court's decision confirming the arbitration awards. We accept the arbitrators' fact findings as final because the appeal challenges orders confirming arbitration awards. *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004). Our focus is exclusively on the district court's legal conclusions, which we review de novo. *Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 807 (Minn. App. 2003). Our de novo review leads us to the same conclusion the district court reached.

We begin with the no-fault act. Minn. Stat. §§ 65B.41–71 (2020). Under the act, automobile insurers generally must reimburse their insureds for "loss suffered through

injury arising out of the maintenance or use of a motor vehicle." Minn. Stat. § 65B.44, subd. 1(a). The insurer then has a limited right to indemnity from another insurer covering "a commercial vehicle of more than 5,500 pounds curb weight if negligence in the operation, maintenance or use of the commercial vehicle was the direct and proximate cause of the injury." Minn. Stat. § 65B.53, subd. 1. A "commercial vehicle" is, among other things, "any motor vehicle, other than a passenger vehicle defined in section 168.002, subdivision 24, which has a curb weight in excess of 5,500 pounds apart from cargo capacity." Minn. Stat. § 65B.43, subd. 12(b). The parties agree that the trucks insured by Progressive exceed the weight threshold for designation as a commercial vehicle, so the appeal turns on whether they are passenger vehicles as defined in Minnesota Statutes section 168.002, subdivision 24 (2020).

The cross-referenced statute (using a slightly different term) defines "passenger automobile" in three paragraphs. Minn. Stat. § 168.002, subd. 24. Under paragraph (a), "'Passenger automobile' means any motor vehicle designed and used for carrying not more than 15 individuals, including the driver." *Id.*, subd. 24(a). Paragraph (b) lists motor vehicles excluded from the passenger-automobile category: "motorcycles, motor scooters, buses, school buses, or commuter vans as defined in section 168.126." *Id.*, subd. 24(b). And paragraph (c) provides a list of passenger automobiles that "includes, but is not limited to," "a vehicle that is a pickup truck or a van as defined in subdivisions 26 and 40." *Id.*, subd. 24(c). Applying these provisions, the district court concluded that the trucks are passenger automobiles and therefore not commercial vehicles, and it consequently denied American Family's motion to vacate the arbitration awards.

American Family asks us to reverse because "any motor vehicle" in paragraph (a) cannot really be so broad as to mean *any* motor vehicle. It highlights paragraph (c) and argues that the inclusion of "a pickup truck or a van as defined in subdivisions 26 and 40" implicitly limits passenger automobiles only to trucks that meet the definition of a pickup truck in subdivision 26. Because this implication is reasonable, argues American Family, the statute is ambiguous and we should explore the statute's history to construe its meaning. Our analysis differs.

We base our decision on the terms of the applicable statute. Unless the statute is ambiguous, we begin and end our analysis with the meaning of its text: "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2020). A statute is ambiguous only if it may be reasonably interpreted in more than one way. *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). Applying basic tools of interpretation, we reject American Family's contention that section 168.002, subdivision 24, allows for more than one reasonable interpretation.

We first address American Family's assertion that paragraph (a)'s use of the phrase "any motor vehicle" is ambiguous. We see no ambiguity in the phrase. Counsel for American Family specified at oral argument that the term "any" is the source of the alleged ambiguity because of its overbreadth. That "any" is an encompassing adjective does not render it ambiguous. Indeed, it is because American Family recognizes the meaning of "any" as all-encompassing that it says it has found an ambiguity. "Any" is not ambiguous merely because its literal meaning is expansive, and courts construe "any" literally. *See,*

e.g., *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997) (concluding that statute barring evidence of seatbelt use or nonuse in "any litigation" barred the plaintiff's products-liability claim against a car manufacturer); *In re Welfare of Child of D.L.D.*, 771 N.W.2d 538, 546 (Minn. App. 2009) ("The word 'any' is broadly applied in statutes."). And here, the term "any motor vehicle" is in fact limited by the qualifying language of paragraph (a), which distinguishes trucks designed and used for carrying 15 passengers or fewer from those designed and used for carrying other things, like garbage trucks or dump trucks. *Compare* Minn. Stat. § 168.002, subd. 24(a) *with id.*, subd. 37 (2020) (defining "truck" as "any motor vehicle designed and used for carrying things other than passengers"). American Family did not argue or identify any evidence bearing on the Progressive-insured trucks' designs or use, so we do not address whether the trucks otherwise fall outside the definition in paragraph (a).

We turn next to paragraphs (b) and (c). Our understanding of paragraph (b), which lists motor vehicles expressly excluded from the "passenger automobile" definition, is guided by "the interpretive canon, *expressio unius est exclusio alterius*, which informs us that the inclusion of some items in a statute implies the exclusion of all [unlisted] items." *County of Hennepin v. 6131 Colfax Lane*, 907 N.W.2d 257, 260 (Minn. App. 2018). Treating paragraph (b) as the exhaustive list of exclusions, we infer that the trucks here were not inadvertently omitted from the list. And the legislature disavowed any limiting effect that paragraph (c) may have on the scope of the definition of passenger automobile by stating that it "includes, but is not limited to," pickup trucks. Minn. Stat. § 168.002, subd. 24(c). Because the trucks fall within the broad definition of "passenger automobile"

in paragraph (a) and are not excluded from that definition by paragraphs (b) or (c), the statute unambiguously includes the Progressive-insured trucks as passenger automobiles. This means that they are not commercial vehicles under the no-fault act.

We are not persuaded to a different conclusion by American Family's argument that this interpretation contradicts legislative intent. Again, we would consider legislative intent beyond the actual words the legislature used only if the statute were ambiguous. But even if it were, American Family's argument is uncompelling. It contends that section 65B.53 authorizes indemnity against insurers of heavier vehicles because of those vehicles' greater "damage causing propensity," citing *National Indemnity Co. v. Mutual Service Casualty Co.*, 311 N.W.2d 856, 858 (Minn. 1981). It then reasons that, because trucks that are not pickup trucks are heavier and more likely to cause damage, the legislature must have intended to allow indemnity for the damage they cause. This focus on the weight of the vehicle is only a distraction. The legislature expressly excluded passenger vehicles from the definition of commercial vehicle—even those weighing more than 5,500 pounds. Minn. Stat. § 65B.43, subd. 12. And it is not a motor vehicle's weight but its design, use, and capacity to carry passengers that determines its status as a passenger vehicle. Minn. Stat. § 168.002, subd. 24.

We recognize that a statute's semantics might be as critical to interpretation as its syntax. In some other circumstance, therefore, a list of "included" items might also imply items that are actually excluded. For example, a hypothetical dangerous-animal statute might forbid keeping dangerous animals, "except pets," which it defines as "any" animal weighing less than 150 pounds, "including, but not limited to, nonvenomous snakes."

Although the structure implies only inclusion, the substance plainly indicates an exclusion, since no reasonable interpreter would contend that the statute authorizes keeping a pet Desert Death Adder. But the "includes" provision in subdivision 24 involves no similar contradiction. More specifically, the no-fault act demonstrates the legislature's intent to exclude passenger vehicles, even heavier ones, from the indemnity obligation. Because the statute unambiguously includes the Progressive-insured trucks in the definition of passenger automobile, we affirm the district court's decision denying American Family's motions to vacate the arbitration awards.

DECISION

The at-fault drivers operated trucks in the class of "any motor vehicle designed and used for carrying not more than 15 individuals, including the driver" under section 168.002, subdivision 24(a), the trucks are not otherwise excluded as passenger automobiles based on subdivision 24(b), and subdivision 24(c) does not limit that definition only to trucks that qualify as "pickup trucks." The trucks are therefore passenger automobiles, not commercial vehicles under section 65B.53.

Affirmed.