

Inc. (Cardinal), struck the vehicle in which they were passengers. On appeal, the plaintiffs argue that a plain, ordinary reading of the applicable insurance policy would lead a reasonable person to conclude that the "Aircraft, Auto or Watercraft" exclusion does not apply to automobile accidents arising from the insured's own use of an automobile. In the alternative, the plaintiffs argue that the exclusion is ambiguous and, as such, must be construed against the drafter. We affirm.

¶ 3

FACTS

¶ 4 On May 11, 2012, the plaintiffs filed a complaint for a declaratory judgment in the circuit court of Franklin County against, *inter alia*, National Union. According to the complaint, on November 25, 2010, the plaintiffs were injured when a vehicle driven by Robert Harrelson, and owned by Cardinal, collided with the vehicle in which they were passengers. At the time of the accident, Cardinal was insured under two liability policies. The first policy, issued by Auto-Owners Insurance Company, had policy limits of \$1 million per occurrence and a general aggregate limit of \$2 million. The second policy, a general commercial liability policy, was issued by National Union and appended to the complaint, and provided an additional \$1 million per occurrence and a general aggregate limit of \$2 million, for covered claims. The plaintiffs requested that the court declare that the National Union policy provided excess coverage for the accident.

¶ 5 Under the terms of the National Union policy, National Union agreed to pay "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies." The policy provided a list of exclusions to which the insurance did not apply. Paragraph g of the exclusions, on page 3 of the policy, and titled "Aircraft, Auto or Watercraft," provided that the insurance policy did not apply to "[b]odily injury' or 'property damage' arising out of the ownership, maintenance, use or entrustment to others of any aircraft, 'auto' or watercraft owned or operated or rented

or loaned to any insured."

¶ 6 The plaintiffs and National Union filed cross-motions for a summary judgment. Exhibit E to the plaintiffs' motion for a summary judgment was the affidavit of a high school English teacher who averred that the auto exclusion in the National Union policy should be interpreted to mean " 'bodily injury' or 'property damage' arising out of the ownership to others, maintenance to others, use to others, or entrustment to others of any aircraft, 'auto' or watercraft owned or operated or rented or loaned to any insured." National Union filed a motion to strike the affidavit, arguing that it contained a legal conclusion as prohibited by Illinois Supreme Court Rule 191(a) (eff. July 1, 2002).

¶ 7 On November 30, 2012, the circuit court entered an order striking the affidavit and granting a summary judgment in favor of National Union. The order declared that there is no coverage under the National Union policy for the November 25, 2010, automobile accident. The plaintiffs filed a timely notice of appeal.

¶ 8 ANALYSIS

¶ 9 The sole issue on appeal is whether the circuit court erred when it granted the defendant's motion for a summary judgment, finding that the terms of the policy were not ambiguous and did not provide coverage for the November 25, 2010, automobile accident. "Summary judgment is appropriate only where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Maxit, Inc. v. Van Cleve*, 231 Ill. 2d 229, 235 (2008); 735 ILCS 5/2-1005(c) (West 2010). We review the circuit court's entry of a summary judgment *de novo*. *Rich v. Principal Life Insurance Co.*, 226 Ill. 2d 359, 371 (2007). In addition, the construction of the terms and provisions of an insurance policy is a question of law, subject to *de novo* review. *Id.* Because the interpretation of an insurance policy is a question of law, the circuit court was

correct in striking the English teacher's affidavit, as it did not comply with the requirement of Illinois Supreme Court Rule 191(a) (eff. July 1, 2002) that the affidavit contain facts and not conclusions.

¶ 10 Interpreting an insurance policy follows the same rules of construction that apply to other types of contracts. *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416 (2006). The "primary objective is to ascertain and give effect to the intentions of the parties as expressed by the words of the policy." *Rich*, 226 Ill. 2d at 371. "The policy must be construed as a whole, giving effect to every provision." *West American Insurance Co. v. Yorkville National Bank*, 238 Ill. 2d 177, 184 (2010). The type of insurance provided as well as the nature of the risks involved should also be taken into account. *Nicor*, 223 Ill. 2d at 416.

¶ 11 "The words of a policy should be accorded their plain and ordinary meaning," or their meaning as defined within the policy, if applicable. *Id.* If the language of the policy is clear and unambiguous, its terms will be applied as written unless doing so would violate public policy. *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). When the words of a policy "are reasonably susceptible to more than one meaning, they are considered ambiguous." *Rich*, 226 Ill. 2d at 371. If an ambiguity is found in the policy, it will be strictly construed against the insurer who drafted the policy, especially if the ambiguity attempts to exclude or limit coverage. *Id.* However, a policy provision will not be rendered ambiguous simply because the parties disagree on its meaning. *Founders*, 237 Ill. 2d at 433. Nor is a provision considered ambiguous if the policy fails to specifically define a term or "because the parties can suggest creative possibilities for its meaning." *Nicor*, 223 Ill. 2d at 417. In other words, we "will not strain to find an ambiguity where none exists." *Rich*, 226 Ill. 2d at 372.

¶ 12 The plaintiffs allege that the policy is ambiguous and, therefore, should be construed

in their favor. However, our courts have consistently recognized the language of the exclusion at issue, in the context of a commercial general liability insurance policy, to exclude coverage for all injuries arising out of the insured's use of an automobile. See, *e.g.*, *Northbrook Property & Casualty Co. v. Transportation Joint Agreement*, 194 Ill. 2d 96, 98 (2000); see also *Oakley Transport, Inc. v. Zurich Insurance Co.*, 271 Ill. App. 3d 716, 726 (1995). The plaintiffs argue that the phrase "to others" modifies not only the term "entrustment," but the terms "ownership," "maintenance," and "use" as well. However, we agree with National Union that the phrases "ownership to others," "maintenance to others," and "use to others" are nonsensical and grammatically incorrect. We decline to interpret the exclusion in this fashion, and find that the circuit court was correct in entering a summary judgment in favor of National Union.

¶ 13

CONCLUSION

¶ 14 For the foregoing reasons, the November 30, 2012, order of the circuit court of Franklin County, which granted a summary judgment in favor of National Union, declaring that there is no coverage for claims arising out a November 25, 2010, automobile accident, is affirmed.

¶ 15 Affirmed.