STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Court of Appeals
Gadola, P.J., Jansen and Saad, JJ.

HOME-OWNERS INSURANCE COMPANY and AUTO-OWNERS INSURANCE COMPANY,

Plaintiffs-Appellees,

v

RICHARD JANKOWSKI and JANET JANKOWSKI,

Defendants-Appellants.

Supreme Court No. 156240

Court of Appeals No. 331934

15-0025-CK
Honorable William E. Collette

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APPELLANTS RICHARD AND JANET JANKOWSKIS' REPLY TO APPELLEE INSURERS' SUPPLEMENTAL BRIEF

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

LAW AND ARGUMENT

I. HOIC has made no meaningful attempt to refute the Jankowskis' contention that only vehicles driven in Michigan are required to be registered in Michigan under the Michigan Vehicle Code.

Home-Owners Insurance Company (HOIC) and Auto-Owners Insurance Company (hereinafter referred to together as "HOIC" for simplicity), appear to have all but abandoned their original contention that any vehicle owned by a Michigan resident is required to be registered in Michigan. In that regard, HOIC has not made any meaningful attempt to refute the narrower, and more logical, interpretation of the Michigan Vehicle Code offered by the Jankowskis—*i.e.*, that vehicles never driven in Michigan are not required to be registered in Michigan. To the extent, however, that HOIC's Supplemental Response stops short of outright abandoning its position on the Motor Vehicle Code, the lack of merit associated with HOIC's rebuttal arguments is briefly discussed below.

A. HOIC's reliance on the phrase *"any other public places"* contained in the preamble is misplaced.

In response to the Jankowskis' contention that the preamble of the Motor Vehicle Code limits the applicability of its title and registration provisions to only vehicles driven in Michigan, HOIC has argued that the phrase *"any other public places"* broadens the scope of the Motor Vehicle Code to include public roads in any state. This contention, however, does not pass muster when the meaning of the word *"other"* is properly construed in the context that it has been used by the Legislature. In relevant part, the preamble to the Motor Vehicle Code provides:

> *AN ACT to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles . . .*

As was recognized by the Court of Appeals in the recent published decision of *Four Zero*

One Assocs, LLC v Dep't of Treasury, 320 Mich App 587, 599; 907 NW2d 892, 898 (2017), ***"the word 'other' indicates a purposeful similarity, rather than a difference."*** Accordingly, the phrase *"any other public place"* as used in the preamble of the Motor Vehicle Code must be understood to mean any other place in *"this state"* that is open to the general public or generally accessible to motor vehicles and distressed vehicles.

This conclusion is consistent with the *doctrine of the last antecedent*. In the case of *Hardaway v Wayne County*, 494 Mich 423, 427; 835 NW2d 336, 338 (2013), this Court characterized the last antecedent rule as a *"rule of statutory construction that provides that 'a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation."* This Court further recognized that when applying this rule, *"a court should first consider what are the logical metes and bounds of the 'last' antecedent."* *Id.* at 429.

Applying these principles here, the phrase *"any other public place"* as used in the preamble of the Motor Vehicle Code is immediately preceded by the phrase *"this state."* Thus, to the extent that the phrase *"any other public place"* modifies or broadens the scope of the Motor Vehicle Code, it should be interpreted to only broaden the scope of the Motor Vehicle Code to not only apply to public roads in this state, but also to any public place in *"this state."*

As was fully established in the Jankowskis' Supplemental Brief, there is no dispute that the Jankowskis' Florida Lexus was never driven in Michigan. It was therefore not required to be registered or insured in Michigan. The absence of a Michigan registration requirement is dispositive in their favor, because they were lawfully insured under a Michigan auto no-fault policy issued for their Michigan vehicles—which as is further discussed in Section II of this brief, cemented their legal right to PIP benefits for their Florida accident notwithstanding the fact that

their Florida Lexus was not insured with Michigan PIP insurance.

B. HOIC's reliance on this Court's *Pohutski* decision as a basis for avoiding the title-object clause of the Michigan Constitution is also misplaced.

In an attempt to avoid the dispositive implications associated with the limited scope expressed in the preamble of the Motor Vehicle Code, MCL 257.1 *et seq*, HOIC contends on page 27 of its Supplemental Brief that the Jankowskis have failed to discuss a critical passage in this Court's *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002) decision, in which the title-object clause was discussed at length. Specifically, HOIC contends:

> *While the Jankowskis cite Pohutski v City of Allen Park, 465 Mich 675; 641 NW2d 219 (2002), they fail to mention the following portion of the Pohutski opinion:*
>
> > *The "object" of a law is defined as its general purpose or aim. . . . The "one object" provision must be construed reasonably, not in so narrow or technical a manner that the legislative intent is frustrated. . . . The act may include all matters germane to its object, as well as the provisions that directly relate to, carry out, and implement the principal object. . . . Finally, the constitutional requirement is not that the title refer to every detail of the act; rather, "[i]t is sufficient that 'the act centers to one main general topic or purpose which the title comprehensively declares, though in general terms, and if provisions in the body of the act not directly mentioned in the title are germane, auxiliary, or incidental to that general purpose.'" [Pohutski, at 691-692 (internal citations omitted)(emphasis added).]*

HOIC's Supplemental Brief, p 27.

It is unclear why HOIC contends that this passage is harmful to the Jankowskis' position when, in fact, it only bolsters their position. The foregoing passage makes it very clear that a specific provision within an act of legislation will pass muster under the title-object clause so long as the provision somehow furthers the overall purpose or aim stated in the title of the act. In applying that principle here, requiring the Jankowskis' Florida Lexus (that was never used in Michigan) to be registered in Michigan does absolutely nothing whatsoever to advance the Motor

Vehicle Code's stated object of regulating the title and registration of vehicles driven on the roads of *"this state."* Accordingly, the foregoing passage only underscores the point that interpreting the Motor Vehicle Code to require Michigan vehicle registration for out-of-state vehicles that are NOT driven in Michigan unconstitutionally exceeds the limited scope of the Vehicle Code stated in the title of that legislation.

Thus, HOIC's attempt to avoid the dictates of the title-object clause on the basis of this Court's *Pohutski* decision is without merit.

II. HOIC's interpretation of the disqualification provisions in § 3113(b) would be fundamentally at odds with the legislative intent to provide Michigan residents with auto no-fault protection for out-of-state accidents under § 3111.

In apparent recognition of the futility associated with attempting to create a Michigan vehicle registration requirement for out-of-state vehicles driven exclusively outside of Michigan, HOIC has shifted its primary focus towards advancing a flawed interpretation of the disqualification provisions in § 3113(b) in a manner that disqualifies the Jankowskis. HOIC's interpretation in that regard, however, is equally without merit.

Decades of auto no-fault precedent uniformly hold that the right to receive no-fault PIP benefits is personal in nature, and that entitlement to PIP benefits is not contingent upon occupancy of a vehicle that is insured with PIP so long as the vehicle is not required to be. In the case of *Lee v DAIIE,* 412 Mich 505; 315 NW2d 413 (1982), this Court made it clear that:

> *". . . the Legislature, in its broader purpose, intended to provide benefits whenever, as a general proposition, an insured is injured in a motor vehicle accident, whether or not a registered or covered motor vehicle is involved; and in its narrower purpose intended that an injured person's personal insurer stand primarily liable for such benefits whether or not its policy covers the motor vehicle involved . . ."* *Lee, supra* at 515.

Again, in the case of *Turner v Auto Club Ins*, 448 Mich 22, 44; 528 NW2d 681 (1995), this Court reiterated:

> *With regard to PIPs, the duty to provide coverage for the insured generally is not linked to the involvement of the insured's vehicle in the accident. As indicated, the insurer that is primarily liable for PIPs is the insurer of the injured person. The primary insurer's duty to provide PIPs is triggered when the insured is injured, and the injury arises out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. An insurer is primarily liable even though the insured does not own, operate, maintain, or use a vehicle involved in the accident -- all that is required is that the insured suffer an injury in an accident involving a motor vehicle.*
>
> In the same regard, the Court of Appeals recognized in the case of *Corwin v*

DaimlerChrysler Ins Co, 296 Mich App 242, 255; 819 NW2d 68 (2012) that ***"a no-fault insurance carrier can be responsible for PIP benefits even if the motor vehicle it insures was not the actual motor vehicle involved in the accident."*** The Court further recognized in *Corwin* that ***"PIP coverage protects the person, not the motor vehicle."*** *Id*. at 255 (quoting *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 17; 684 NW2d 391 (2004)).

The right to receive PIP benefits irrespective of whether the involved vehicle is insured with PIP is further embodied throughout the No-Fault Act. For example under the priority provisions of MCL 500.3114(1), ***"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."*** § 3114(1). On this basis, an injured person generally receives no-fault PIP benefits from his or her own no-fault insurance company, or from a no-fault policy issued to the injured person's spouse or a relative of either domiciled in the same household. ***This is the case regardless of whether the injured person is driving or occupying his or her own motor vehicle or is a passenger in another vehicle.*** With limited exception, the insured status of the involved vehicle only becomes relevant when the injured person is not otherwise covered under his or her own no-fault policy.[1] In that case, the injured person will claim benefits from the owner or operator of the involved vehicle. See MCL 500.3114(4).

The out-of-state entitlement provisions in § 3111 of the No-Fault Act are fundamentally no different. Under the clear and unambiguous language of § 3111, a Michigan resident is fully vested with the legal right to no-fault PIP benefits for an out-of-state accident so long as the person is a *"named insured"* under a Michigan auto no-fault policy, or is the spouse or resident relative

[1] The limited exceptions to this general rule are set forth in MCL 500.3114(2), (3) & (5).

of a named insured. If this is the case, the insured status of the out-of-state vehicle is irrelevant. ***When the text of § 3111 is faithfully applied as written, the insured status of the vehicle is only relevant if the Michigan resident is otherwise not a named insured under a Michigan auto policy.***

By vesting Michigan named insureds with PIP entitlement in this manner under § 3111, the Legislature created a specific mechanism that provides Michigan residents who are lawfully insured under a Michigan auto no-fault policy with the protection of the auto no-fault system when they leave the state of Michigan. This protection entitles a Michigan named insured to PIP benefits for an out-of-state accident, regardless of whether the named insured was occupying a vehicle that is insured with Michigan PIP insurance.

As a result of this special provision, a named insured (or the spouse or resident relative of a named insured) under a Michigan auto policy is broadly covered with Michigan PIP insurance in a variety of situations where a person travels out of state and becomes injured in an auto accident while occupying a vehicle that is driven exclusively outside of Michigan (*i.e.*, situations where a person is driving or occupying a rental car, riding on a city bus, riding in an out-of-state vehicle belonging to a family member or friend in another state, etc.). There is <u>absolutely nothing</u> in either the language of § 3111, or the No-Fault Act, that takes away this vested legal right to receive PIP benefits for an out-of-state accident simply because the named insured happened to also own the involved out-of-state vehicle that was never used in Michigan.

Despite all of this, HOIC has asked this Court to interpret the general disqualification provisions in § 3113(b) in a manner that takes away this vested legal right if a Michigan insured is injured out-of-state while occupying an owned vehicle—***that is NOT even required to be insured with Michigan PIP insurance.*** In doing so, however, HOIC completely ignores the fact that the disqualification provisions in § 3113(b) only disqualify an owner for failing to have

no-fault insurance in effect for the involved vehicle ***if the involved vehicle is "required" to be insured with Michigan PIP insurance under § 3101(1)***. Again, this provision narrowly applies if:

> *The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security* ***required*** *by section 3101 or 3103 was not in effect.* (emphasis added)

Because the Jankowski's Lexus was not driven in Michigan, it was not required to be registered or insured in Michigan. Thus, HOIC's attempt to rely on the general disqualification provisions in § 3113(b) in the context of § 3111 is flawed on its face. HOIC's request for a contrary ruling is nothing short of a blatant request for this Court to judicially legislate from the bench a new limitation on PIP entitlement for out-of-state accidents that: (1) is NOT contained anywhere in the text of the No-Fault Act; and (2) is inherently discriminatory against Michigan residents who chose to own out-of-state vehicles used exclusively outside the state of Michigan.

In any event, even if, *arguendo*, HOIC's patently incorrect interpretation of § 3113(b) could somehow be reconciled on some contorted textual basis, HOIC's interpretation must still be rejected by this Court. In *Gebhardt v O'Rourke*, 444 Mich 535, 542; 510 NW2d 900 (1994), this Court made it clear that ***"rules of statutory construction require that separate provisions of a statute, where possible, should be read as being a consistent whole, with effect given to each provision."*** *Id.* at 542 (citing *Malonny v Mahar*, 1 Mich 26 (1847); *R & T Sheet Metal, Inc v Hospitality Motor Inns, Inc*, 139 Mich App 249; 361 NW2d 785 (1984)). If that is not possible, however, it is well settled that *"where a statute contains a general provision and a specific provision, the specific provision controls." Gebhardt, supra*, at 542.

Applying these principals here, interpreting the general disqualification provisions set forth in § 3113(b) to apply as HOIC contends would be fundamentally at odds with the specific

legislative intent to provide Michigan insureds with the protections of the Auto No-Fault Act for out-of-state accidents under § 3111. Thus, the specific out-of-state entitlement provisions in § 3111 must still be viewed as being controlling.

III. HOIC cannot otherwise rely on a contractual exclusion to avoid its compulsory obligation to pay PIP benefits under § 3111.

It is well-established that *"[a]n insurer who elects to provide automobile insurance is liable to pay no-fault benefits subject to the provisions of the [no-fault] act." Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 530; 740 NW2d 503 (2007). The Michigan Supreme Court has further clarified that *"[a] compulsory insurance statute in effect declares a minimum standard which must be observed, and a policy cannot be written with a more restrictive coverage. The statute is manifestly superior to and controls the policy, and its provisions supersede any conflicting provisions of the policy." Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 531 n 10; 502 NW2d 310 (1993). See also, *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588; 648 NW2d 591 (2002) (holding that the inclusion of an examination under oath provision may be included in a Michigan automobile no-fault insurance policy, but is only enforceable to the extent that it does not conflict with statutory requirements of the No-Fault Act).

Here, as stated above, the Jankowskis' are entitled to no-fault benefits for their Florida accident because they satisfy the out-of-state entitlement provisions in MCL 500.3111 of the No-Fault Act. Because their Florida vehicle was not required to be insured with PIP, they are NOT disqualified under § 3113(b). To the extent that coverage is nevertheless excluded under the *"Exclusion J"* contained in HOIC's no-fault policy, that contractual exclusion is more restrictive than the No-Fault Act—which makes it *per se* unenforceable.

IV. There are two rules of law that should result from this case.

When all is said and done, there are two rules of law that this Court should pronounce in resolving this case:

1. An out-of-state motor vehicle owned by a Michigan resident and never driven in Michigan is NOT subject to the vehicle registration requirements in the Michigan Vehicle Code, MCL 257.1 *et seq*;

2. A Michigan resident, who is insured under a Michigan no-fault insurance policy, cannot be disqualified from receiving no-fault benefits under § 3113(b) of the No-Fault Act when injured in an out-of-state accident involving a vehicle the person owns and registers in another state and never operates in Michigan.

Interpreting the Michigan Vehicle Code to only require Michigan vehicle registration for vehicles driven in Michigan is the only interpretation that is properly limited in scope in accordance with the Vehicle Code's preamble. Interpreting the disqualification provision of § 3113(b) of the No-Fault Act in this manner is the only interpretation that harmonizes the Legislature's specific intent to provide lawfully insured Michigan residents with no-fault PIP benefits for out-of-state accidents with the Legislature's intent to penalize those residents who fail to comply with Michigan's compulsory no-fault insurance system.

When these rules of law are applied in the case at bar, the Jankowskis cannot be disqualified from receiving PIP benefits for their Florida accident under § 3113(b), because their Florida Lexus was not required to be registered in Michigan.

Respectfully submitted:

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