

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE CO.,

UNPUBLISHED
November 1, 1996

Plaintiff-Appellee/
Cross-Appellant,

v

No. 188931
LC No. 94-001988-CK

GABRIEL GILBERT SAN MIGUEL,

Defendant-Appellant/
Cross-Appellee.

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order granting summary disposition in favor of plaintiff in this insurance coverage dispute. Plaintiff cross-appeals, arguing that the trial court erred in rejecting an alternative basis for granting summary disposition. We reverse and remand for trial.

On November 2 or 3, 1993, defendant was injured in an automobile accident while driving an uninsured Chevrolet Cavalier that he had arranged to purchase from Lelia Campbell. The owner of an uninsured motor vehicle involved in an accident is not entitled to collect personal injury protection benefits for injuries stemming from that accident. MCL 500.3113(b); MSA 24.13113(b); *Botsford Gen'l Hosp v Citizens Ins Co*, 195 Mich App 127, 130; 489 NW2d 137 (1992). However, defendant carried insurance from plaintiff on a second car. Plaintiff sought a declaratory judgment that it was not obligated to provide personal injury protection benefits to defendant because defendant was the owner of the Cavalier.

Defendant argues that the trial court erred in granting summary disposition to plaintiff.¹ We agree. The trial court found that defendant held legal title to the Cavalier and was therefore an owner of the car. See MCL 257.37(b); MSA 9.1837(b); *Botsford Hosp, supra* at 132. The failure to execute and deliver the certificate of title precludes a transfer of ownership. *Michigan Mutual Auto Ins Co v Reddig*, 129 Mich App 631, 635-636; 341 NW2d 847 (1983). In this case, defendant gave

Campbell a down payment on the Cavalier on October 14, 1993, and the certificate of title and defendant's registration indicated that transfer and delivery occurred on that date. Campbell did not recall when the certificate of title was signed or delivered, although she believed that both occurred prior to the accident. Defendant, however, claimed that the certificate of title was not delivered until after his accident. Because the parties presented conflicting evidence regarding when title was delivered to defendant, the trial court made impermissible factual findings if it determined that defendant was the titleholder based on delivery of title before the accident. See *Johnson v Wayne Co*, 213 Mich App 143, 149; 540 NW2d 66 (1995).

However, the trial court may have determined that defendant was the titleholder because, upon delivery of the certificate, the effective date of transfer was the date on which the certificate of title was executed. See MCL 257.233(5); MSA 9.1933(5). The certificate of title indicates that the date of execution was October 14, 1993. However, the date on the certificate of title is merely presumptive evidence of the date of execution. See *Fan-Gil Corp v American Hospital Supply Corp*, 49 Mich App 106, 111; 211 NW2d 561 (1973). The deposition testimony of both Campbell and defendant suggested that the actual date of execution was after October 14, 1993, and might even have been after the accident. Because a genuine issue of material fact exists with respect to when the certificate of title was actually executed, the trial court erred in granting plaintiff's motion for summary disposition. *Johnson, supra* at 149. Because we reverse on this issue, we will not address defendant's argument concerning the relative duties of a registrant/seller and an owner/buyer in insuring a newly transferred motor vehicle.

Plaintiff argues on cross-appeal that the trial court erred in rejecting an alternative basis for granting summary disposition. We disagree. A person who has the right to exclusive use of a motor vehicle for a period exceeding thirty days is considered an owner of that vehicle for purposes of the Insurance Code, regardless of whether that person has, in fact, controlled the vehicle for that time period. MCL 257.37(a); MSA 9.1837(a); *Ringewold v Bos*, 200 Mich App 131, 137-138; 503 NW2d 716 (1993). In the present case, there is no genuine issue of material fact concerning whether defendant had a right to exclusive use of the vehicle for a period exceeding thirty days. The accident occurred on November 2 or 3, 1993, and defendant purchased and started using the vehicle, at the earliest, on October 14, 1993, less than thirty days before the accident occurred. Thus, the trial court did not err in denying summary disposition on this basis.

We reverse and remand for trial. We do not retain jurisdiction.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Richard A. Bandstra

¹ Although defendant suggests in his appellate brief that the question of ownership of a motor vehicle is always a question of fact to be decided by the factfinder, we find this assertion to be without merit.

Ringewold v Bos, 200 Mich App 131, 135-136; 503 NW2d 716 (1993) (summary disposition is properly granted regarding the issue of ownership of a vehicle when there is no genuine issue of material fact).