STATE OF MICHIGAN

COURT OF APPEALS

ATTORNEY GENERAL and FAMILY INDEPENDENCE AGENCY, f/k/a DEPARTMENT OF SOCIAL SERVICES,

Plaintiffs-Appellees,

v

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
October 26, 1999

No. 212824
Ingham Circuit Court
LC No. 95-081295 NF

Before: Talbot, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals by leave granted[1] a judgment ordering it to reimburse plaintiffs in the amount of $53,926.39[2] for medical expenses paid on behalf of Ray Gordon, the driver of an uninsured automobile involved in an accident. Defendant contends that the trial court erred in determining that Gordon was not the "owner" of the uninsured vehicle, thus entitling him to personal protection insurance benefits. We reverse and remand.

Ray Gordon, an unlicensed driver, was injured while driving an uninsured automobile belonging to his then-fiancée Janice Stanford. Following the accident, the Department of Social Services paid Gordon's medical expenses with Medicaid funds and sought reimbursement through the Assigned Claims Facility (ACF), the entity charged with coordinating uninsured motorist benefits. MCL 500.3172; MSA 24.13172. The ACF assigned the claim to defendant ACIA. ACIA denied coverage on the ground that Gordon was an owner of the vehicle pursuant to MCL 24.3101(2)(g)(i); MSA 24.13101(2)(g)(i) and was therefore not entitled to be paid personal protection insurance benefits. MCL 500.3113(b); MSA 24.13113(b). The trial court granted summary disposition in favor of plaintiffs, concluding that to be an "owner" under § 3101(2)(g)(i), a person must have exclusive use of the vehicle.

This case requires that we decide whether a person must have exclusive use of a vehicle for more than thirty days to meet the statutory definition of "owner" in the no-fault act. The primary goal of

judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). The first criterion in determining specific intent is the specific language of the statute. *In re MCI Telecommunications Complaint*, ___ Mich ___; ___ NW2d ___ (No. 112363, dec'd 7/8/99), slip op p 16. If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Sun Valley Foods Co v Ward*, ___ Mich ___; ___ NW2d ___ (No. 108676, dec'd 6/29/99), slip op p 7.

An "owner" is defined as "[a] person renting a motor vehicle or *having the use thereof*, under a lease or otherwise, for a period that is greater than 30 days." MCL 500.3101(2)(g)(i) MSA 24.13101(2)(g)(i).[3] Nothing in the plain language of § 3101(g)(i) requires *exclusive* use of the vehicle. Hence, while the trial court may have correctly concluded that Gordon did not have exclusive use of the vehicle, this finding was not sufficient to resolve the issue whether Gordon met the no-fault act's statutory definition of "owner."

The phrase "having the use" of a motor vehicle for purposes of defining "owner" under § 3101(2)(g)(i) means "using the vehicle in ways that comport with concepts of ownership." *Ardt v Titan Ins Co*, 233 Mich App 685, 690; 593 NW2d 215 (1999). Here, the documentary evidence presented to the court regarding Gordon's residency, proprietary interest, and use of the vehicle was factually inconsistent. Accordingly, there remains a genuine issue of material fact for resolution at trial, rendering summary disposition of this issue inappropriate.

Because summary disposition was not warranted under these facts, the award of attorney fees was premature. Therefore, we need not address the preservation issues or the merit of awarding attorney fees in this case.

Reversed and remanded. Jurisdiction is not retained.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

[1] After this Court twice dismissed for lack of jurisdiction and denied leave to appeal, the Supreme Court, in lieu of granting leave, remanded for consideration as on leave granted. 458 Mich 852; 587 NW2d 631 (1998).

[2] The amount includes $5,853.40 in interest and $3,425 in attorney fees.

[3] The trial court apparently relied on the motor vehicle code's definition of owner. Although the motor vehicle code definition of "owner" requires exclusive use of the vehicle, MCL 257.37(a); MSA 9.1837(a), this Court has rejected application of the motor vehicle code when interpreting the term "owner" for purposes of the no-fault act because the no-fault act defines "owner." *Auto Owners Ins Co v Hoadley*, 201 Mich App 555, 561; 506 NW2d 595 (1993).