STATE OF MICHIGAN

COURT OF APPEALS

JILL K. SANBORN, Individually and as Personal Representative of the Estate of JOSHUA LEE FINNEY, Deceased, and PHILIP SANBORN,

Plaintiffs-Appellants,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 2, 2003

No. 241250
Midland Circuit Court
LC No. 01-004108-NI

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Philip Sanborn was plowing his driveway when he struck and killed decedent Joshua Lee Finney, his four-year-old stepson. At the time of the accident Philip Sanborn was driving a Chevy Blazer titled to his employer, Ross Duford. Philip Sanford worked for Duford plowing snow. Duford gave his vehicles to his employees at the beginning of the season, and the employees generally kept the vehicles at their homes. The employees were free to use the vehicles for personal reasons.

Jill Sanborn, Philip Sanborn's wife and decedent's mother, was insured under an automobile liability policy issued by defendant. The policy provided coverage for bodily injury for which an insured person was legally responsible. The policy defined an "insured person" as the policyholder or a relative with respect to an accident arising out of the ownership or use of a covered vehicle. The policy defined "covered vehicle" as the vehicle shown on the declarations page or a vehicle acquired as an additional or replacement vehicle. The policy defined "owned" and "owner" as a person who, with respect to a vehicle, had the use of the vehicle for a period greater than thirty days. The policy excluded coverage for bodily injury resulting from a relative's use of a vehicle other than a covered vehicle owned by a person who resided with the policyholder.

Jill Sanborn, individually and as personal representative of decedent's estate, filed suit against Philip Sanborn and Duford. Philip Sanborn tendered defense of the suit to defendant. Defendant declined defense of the suit on the ground that pursuant to MCL 500.3101(2)(g)(i) an "owner" was defined as a person having the use of a vehicle for a period greater than thirty days. Defendant asserted that Philip Sanborn owned the Blazer, and that the policy excluded coverage for bodily injury resulting from the use of an owned vehicle other than a covered vehicle.

Thereafter, plaintiffs filed suit for declaratory relief. They alleged that Philip Sanborn did not own the vehicle that caused decedent's death and was not in exclusive possession of the vehicle at the time of the accident. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that at the time of the accident Philip Sanborn "owned" the Blazer as that term was defined in the policy. Defendant noted that in their depositions Philip Sanborn and Duford testified that Philip Sanford obtained the Blazer in November 1999 in anticipation of the first snowfall, that he kept the vehicle at his home, and that when he was not plowing snow he was free to make reasonable use of the vehicle for personal errands. He was not required to obtain Duford's permission before using the vehicle for personal reasons. Defendant contended that neither the policy nor MCL 500.3101(2)(g)(i) required that a person have exclusive use of a vehicle in order to be considered the owner of the vehicle.

The trial court granted defendant's motion for summary disposition, finding that the undisputed evidence showed that Philip Sanborn had the right to use the Blazer for a period exceeding thirty days prior to the accident. This right of use extended to personal errands.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An insurance contract must be enforced in accordance with its terms. *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197, 207; 476 NW2d 392 (1991). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996). Similarly, exclusionary clauses are to be strictly construed against the insurer. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567; 489 NW2d 431 (1992).

The primary goal of statutory interpretation 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). If the statutory language is clear and unambiguous, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000).

For the purpose of determining ownership of a vehicle under MCL 500.3101(2)(g)(i), a person who has the right to the use of the vehicle for more than thirty days is an owner of the vehicle if he or she has the right to use the vehicle in ways which comport with the concepts of ownership. The individual must have actual use of the vehicle, not merely the right to use the vehicle, for more than thirty days. *Twichel v MIC General Ins Corp*, 251 Mich App 476, 485; 650 NW2d 428 (2002).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. Plaintiffs rely on *Ardt v Titan Ins Co*, 233 Mich App 685, 689-691; 593 NW2d 215 (1999), in which the testimony differed regarding the extent of the decedent's use of the uninsured vehicle. The *Ardt* Court reversed the trial court's grant of summary disposition in favor of the defendant, finding that a genuine issue of fact existed as to whether the extent of the decedent's use of the vehicle rendered him an owner thereof under MCL 500.3101(2)(g)(i). Here, plaintiffs assert that a question of fact existed as to whether the extent of Philip Sanborn's use of the Blazer for the thirty days preceding the accident rendered him an owner of the vehicle as that term is defined by defendant's policy and MCL 500.3101(2)(g)(i).

We find the trial court properly granted summary disposition to defendant. The fact that Philip Sanborn did not hold legal title to the Blazer is not dispositive of whether he may be considered an owner of the vehicle under MCL 500.3101(2)(g)(i). A vehicle may have multiple owners for purposes of the no-fault act. *Chop v Zielinski*, 244 Mich App 677, 681; 624 NW2d 539 (2001). MCL 500.3101(2)(g)(i) extends the concept of the owner of a vehicle to a mere user of the vehicle under certain circumstances. Having the use of a vehicle for purposes of defining the owner thereof under MCL 500.3101(2)(g)(i) means using the vehicle in ways that comport with concepts of ownership. Ownership follows from proprietary or possessory usage of a vehicle, as opposed to merely incidental usage under the direction of or with the permission of another. *Ardt*, *supra*, 690-691. In this case, unlike in *Ardt*, *supra*, the extent of Philip Sanborn's use of the Blazer was not in dispute. The parties agreed that Philip Sanborn kept the vehicle at his home during the winter except on the rare occasions when another driver needed to use it for snowplowing or it was in the shop for repairs, and that he was entitled to use it for personal reasons at any time other than when he was engaged in snowplowing. Duford did not restrict Philip Sanford's use of the Blazer for his own purposes other than to require that the use be within reason. Philip Sanborn acknowledged that on occasion he used the Blazer to run personal errands. He did not seek, and was not required to obtain, Duford's permission prior to using the Blazer for his own purposes, and acknowledged that he believed that he was authorized to allow his wife to use the Blazer. Such usage comports with the concepts of ownership. *Id*. The trial court correctly found that no genuine issue of material fact existed as to whether Philip Sanborn had a regular pattern of unsupervised usage of the Blazer to establish a sufficient proprietary or possessory use of the vehicle for more than thirty days, and that Philip Sanborn was an owner of the vehicle as that term was defined by MCL 500.3101(2)(g)(i) and defendant's policy. The trial court properly decided the issue as one of law and granted summary disposition in favor of defendant.

Affirmed.

/s/ Christopher M. Murray
/s/ Hilda R. Gage
/s/ Kirsten Frank Kelly