STATE OF MICHIGAN

COURT OF APPEALS

HERMAN BUNDLES, Plaintiff-Appellant/Cross Appellee,	UNPUBLISHED September 21, 2004
v MARKEL INSURANCE COMPANY OF CANADA, Defendant/Cross Plaintiff-Appellee/Cross Appellant, and AUTO CLUB INSURANCE ASSOCIATION, Defendant/Cross Defendant-Appellee/Cross Appellee.	No. 248843 Oakland Circuit Court LC No. 2001-036449-NF

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

In this action, plaintiff seeks to recover first-party no-fault benefits, i.e., personal protection insurance (PIP) benefits from defendant insurance companies. Plaintiff appeals from the trial court's order granting summary disposition to defendants Markel Insurance Company of Canada (Markel) and Auto Club Insurance Association (ACIA). Cross-appellant Markel appeals the trial court's order granting cross-defendant ACIA's motion for summary disposition. We affirm.

I

Plaintiff was injured when the tractor-trailer he was driving was struck in the rear by another tractor-trailer. At the time, plaintiff, a Michigan resident, was hauling freight in Kentucky as a truck driver for Glory Transportation Services (Glory Transport), a Canadian corporation. Glory Transport was the title holder of the truck, which was registered in Ontario, Canada. At the time of the accident, plaintiff and Glory Transport had a lease/purchase agreement on the truck where plaintiff made weekly payments. Glory Transport maintained an insurance policy on the truck through Markel. Markel is not an admitted insurer under Michigan law, and the policy does not provide no-fault coverage. Plaintiff owned another vehicle which

was insured by ACIA. Plaintiff filed claims with both Markel and ACIA for PIP benefits. Both companies paid some benefits before denying coverage. Plaintiff then brought this action against both insurers seeking PIP benefits. And Markel filed a cross-claim against ACIA arguing that ACIA must reimburse Markel for the benefits it had paid to plaintiff. Defendants filed motions for summary disposition under MCR 2.116(C) (8) and (10) as to plaintiff's claim, and ACIA filed a similar motion as to Markel's cross-complaint. The trial court granted all the summary disposition motions in favor of the movant.

II

We review de novo a trial court's decision on a motion for summary disposition. *Koenig v City of South Haven,* 460 Mich 667, 674; 597 NW2d 99 (1999).

> MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiff's claim for relief. [*Id.*, quoting *Spiek v Dep't of Transportation*, 456 Mich 331, 337 572 NW2d 201 (1998).]
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> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. [*Id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358,362; 547 NW2d 314 (1996) (citations omitted).]

A

Plaintiff argues first that the trial court erred in holding that MCL 500.3113(b) precludes his claim for PIP benefits. We disagree.

MCL 500.3113(b) reads:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) 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.

The no-fault act itself defines "owner" for purposes of the statute:

> (g) "Owner" means any of the following:

> (i) 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.
>
> (ii) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (iii) A person who has the immediate right of possession of a motor vehicle under an installment sale contract. [MCL 500.3101(2)(g).]

Plaintiff concedes that he was an owner, as defined in the statute, of the truck he was driving at the time of the accident. But plaintiff asserts that under the statute, Glory Transport, as the holder of the truck's legal title, was also an owner. Plaintiff argues that while he was "an owner" of the truck, he was not "the owner" of the truck, and concludes that because MCL 500.3113(b) only precludes "*the* owner" from receiving no-fault benefits, a designation which he did not have, he is not precluded from receiving benefits under the statute.

This Court was presented with this precise argument in *Ardt v Titan Ins Co*, 233 Mich App 685, 691-692; 593 NW2d 215 (1999), and addressed it as follows:

> Plaintiffs extend their argument against Robert's ownership of the truck by emphasizing that MCL 500.3113(b); MSA 24.13113(b) states that it is "the owner" of an uninsured motor vehicle who comes under the exclusion, arguing that the use of the definite article indicates the legislative intention to exclude only the primary owner. We disagree. This Court has specifically identified multiple owners of a motor vehicle for purposes of MCL 500.3101(2)(g); MSA 24.13101(2)(g). *Integral Ins Co v Maersk Container Service Co, Inc,* 206 Mich App 325, 332; 520 NW2d 656 (1994). Further, in reading this state's statutory language, "[e]very word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number." MCL 8.3b; MSA 2.212(2). Had the Legislature intended the exclusionary effect of MCL 500.3113(b); MSA 24.13113(b) to apply to only a single primary owner for each vehicle, it would have had to indicate that intention more clearly than by use of the definite article in this instance. We hold that where an uninsured motor vehicle involved in an accident has more than one owner, all the owners come under the statutory exclusion for personal protection insurance benefits.

Therefore, because plaintiff was an owner of the truck, he is statutorily precluded from receiving PIP benefits.[1] Accordingly, his claim for such benefits against Markel and ACIA cannot be sustained.

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[1] *Ardt* is controlling and binding on this panel under MCR 7.215(J)(1), and we decline plaintiff's

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ACIA's liability to Markel is premised on Markel's theory that ACIA is obligated to pay benefits and that MCL 500.3113(b) does not preclude this obligation. Therefore, Markel's issue on cross-appeal is essentially the same as plaintiff's argument in this regard. Because we have determined that plaintiff is precluded from receiving PIP benefits, Markel's cross-claim against ACIA for recoupment must fail.

B

Plaintiff argues alternatively that the truck was not required to be insured under a no-fault policy because it was not required to be registered in Michigan and that, therefore, MCL 500.3113(b) does not preclude liability as it is inapplicable. Again, we disagree.

MCL 500.3101 mandates that "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." Because plaintiff was an owner of the truck under MCL 500.3101(2)(g), the only question is whether the truck was required to be registered in this state.

The answer to this question is found in MCL 257.216:

> Every motor vehicle, pickup camper, trailer coach, trailer, semitrailer, and pole trailer, when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this act . . . .

Plaintiff points to an exception to this requirement found in MCL 257.216(a) for "[a] vehicle driven or moved upon a highway in conformance with the provisions of this act relating to manufacturers, transporters, dealers, or nonresidents," and argues that because Glory Transport, a non-resident, is the title holder of the vehicle, this section applies and exempts the truck from the registration requirement, and ultimately the requirement that it be insured by a no-fault policy. However, like the no-fault act, the motor vehicle code also defines an "owner" in a fashion that contemplates multiple owners. MCL 257.37(a); *Basgall v Kovach*, 156 Mich App 323, 327; 401 NW2d 638 (1986). An owner is "[a]ny person, firm, association, or corporation renting a motor vehicle or having exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days." MCL 257.37(a). Thus, as contemplated under the motor vehicle code, there is no question that plaintiff was an "owner." Accordingly, because plaintiff was a resident owner, MCL 257.217 requires that the truck be registered in Michigan, and MCL 500.3101 requires it to be insured by a no-fault policy. The failure to have that policy in place triggers the preclusions found in MCL 500.3113(b).[2]

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request to revisit this issue via the procedures set forth in MCR 7.215(J)(3).

[2] Defendant ACIA also points out an alternative source for the requirement that the truck be insured. The no-fault act itself forbids a nonresident owner, here Glory Transport, from operating a motor vehicle, or allowing one to be operated, in this state for an aggregate of more than thirty days in any calendar year unless he or she continuously maintains security for the payment of the benefits pursuant to this chapter. MCL 500.3102(1). Accordingly, under this section as well, the truck was required to be insured because there is no dispute that it was

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C

Plaintiff's next argument is that Markel had a duty to pay no-fault benefits based on the policy on the truck. Plaintiff concedes that Markel is not an admitted insurer in Michigan and that the truck's insurance policy did not include no-fault coverage. However, plaintiff argues that under the principles of waiver and estoppel, Markel should have been ordered by the trial court to pay benefits. We disagree.

The general rule is that "waiver and estoppel are not available where their application would result in broadening the coverage of a policy, such that it would 'cover a loss it never covered by its terms . . . [and] create a liability contrary to the express provisions of the contract the parties did make.'" *Smit v State Farm Mut Automobile Ins Co*, 207 Mich App 674, 680; 525 NW2d 528 (1994), quoting *Ruddock v Detroit Life Ins Co,* 209 Mich 638, 654; 177 NW 242 (1920). This general rule and limitation on the application of waiver and estoppel are subject to two exceptions. The *Smit* panel observed that in *Lee v Evergreen Regency Cooperative,* 151 Mich App 281; 390 NW2d 183 (1986), this Court recognized two classes of cases in which estoppel or waiver was applied to bring within coverage risks not covered by policy terms:

> The first class involves companies which have rejected claims of coverage and declined to defend their insureds in the underlying litigation. In these instances, the Court has held that the insurance company cannot later raise issues that were or should have been raised in the underlying litigation. *Morrill v Gallagher,* 370 Mich 578; 122 NW2d 687 (1963); *Dickenson [Dickinson] v Homerich,* 248 Mich 634; 227 NW 696 (1929). These cases are closely akin to the principle behind collateral estoppel . . . .
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> The second class of cases allowing the limits of a policy to be expanded by estoppel or waiver despite the holding of *Ruddock* involves instances where the inequity of forcing the insurer to pay on a risk for which it never collected premiums is outweighed by the inequity suffered by the insured because of the insurance company's actions. [*Smit,* supra at 680-681, quoting *Lee, supra* at 286-287.]

Here, the first class does not apply because there has been no third-party action against plaintiff that Markel has refused to defend. Rather, plaintiff argues that his situation falls within the second class. He asserts that the inequity of not being able to recover PIP benefits is greater than the inequity of forcing Markel to pay such benefits, even though the benefits were not provided for in the policy.

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operated in Michigan for more than thirty days in one year. Therefore, this section as well establishes that the truck was required to be insured. See *McGhee v Helsel*, 262 Mich App 221, 224-225; ___ NW2d ___ (2004) (looking at language similar to MCL 500.3113(b) in MCL 500.3135(2)(c), which precludes suit for noneconomic damages where a party did not have the statutorily required insurance, and stating that MCL 500.3102 provides a basis on which insurance is required).

Our courts have only recognized two scenarios that would fall within the second exception class: (1) a situation where an insurance company misrepresented the terms of the policy to the insured, or (2) where the insurance company defended the insured without reserving the right to deny coverage. *Kirschner v Process Design Assoc, Inc,* 459 Mich 587, 594-595; 592 NW2d 707 (1999), citing as examples *Smit, supra,* and *Lee, supra.* In this case, plaintiff does not fall within either of these two recognized scenarios. Markel has not defended plaintiff in a third-party action and there is no allegation that Markel ever misrepresented the terms of the policy to the insured. Rather, plaintiff argues that Markel was aware that much of Glory Transport's business was done in Michigan and that therefore it should have sold Glory Transport a policy that included Michigan no-fault coverage. But there is no suggestion that Markel represented in any way, either to Glory Transport or plaintiff, that no-fault benefits were included in the policy.

Moreover, even if the exception was expanded to include the scenario presented here, ultimately we are required to weigh the inequity of forcing the insurer to pay on a risk for which it never collected premiums against the inequity suffered by the insured because of the insurance company's actions. *Smit,* supra at 681. While plaintiff's predicament is certainly unfortunate, we fail to see how this inequity was caused by the insurance company's actions. Rather, Markel simply sold a policy of insurance to Glory Transport. There is no evidence of misrepresentation to any party by Markel or of any other wrongdoing. Plaintiff's predicament was caused, rather, by plaintiff's failure to inquire whether Markel's insurance policy provided no-fault benefits. We, therefore, conclude that the greater inequity here would be to require Markel to pay on a risk for which it never collected premiums.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens