STATE OF MICHIGAN

COURT OF APPEALS

AMERISURE MUTUAL INSURANCE COMPANY, Plaintiff-Appellee, v AMERICAN INTERNATIONAL INSURANCE COMPANY, Defendant-Appellant.	UNPUBLISHED August 25, 2005 No. 261227 Wayne Circuit Court LC No. 04-413034-CK

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

PER CURIAM.

Defendant American International Insurance Company (AIIC) appeals as of right from the trial court's order denying its motion for summary disposition and granting summary disposition in favor of plaintiff Amerisure Mutual Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Audrey Daniel, an independent contractor[1] for Great Lakes Drive-A-Way, received driving assignments from ASAP Express, Inc., a transportation company. Daniel was injured when her delivery van was involved in an accident. AIIC, her personal insurer, denied her claim for personal injury protection (PIP) benefits on the ground that she was an employee of ASAP, and maintained that pursuant to MCL 500.3114(3), Amerisure was liable for payment of PIP benefits because it insured the van.

Amerisure filed a declaratory action seeking a determination that AIIC was responsible for payment of PIP benefits. AIIC moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was not liable for payment of PIP benefits because Daniel was an employee of ASAP. Amerisure filed a countermotion for summary disposition pursuant to MCR

[1] Daniel worked as a sole proprietor under the name "Audrey's Transportation."

2.116(C)(10) and MCR 2.116(I)(2), arguing that because Daniel was an independent contractor, she was obligated to look to AIIC for payment of PIP benefits.[2]

The trial court denied AIIC's motion for summary disposition and granted summary disposition in favor of Amerisure pursuant to MCR 2.116(I)(2). AIIC sought reconsideration, noting that the economic realities test had been superseded by the definition of "employee" found in MCL 418.161(n),[3] *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 572; 592 NW2d 360 (1999), and arguing that the trial court erred by failing to apply that statutory definition to conclude that Daniel was an employee of ASAP. The trial court denied the motion for reconsideration.

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). In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), this Court must review the record evidence and all reasonable inferences drawn that evidence in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

As a general rule, a person injured in an automobile accident must first seek no-fault benefits from his own insurer. However, an employee who suffers accidental bodily injury while occupying a vehicle owned by or registered to his employer must receive benefits from the insurer of that vehicle. MCL 500.3114(1); MCL 500.3114(3).

The terms "employee" and "employer" are not defined for purposes of MCL 500.3114(3). The economic realities test has been applied in determining whether an employment relationship existed for purposes of applying MCL 500.3114(3). The factors to be considered in applying the economic realities test include: (1) control of the worker's duties; (2) payment of wages; (3) right to hire, fire, and discipline; and (4) performance of the duties as an integral part of the employer's business toward the achievement of a common goal. *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 624; 335 NW2d 106 (1983). An independent contractor is "one who, carrying on an independent business, contracts to do work without being subject to the right of control by the employer as to the method of work but only as to the result to be accomplished." *Id*. at 622-623.

AIIC's argument that the trial court erred by failing to apply MCL 418.161(n) and *Hoste* to this case is without merit. This case involves the priority of insurance coverage under the no-fault act. Worker's compensation benefits are not at issue in this case; therefore, this Court need not consider the definition of "employee" found in the WDCA.[4] Daniel was an independent

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[2] Daniel and her husband, John, filed a separate action against AIIC and Amerisure. That action is not at issue in this appeal.

[3] MCL 418.161 is part of the Worker's Disability Compensation Act, MCL 418.101 *et seq*.

[4] Another panel of this Court reached a similar conclusion in *King v Westfield Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued November 4, 2004 (Docket No. 247451), slip op at 3 n 1. *King* is not binding authority, MCR 7.215(C)(1), but its analysis may (continued…)

contractor for Great Lakes, a company that supplied drivers to ASAP. ASAP leased a van from Great Lakes, but Great Lakes paid for the maintenance of the van. Daniel was free to accept or reject any assignment from ASAP. ASAP gave her instructions regarding her location and task (i.e., picking up or delivering parts), but did not control the route she took, the hours she drove, etc. The expenses incurred by Daniel during delivery trips were paid by Great Lakes. ASAP did not pay Daniel a salary, submit taxes on her behalf, or provide her with fringe benefits. The trial court correctly concluded that Daniel was an independent contractor, *Parham*, *supra* at 622-624, and that she was entitled to receive PIP benefits from AIIC. MCL 500.3114(1).

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray

(…continued)

be considered persuasive.