

STATE OF MICHIGAN
COURT OF APPEALS

SOUTHERN MICHIGAN INSURANCE
COMPANY,

Plaintiff-Appellant,

v

STATE FARM INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 15, 2005

No. 262936
Ionia Circuit Court
LC No. 04-023536-CK

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

In this automobile no-fault insurance claim declaratory action, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), and denying plaintiff's cross-motion for summary disposition. Because plaintiff's insured is the claimant's spouse, plaintiff is obligated to provide personal injury protection benefits to the claimant and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision granting or denying summary disposition in a declaratory action. *Unisys Corp v Comm'r of Ins*, 236 Mich App 686, 689; 601 NW2d 155 (1999).

The pertinent facts are undisputed. Plaintiff issued a no-fault policy to Wayne Draper and his wife in January 2004. On March 17, 2004, Wayne Draper signed a policy change form and gave permission for his name to be removed from the policy. He was injured on April 9, 2004, while riding as a passenger in a vehicle insured by defendant. At the time of the accident, he was not domiciled with his wife and divorce proceedings were ongoing. The Drapers' judgment of divorce was entered after the accident.

The trial court correctly determined that pursuant to MCL 500.3114(1), the spouse of a named insured need not be domiciled with the named insured to be eligible for personal protection benefits. MCL 500.3114(1) states:

(1) Except as provided in subsections (2), (3), and (5),¹ a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

The comma following "the person's spouse" indicates that the phrase "domiciled in the same household" modifies only "a relative of either."

In *Citizens Mutual Ins Co v Community Services Ins Co*, 65 Mich App 731, 732; 238 NW2d 182 (1975), this Court examined a prior version of § 3114(1), which stated:

Except as provided in subsections (2) and (3), a personal protection insurance policy applies to accidental bodily injury to the person named in the policy, his spouse and any relative of either domiciled in the same household.

This Court rejected the argument that the phrase "domiciled in the same household" applied to "spouse" as well as to "any relative of either," but noted that the argument was consistent with the structure of the sentence in that version of the statute and expressed that "it might be preferable to place a comma before 'and any relative.'" *Id.*, 733. Plaintiff's argument under the current version of § 3114 is even weaker than that rejected in *Citizens Mutual Ins Co*, because the current version includes a comma before the phrase "and a relative of either."

Plaintiff further contends that the law is unsettled on this point because *Citizens Mutual Ins Co* conflicts with *Bierbusse v Farmers Ins Group*, 84 Mich App 34; 269 NW2d 297 (1978). However, both were issued before November 1, 1990, and, therefore, are not binding under MCR 7.215(J). In any event, the point of disagreement between *Bierbusse* and *Citizens Mutual Ins Co* concerns coverage for relatives of the named insured and the insured's spouse, which is not at issue here. There was no disagreement in *Bierbusse* concerning the coverage afforded the estranged spouse. Furthermore, subsequent decisions addressing priority of insurers implicitly recognize that a spouse of the named insured who is not domiciled in the same household as the named insured continues to be covered by the policy. See *Michigan Mutual Ins Co v Allstate Ins Co*, 146 Mich App 475; 382 NW2d 169 (1985), *aff'd* 426 Mich 346 (1986) (holding that an insurer of the spouse of the injured person and the insurer of the relative with whom the injured person was residing are in the same order of priority to pay personal protection benefits).

Plaintiff argues that the endorsement signed by Draper is controlling because he had an absolute right to terminate his coverage pursuant to MCL 500.3020(1)(a), which requires a policy of insurance to provide that it may be canceled at any time at the request of the insured. However, Draper did not request cancellation of the policy; he only gave permission for modification, specifically, "for my name to be removed from the above referenced policy." Even if the request was effective so that he was no longer a named insured, the request had no

¹ These subsections are not implicated in the present case.

effect on his eligibility to recover personal protection benefits as a spouse of the other named insured.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio