# STATE OF MICHIGAN

# COURT OF APPEALS

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| STATE FARM MUTUAL INSURANCE COMPANY,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>September 29, 2005 |
| v | No. 262833<br>Oakland Circuit Court |
| PROGRESSIVE MICHIGAN INSURANCE COMPANY,<br><br>Defendant-Appellant. | LC No. 2004-059962-NF |

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

PER CURIAM.

Defendant appeals as of right the trial court order granting summary disposition in favor of plaintiff on the ground that defendant had a higher priority to pay benefits under the Michigan no-fault statute. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Michael J's Adult Day Care owned a van that was insured by defendant. That van was equipped to transport one wheelchair-bound passenger and five or six other passengers. Michael J's was primarily a provider of adult day care to make respite available to family caregivers. As a part of its business it would drive clients to and from their home to Michael J's and it would also use the van if it took the clients on field trips.

Michael J's had some clients that were referred to it by the Area Agency on Aging. To get such referrals, Michael J's had to meet requirements set forth by the Area Agency on Aging. Among other things, those requirements included that Michael J's either had to provide transportation or it had to make arrangements for transportation. Michael J's was also required to have one million dollars in insurance liability coverage on the van that it used for such transportation.

On September 26, 2002, a wheelchair-bound passenger in the Michael J's van was injured when she somehow slumped out of her wheelchair. That passenger resided with her daughter who had no-fault insurance coverage through plaintiff. Plaintiff initially paid the benefits under the no-fault act and then submitted the expenses to defendant for reimbursement

claiming that defendant held a higher priority under the no-fault statute to pay for such benefits. This lawsuit ensued after defendant denied reimbursement.

The trial court heard defendant's motion for summary disposition and determined that defendant was in a higher priority for payment under the statute. The trial court therefore denied defendant's motion and granted summary disposition in favor of plaintiff.

This case involves a priority dispute between two insurance companies under Michigan's no-fault act. MCL 500.3101 *et seq*. Resolution of the issue requires interpretation and application of MCL 500.3114(2). Interpretation and application of a statute is a question of law that is reviewed de novo. *Farmers Ins Exch v AAA of Michigan*, 256 Mich App 691, 694; 671 NW2d 89 (2003).

MCL 500.3114(2) provides that "[a] person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle." That subsection of the statute goes on to list six exceptions to that rule, but it is agreed that none of those exceptions are applicable here.

The dispositive question is whether the van owned by Michael J's Adult Day Care, in which the passenger was injured, was "a motor vehicle operated in the business of transporting passengers." The statutory phrase in question—"a motor vehicle operated in the business of transporting passengers"—must be construed under the rules of statutory interpretation because it does not have a clear and unambiguous meaning. *Farmers Ins Exch*, *supra* at 697. The primary goal in statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Id*. at 695.

Throughout the no-fault act the Legislature generally intended that a person's personal insurer, which is the insurance company that provides no-fault insurance to the household, is primarily liable. *Id*. at 695-696. The Legislature recognized, however, that always following such a general intent would have resulted in insurers of business vehicles rarely being first in priority for payment. *Id*. at 697-698. Consequently, the Legislature "created what amounts to a business household in §3114(2) and (3), so that responsibility for providing benefits would be spread equitably among all insurers of motor vehicles." *Id*. at 698, quoting *Michigan Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 634; 455 NW2d 352 (1990).

The exceptions to the rule of MCL 500.3114(2), that the insurer of the vehicle would be primarily liable, also reveal the legislative intent.

> It was apparently the intent of the Legislature to place the burden of providing no-fault benefits on the insurers of these motor vehicles, rather than on the insurers of the injured individual. This scheme allows for predictability; coverage in the "commercial" setting will not depend on whether the injured individual is covered under another policy. A company issuing insurance covering a motor vehicle to be used in a (2) or (3) situation will know in advance the scope of the risk it is insuring. [*Farmers Ins Exchange*, *supra* at 698, quoting *State Farm Mut Automobile Ins Co v Sentry Ins*, 91 Mich App 109, 114; 283 NW2d 661 (1979).]

The *Farmers* Court held "that a primary purpose/incidental nature test is to be applied to determine whether at the time of an accident a motor vehicle was operated in the business of transporting passengers pursuant to subsection 3114(2)." *Id*. at 701. In this Court's actual application of that test it used a two-part analysis. The first part was whether the vehicle was transporting passengers in a manner incidental to the vehicle's primary use. *Id*. The second part of the analysis was whether the transportation of the passengers was an incidental or small part of the actual business in question. *Id*. at 701-702. In *Farmers*, this Court decided that a daycare provider was not operating her vehicle in the business of transporting passenger when (1) she used her personal automobile to transport children to and from school three to five times a week; and (2) that transportation made up an incidental or small part of her day-care business. *Id*.

In the present case Michael J's Adult Day Care owned a van specifically equipped to handle transportation of wheelchair-bound and other passengers. Michael J's purchased the van for that specific and primary purpose, and defendant provided insurance to the commercial entity for that vehicle. While transporting passengers was not the primary purpose of Michael J's Adult Day Care, it was a significant enough component for Michael J's to provide the transportation in a specially equipped vehicle, owned and operated by the business and insured according to the commercial requirements established by the Area Agency on Aging that referred clients to the business.

Based on the legislative intent that MCL 500.3114(2) creates a "business household," and applies to commercial situations, along with the fact that the transportation component of Michael J's business was important enough for the business to purchase a vehicle that was used primarily for and insured specifically for transporting Michael J's clients, we hold that MCL 500.3114(2) applies in this situation and defendant has a higher priority to pay Michigan no-fault benefits.

We affirm.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio