# STATE OF MICHIGAN

# COURT OF APPEALS

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DETROIT MEDICAL CENTER,

Plaintiff-Appellant/Cross-Appellee,

and

GAMAL ALMAWRI, as Next Friend of ISHAK ALMAWRI and MARWAN ALMAWRI,

Plaintiffs,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellee,

and

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee/Cross-Appellant.

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UNPUBLISHED
March 7, 2006

No. 263107
Wayne Circuit Court
LC No. 03-324440-NF

Before: Murray, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of dismissal granting summary disposition to both defendants. We affirm.

I. Facts and Proceedings

On November 11, 2002, two brothers, fifteen-year-old Marwan and thirteen-year-old Ishak Almawri, were injured when the vehicle they occupied was involved in a collision. It was undisputed that the driver of the vehicle was their fifteen-year-old friend, Abraham Algahim. Although there was conflicting testimony between the Almawri brothers and Algahim as to how the three boys came to be in the car, there was no dispute that the car had been reported as stolen and was abandoned in an alley with its radio missing and the air bags deployed. Moreover, under the versions offered by the Almawri brothers and Algahim, there was no dispute that all

three of the occupants were uncertain as to who owned the vehicle,[1] and they were all under the legal driving age.

All the involved parties were uninsured and no insurer for the vehicle was originally found. Therefore, the brothers made a claim through the Michigan Assigned Claims Facility, and Citizens was assigned the claim. Citizens began paying benefits, but terminated them, resulting in the instant action seeking a judgment against Citizens for failure to pay no-fault benefits. During the course of discovery, plaintiff learned that Farmers insured the stolen vehicle involved in the collision, and moved to amend their complaint to include Farmers as a defendant. That motion was granted and Farmers was added as a defendant and later admitted being the insurer of the vehicle.

Farmers moved for summary disposition under MCR 2.116(C)(10), arguing that the brothers were not entitled to benefits under MCL 500.3113(a) of the no-fault act, as it prohibits benefits for any injured person who is "using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle." MCL 500.3113(a). The trial court denied Farmers' motion, indicating that there was conflicting evidence that created a genuine issue of material fact. Citizens then moved for summary disposition under MCR 2.116(C)(8) and (C)(10) on the basis that Farmers was the insurer of the vehicle and so would be a higher priority insurer under MCL 500.3114. At the hearing on that motion, the trial court implicitly reversed its prior decision and found neither defendant had liability under MCL 500.3113(a) because the brothers stole the car. Plaintiff appeals the trial court's decision.

## II. Analysis

This Court reviews rulings on motions for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Additionally, questions regarding statutory interpretation and application are issues of law determined de novo on appeal. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 344; 578 NW2d 274 (1998). The no-fault act excludes benefits when "[t]he person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle." *Priesman v Meridian Mut Ins Co*, 441 Mich 60, 63 n 3; 490 NW2d 314 (1992), quoting MCL 500.3113(a). Coverage under the act is therefore properly denied if (1) a person takes a vehicle unlawfully and (2) that person did not have a reasonable basis for believing that he could take and use the vehicle. *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 623; 499 NW2d 423 (1993).

Plaintiff contends that there is a genuine issue of material fact whether the brothers unlawfully took the vehicle at issue. It contends that the vehicle had already been taken by the

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[1] Specifically, the Almawri brothers testified that when they entered the car being driven by Algahim, they speculated that the car was either his cousin's or a friend of Algahim's. Nevertheless, they entered the vehicle. According to Algahim, he speculated that the vehicle belonged to the Almawri brothers father "or something" because Marwan turned the car on.

driver before that driver offered them a ride. Therefore, they were not aware the vehicle was stolen and did not participate in its taking. Plaintiff contends this outcome is required by *Landon v Titan Ins Co*, 251 Mich App 633; 651 NW2d 93 (2002). We disagree. When read in context, *Landon* does not stand for plaintiff's proposition that the injured person *himself* must take the vehicle. Further, *Landon* is distinguishable here because the issue there was whether the plaintiff's admitted taking was done with the permission of the owner. *Landon*, *supra* at 642. This Court found that the plaintiff had lawful possession of the vehicle because she was a bailee. *Id*. In this case, however, there is no question whether the brothers had lawful possession of the vehicle because it was stolen. Therefore, *Landon* is not applicable. Rather, we find the reasoning of *Mester v State Farm Mut Ins Co*, 235 Mich App 84; 596 NW2d 205 (1999), to be determinative.

In *Mester*, three girls were skipping school together and took a truck that they eventually crashed during a police chase. *Id*. at 85-86. The plaintiff argued that she was only involved in the "unlawful use" of the vehicle, rather than an "unlawful taking," because it was her friend who actually found the truck with the keys in it and was the one who was driving. *Id*. Further, the plaintiff had pleaded with the driver to stop before the accident occurred. *Id*. at 86. This Court rejected the plaintiff's argument, finding that subsection 3113(a) requires only the intent to drive the vehicle away, not to steal or permanently deprive the owner. *Id*. at 88. Additionally, the Court found that by using the phrase "unlawfully taking" in the statute, the Legislature chose a term that encompasses the offense of joyriding. *Id*. Therefore, the plaintiff was joyriding and had participated in the unlawful taking of the vehicle so was not entitled to benefits under subsection 3113(a). *Id*. at 88-89.

Here, there was no evidence that the brothers intended to steal the vehicle, but they did get in the car with the intent to drive away and were, as admitted by plaintiff, joyriding. Therefore, under the holding of *Mester*, they were using a vehicle that they had unlawfully taken, and they are precluded from benefits under MCL 500.3113(a), unless they had a reasonable belief that they were entitled to take and use the vehicle. MCL 500.3113(a).

Plaintiff contends the brothers had a reasonable belief that they were entitled to take and use the vehicle because the driver did not tell them the vehicle was stolen and they believed the car belonged to the driver's cousin or friend. We disagree. The brothers got into a vehicle they knew did not belong to the driver, because of the driver's age, who they also knew or should have known did not have a driver's license. Additionally, their testimony was only speculative as to who actually owned the vehicle, which means they did not know who owned it, and therefore could not have had permission to ride in it with an underage driver. Therefore, the brothers could have no reasonable belief that they were entitled to take and use the vehicle. The grant of summary disposition on the basis of no liability under MCL 500.3113(a) is affirmed.

Farmers has cross-appealed urging that we affirm the grant of summary disposition on the basis that plaintiff's claim is barred by the one-year time limitation under MCL 500.3145(1). However, due to the outcome of plaintiff's appeal, we need not address that argument.

Affirmed.

*/s/* Christopher M. Murray
*/s/* Mark J. Cavanagh
*/s/* Henry William Saad