STATE OF MICHIGAN

COURT OF APPEALS

SHARON H. VUCINAJ, Plaintiff-Appellant,	UNPUBLISHED March 21, 2006
v AMERISURE INSURANCE COMPANY, Defendant-Appellee.	No. 264933 Oakland Circuit Court LC No. 04-062380-NF

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

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in plaintiff's action to recover no-fault personal protection insurance ("PIP") benefits. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

Plaintiff was injured in an automobile accident while driving a Jeep Cherokee that was owned by and registered solely in the name of her husband, Vaselj Vucinaj ("Vaselj").[1] Vaselj was a passenger in the automobile at the time of the accident. On the date of the accident, the Jeep was uninsured because Vaselj had stopped paying the insurance premiums owed to his insurance company. According to the deposition testimony of plaintiff and Vaselj, plaintiff normally drove a Ford Escort, also registered solely in Vaselj's name and also uninsured; Vaselj normally drove the Jeep. Plaintiff estimated that, during the two-and-a-half-year period that she was married to Vaselj before the accident, she had driven the Jeep on eight occasions when Vaselj had been drinking and on only two other occasions to pick up her niece at school. Plaintiff also occasionally operated the Jeep in order to move it out of the driveway when it was blocking the Escort.

Plaintiff notified the assigned claims facility (ACF), see MCL 500.3171 *et seq.*, of her claim for PIP benefits under MCL 500.3174, and the ACF assigned her claim to defendant. Defendant denied plaintiff's claim on the ground that she was the "owner" of an uninsured vehicle within the meaning of MCL 500.3113 and was therefore disqualified from receiving PIP

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[1] Vaselj Vucinaj was a third-party defendant in this case. A default judgment was entered against him in defendant's third-party claim against him for indemnification for no-fault benefits paid to plaintiff. He is not a party to this appeal.

benefits. The trial court granted summary disposition in favor of defendant on this basis in plaintiff's ensuing lawsuit.

We review de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). "When a motion under [MCR 2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4).

We also review de novo issues of statutory interpretation. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 528; 676 NW 616 (2004). In reviewing questions of statutory interpretation, our purpose is to discern and give effect to the intent of the Legislature. *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005). If the plain language of the statute is unambiguous, no further judicial construction is required or permitted, and the statute must be enforced as written. *Id*.

MCL 500.3172(1) provides for payment of personal protection insurance benefits through an assigned claims plan where no personal protection insurance is applicable to the injury. *Butterworth Hosp v Farm Bureau Ins Co*, 225 Mich App 244, 251 n 3; 570 NW2d 304 (1997). MCL 500.3173 provides that a person who, pursuant to any limitation or exclusion set forth in the no-fault act, would be disqualified from receiving PIP benefits under an applicable insurance policy is also disqualified under the assigned claims plan.

MCL 500.3101(1) requires the owner or registrant of a vehicle to carry personal protection, property protection, and residual liability insurance. MCL 500.3113(b), in turn, precludes owners of uninsured vehicles from receiving PIP benefits:

> 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:
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> (b) The person was the owner or registrant of a motor vehicle . . . involved in the accident with respect to which the security required by [MCL 500.3101 or 500.3103] was not in effect.

MCL 500.3101(2)(g)(i) defines the term "owner" as "[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."

In *Twichel*, *supra* at 530, our Supreme Court addressed the definition of "owner" set out in § 3101(2)(g)(i), rejecting this Court's determination, based in part on *Ardt v Titan Ins Co*, 233 Mich App 685; 593 NW2d 215 (1999), that the person in question must actually have had use of a vehicle for 30 days or more in order to qualify as an "owner" of that vehicle. Rather, the Court held that "the focus must be on the nature of the person's right to use the vehicle." *Id*. The Court further noted that reading the language of § 3101(2)(g)(i) to require actual use of a vehicle for a 30-day period would "require[] substitution of the phrase 'having *used* the vehicle' for the

phrase ‘having the use thereof.’” *Id*.

We conclude that *Twichel* requires affirmance of the trial court’s grant of summary disposition in favor of defendant. The clear import of *Twichel* is that a person need not have *actually* used a vehicle for a 30-day period in order to qualify as an “owner.” Rather, what matters is the person’s *right* to use the vehicle for a 30-day period. Plaintiff has failed to produce any evidence whatsoever to establish an issue of fact concerning her *right* to use the vehicle, notwithstanding her *actual*, limited use of the vehicle. The undisputed testimony establishes that plaintiff had every “right” to use her husband’s Jeep for a period extending well beyond 30 days. Plaintiff had driven the Jeep on several occasions. Although Vaselj was the sole registered owner and primary driver of the Jeep, he acknowledged that a second key to the Jeep was accessible to plaintiff whenever she needed to use it. The fact that plaintiff did not *actually* use the vehicle on a “regular” basis for a 30-day period is simply irrelevant under *Twichel*.

We affirm.

/s/ Henry William Saad
/s/ Richard A. Bandstra

I concur in result only.

/s/ Janet T. Neff