

STATE OF MICHIGAN
COURT OF APPEALS

MARKHAM GENERAL INSURANCE
COMPANY, subrogee of ALL MAKES
LOGISTICS, LTD,

UNPUBLISHED
March 23, 2006

Plaintiff-Appellant,

V

NATHANIEL MORRIS EVANS,

Defendant-Appellee.

No. 257284
Calhoun Circuit Court
LC No. 04-000681-NO

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff, a Canadian corporation and subrogee of All Makes Logistics, Ltd (AML), appeals as of right from the trial court order granting summary disposition to defendant in this no-fault insurance case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 27, 2002, defendant's vehicle and a truck owned by AML and insured by plaintiff were involved in a collision that resulted in property damage. Defendant's vehicle was registered in Michigan and insured in accordance with Michigan's No-Fault Act, MCL 500.3101 *et seq.* The truck insured by plaintiff was neither registered nor insured in accordance with the no-fault act. After plaintiff paid the claim and waived AML's deductible, defendant's insurance company denied plaintiff's request for reimbursement. Plaintiff filed suit seeking property damages. Defendant thereafter moved for, and was granted, summary disposition.

On appeal, plaintiff argues that because AML was not required to register or maintain no-fault insurance on its vehicle in Michigan, MCL 500.3135 (which limits tort liability for property damages) is inapplicable and plaintiff may recover damages. Plaintiff also argues that because it did not file a certificate of compliance pursuant to MCL 500.3163, it is not subject to no-fault act. We disagree.

This Court reviews de novo an appeal from an order granting summary disposition pursuant to MCR 2.116(C)(8) for failure to state a claim. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In reviewing a motion for summary disposition, the Court considers the pleadings alone to test the legal sufficiency of the complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

MCL 500.3135(3) abolishes tort liability “arising from the ownership, maintenance, or use within this state of a motor vehicle” provided that the security required by MCL 500.3101(1)¹ was in effect at the time unless there are noneconomic damages as provided for in MCL 500.3135(1). Subsection (e) provides an exception to MCL 500.3135(3) for damages to motor vehicles up to \$500 to the extent that insurance does not cover those damages.

In *Gersten v Blackwell*, 111 Mich App 418; 314 NW2d 645 (1981), the Court found the provisions of MCL 500.3135 applied to relieve the defendant of liability. In that case, the plaintiffs, who were out-of-state residents whose vehicle was insured in Illinois, sued the defendant, a Michigan resident whose vehicle was insured under a no-fault policy in Michigan, for injuries resulting from their automobile accident. *Id.* at 420-421. In holding that the exceptions to tort liability in MCL 500.3135 did not apply, the Court reasoned that “[s]ince the defendant maintained the requisite security, he is, pursuant to [MCL 500.3135], relieved of all tort liability to the plaintiffs resulting from the accident.”² *Id.*

In contrast, in *McGhee v Helsel*, 262 Mich App 221; 686 NW2d 6 (2004), the Court found that MCL 500.3135 did not relieve the plaintiff of liability. In that case, the plaintiff, an uninsured Indiana resident, sued the defendant, a Michigan resident insured with no-fault coverage, for the noneconomic damages resulting from their automobile accident. *Id.* In holding the defendant liable, the Court explained that MCL 500.3135(1) permits recovery for noneconomic damages only if the injured party (in that case, the plaintiff) maintains the security required by MCL 500.3101(1). *Id.* at 224-225. However, because MCL 500.3101(1) did not require the plaintiff, an uninsured out-of-state resident, to maintain this security, the plaintiff could recover noneconomic damages from the defendant.³ *Id.*

These cases stand for the proposition that MCL 500.3135 will shield a Michigan resident with no-fault insurance coverage from liability to an out-of-state resident without no-fault insurance coverage unless that out-of-state resident seeks noneconomic damages. Thus, plaintiff’s argument that MCL 500.3135(3) does not bar its recovery because MCL 500.3101(1) does not require AML to maintain a no-fault insurance policy is incorrect. Whether the out-of-state resident maintains a no-fault insurance policy is only relevant when noneconomic damages are at stake. *McGhee, supra* at 224-225. However, where the out-of-state resident seeks property damages, liability is dependent on whether the Michigan resident maintains the

¹ MCL 500.3101(1) provides that “the owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance”

² The Court noted that plaintiffs’ damages were not noneconomic because they did not involve death, serious impairment of a bodily function, or permanent serious disfigurement as required by MCL 500.3135(1).

³ The Court also noted that MCL 500.3135(2)(c), which forecloses noneconomic damages if the plaintiff was required to maintain security pursuant to MCL 500.3101(1), did not apply in that case because as an out-of-state resident, the plaintiff was exempt from the requirements of MCL 500.3101(1).

coverage mandated by MCL 500.3101(1). *Gersten, supra* at 421. In addition, because plaintiff covered AML's claim in its entirety, defendant is also not liable for the exception in MCL 500.3135(3)(e) permitting tort liability for motor vehicle damages up to \$500 not covered by insurance. Moreover, plaintiff's argument that it is not subject to the no-fault act because it did not file a certificate of compliance pursuant to MCL 500.3163 is irrelevant because this case deals with defendant's liability and not plaintiff's obligation to pay the benefits under the no-fault act.

Therefore, because plaintiff is seeking property damages and because defendant complied with MCL 500.3101(1), defendant is not liable to plaintiff in accordance with MCL 500.3135(3). Moreover, defendant is not subject the \$500 exception of MCL 500.3135(3)(e) because plaintiff covered AML's claim in its entirety.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra