

STATE OF MICHIGAN
COURT OF APPEALS

EDDIE J. KEY,

Plaintiff-Appellant,

v

MIRAC, INC., d/b/a ENTERPRISE RENT-A-CAR,

Defendant-Appellee.

UNPUBLISHED

November 16, 2006

No. 268500

Wayne Circuit Court

LC No. 05-520318-NI

Before: Whitbeck, C.J., Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting summary disposition to defendant on plaintiff's claim alleging damages for bodily injury suffered in an automobile accident. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

In 2004, Lynquinette Collins had rented a 2004 Chevrolet. At the time, Collins and Michael Brookins were living together but were not married or otherwise related. In fact, Collins was then legally married to another man. Further, Brookins was not listed as an authorized driver on Collins's car rental agreement, and Collins never permitted Brookins to drive the car because he did not have a driver's license. During the early morning of May 1, 2004, Brookins used the car while Collins was sleeping. Collins did not know that Brookins had taken the car and had not given him permission to do so. While using the car, Brookins ran a stop sign and struck a bus that plaintiff, a bus driver, was operating. Brookins was killed. Plaintiff and several passengers were injured.

Plaintiff sued Mirac, Inc., d/b/a Enterprise Rent-A-Car of Michigan, for serious impairment of an important body function. Plaintiff alleged that defendant was the statutory owner of the rental car under MCL 257.401, that defendant knew, permitted, or consented to Brookins driving the car, that Brookins negligently operated the car causing plaintiff's injuries, and that defendant was, therefore, liable for his injuries. Defendant answered with a general denial and asserted 15 defenses, including a defense of misnomer. According to defendant, Enterprise Leasing Company of Detroit, not Mirac, was the registered owner of the car. Defendant offered to stipulate to an order to amend the caption to name Enterprise Leasing Company of Detroit, but plaintiff did not do so. Defendant also asked plaintiff to dismiss the

case against it because, under the circumstances of this case, Brookins was not a driver for whom a rental car company was liable under MCL 257.401. Again, plaintiff did not do so.

Defendant then moved for summary disposition under MCR 2.116(C)(10) based on misnomer, claiming that the owner of the car was Enterprise Leasing Company of Detroit. Plaintiff moved for a declaratory judgment under MCR 2.605 to determine the meaning of the phrase “other immediate family member,” as used in the car rental agreement and in MCL 257.401. The circuit court determined that Brookins was not an “other immediate family member” under the statute and the rental agreement and dismissed plaintiff’s claim. The court reasoned that Brookins was, at most, Collins’s boyfriend, especially considering that Collins was legally married to someone else. The court did not explicitly address or decide the issue of misnomer in defendant’s motion for summary disposition.

On appeal, plaintiff contends that the circuit court erred in not finding that plaintiff was an “other immediate family member” of Collins. We disagree.

II. STANDARD OF REVIEW

The Court reviews questions of law de novo. *McClements v Ford Motor Co*, 473 Mich 373, 380; 702 NW2d 166 (2005), amended 474 Mich 1201; 704 NW2d 68 (2005).

III. ANALYSIS

MCL 257.401 provides in pertinent part:

The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. *It is presumed that the motor vehicle is being driven with the knowledge and consent of the owner if it is driven at the time of the injury by his or her spouse, father, mother, brother, sister, son, daughter, or other immediate member of the family.*

* * *

[A] person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle under a lease providing for the use of the motor vehicle by the lessee for a period of 30 days or less is liable for an injury caused by the negligent operation of the leased motor vehicle only if the injury occurred *while the leased motor vehicle was being operated by an authorized driver under the lease agreement or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member.* [Emphasis added.]

The goal of statutory interpretation is to discern and give effect to the intent of the Legislature. *Estate of Shinholster v Annapolis Hosp*, 471 Mich 540, 548; 685 NW2d 275 (2004). In determining legislative intent by construing a statute, a court must give effect to every word, phrase and clause, and must avoid an interpretation which would render any part of it surplusage

or nugatory. *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). In this case, the term “other immediate family member” must indicate some familial status other than one of those specified in the statute or it would be rendered mere surplusage. Further, under the principle of *ejusdem generis*, a term that follows a series of other terms is interpreted to reflect the same kind, class, character, or nature as those items specifically enumerated. *Huggett v Dep’t of Natural Resources*, 464 Mich 711, 718-719; 629 NW2d 915 (2001). The term “other immediate family member” appears at the end of a list of conventional familial statuses, so presumably the term should indicate a similar conventional relationship, such as step-relatives or in-law relatives. In this case, Brookins was Collins’s live-in, male companion. The most analogous relationship specified in the statute is that of spouse. However, Michigan does not recognize common law quasi-spousal relationships, and Collins already had a legal spouse when Brookins used the vehicle.

In the absence of a statutory definition, plaintiff properly notes that a court uses the common and ordinary meaning of the term as contained in a dictionary. MCL 8.3a; *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 196; 694 NW2d 544 (2005). One dictionary meaning of “family” is “a collective body of any two persons living together in one house as their common home for the time.” Black’s Law Dictionary (4th ed). Plaintiff argues that, given the changing mores, values, and various nontraditional associations that function as quasi-family units, this Court should recognize that domestic partners, friends, and others may effectively constitute “other immediate family members.” However, even if this panel were to accept this argument, it would be difficult to characterize Brookins as an “other immediate family member” under the facts of this case because it is highly improbable that the Michigan Legislature intended that the partner to an adulterous relationship with a spouse would be considered as an “other immediate family member” for purposes of imposing liability on a car rental company. Therefore, we conclude that the circuit court did not err in finding that Brookins was not an “other immediate family member” of Collins and, therefore, Brookins was not a driver for whom a car rental company would be liable under the statute or the rental agreement.

Plaintiff also contends that the circuit court improperly considered inadmissible and irrelevant evidence in considering defendant’s motion for summary disposition based on misnomer. From our review of the record, we find that the circuit court did not specifically determine whether defendant actually rented the car to Collins. Rather, we find that the circuit court dismissed plaintiff’s claim based on its determination that, under the statute, Brookins was not a driver for whom a car rental agency would be liable. Therefore, we conclude that this argument lacks merit.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Bill Schuette