STATE OF MICHIGAN

COURT OF APPEALS

DZEMAL DULIC,

Plaintiff-Appellee,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY and CLARENDON NATIONAL INSURANCE,

Defendants-Appellees,

and

AMERISURE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 15, 2007

No. 271275
Macomb Circuit Court
LC No. 2004-004851-NF

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Defendant Amerisure Insurance Company appeals as of right from the trial court's grant of summary disposition under MCR 2.116(C)(10) in favor of defendant Progressive Michigan Insurance Company. We affirm. This case is being decided without oral argument under MCR 7.214(E).

This case arises from a motor vehicle accident that occurred while plaintiff was occupying a semi-tractor insured under a policy issued by Amerisure to Sweet Express, a trucking company that contracted with plaintiff to haul loads. The trial court held that Amerisure was liable for payment of personal protection insurance (PIP) benefits to plaintiff under MCL 500.3114(3) and *Celina Mut Ins Co v Lake States Ins Co*, 452 Mich 84; 549 NW2d 834 (1996).

Amerisure, while acknowledging that plaintiff is entitled to PIP benefits, argues that it is not obligated to pay those benefits under MCL 500.3114(3) because plaintiff was an independent contractor, not an employee of Sweet Express, at the time of the accident. We disagree.

We review a grant of summary disposition de novo. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 713; 706 NW2d 426 (2005).

MCL 500.3114(3) provides:

> An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

Celina involved the issue of whether MCL 500.3114(3) applies when an injured person is operating an insured vehicle in the course of self-employment. *Celina*, *supra* at 85. In *Celina*, Robert Rood, the self-employed owner of a sole proprietorship, was injured in a motor vehicle accident in which he was operating a wrecker truck he owned in the course of his work as a sole proprietor. *Id*. at 86-87. The wrecker truck was insured under a policy issued by Celina Mutual Insurance Company. *Id*. Celina contended that Lake States Insurance Company, the insurer of three personal vehicles owned by Rood, was obligated to pay a portion of no-fault PIP benefits to Rood. *Id*. The trial court held that Celina was solely responsible for the payment of no-fault benefits in that case under MCL 500.3114(3). *Id*. at 85, 87.

This Court reversed the trial court's holding, concluding that MCL 500.3114(3) was inapplicable because Rood was not an "employee" at the time of the accident. *Celina*, *supra* at 87-89. Our Supreme Court reversed this Court and reinstated the judgment of the trial court. *Id*. at 91. The *Celina* Court opined that "it is most consistent with the purposes of the no-fault statute to apply [MCL 500.3114(3)] in the case of injuries to a self-employed person." *Id*. at 89. By its plain language, except for the spouse and relative circumstances, which are inapplicable here, MCL 500.3114(3) only applies where an employee is injured while occupying a motor vehicle owned or registered by an employer. Thus, pursuant to *Celina*, MCL 500.3114(3) applies in a self-employment situation because the self-employed person is considered both an "employee" and his own "employer." Accordingly, it is inherent in the result and analysis of *Celina*, that a self-employed person operating a motor vehicle owned by that self-employed person in the course of his or her self-employment is both an employee and employer for purposes of MCL 500.3114(3).

Accepting for purposes of discussion Amerisure's position that plaintiff was an independent contractor and thus self-employed at the time of the motor vehicle accident underlying the present case, we nevertheless conclude that MCL 500.3114(3) applies to impose responsibility on Amerisure to provide no-fault PIP benefits to plaintiff. First, under the rationale of *Celina*, plaintiff as a self-employed person who was occupying the semi-tractor in the course of his self-employment was acting as both an employee and his own employer at the time of the accident. Plaintiff owned the relevant motor vehicle, i.e., the semi-tractor, at the time of the accident as required for MCL 500.3114(3) to apply under the applicable definition of "owner" in the no-fault act. Specifically, under MCL 500.3101(2)(g)(i), plaintiff was an owner of the semi-tractor based on his "having the use thereof, under a lease or otherwise, for a period that is greater than 30 days." The lease agreement between plaintiff and Sweet Express, which went into force more than 30 days before the accident, plainly contemplated that plaintiff would have use of the motor vehicle in hauling cargo. We believe that this alone is sufficient to constitute plaintiff having the use of the motor vehicle for over 30 days. Further, the lease agreement provided that Sweet Express did not have exclusive use of the semi-tractor, which must mean that plaintiff was free to generally make use of it for other purposes. Thus, plaintiff

owned the relevant motor vehicle for purposes of the no-fault act.[1] Under the plain language of MCL 500.3114(3), where, as in this case, an employee is entitled to PIP benefits based on injury suffered while occupying a motor vehicle owned by the employer, the employee is to receive those PIP benefits "from the insurer of the furnished vehicle." Therefore, because Amerisure was the insurer of the furnished vehicle in this case, i.e., the semi-tractor, it is obligated to pay PIP benefits to plaintiff.

It is true, as noted by Amerisure, that the insurance policy on the semi-tractor in this case was issued to Sweet Express while the insurance policy on the wrecker truck involved in the accident in *Celina*, *supra*, was issued to the self-insured person. But this factual distinction is simply immaterial to application of the relevant holding in *Celina* and the plain language of MCL 500.3114(3). The critical point from *Celina* as concerns the present case is that a self-employed person occupying a motor vehicle owned by the self-employed person in the course of his or her self-employment is considered to be both an employee and an employer, so that MCL 500.3114(3) applies if the self-employed person is injured in a motor vehicle accident in that circumstance. When MCL 500.3114(3) is triggered, it expressly provides that "the insurer of the furnished vehicle" is liable to provide PIP benefits. Thus, contrary to the apparent implication of Amerisure's position, if MCL 500.3114(3) applies, it does not automatically impose liability on an insurer of the self-employed "employer" because, as illustrated by the facts of this case, it is possible for the self-employed person and the person or entity obtaining insurance coverage on the relevant motor vehicle to be different parties. Accordingly, Amerisure is responsible for the payment of PIP benefits to plaintiff, notwithstanding the fact that Sweet Express, and not plaintiff, obtained the no-fault automobile policy for the semi-tractor.[2]

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[1] It might seem more straightforward for us to simply state that plaintiff owned the semi-tractor because he held legal title to it. But while the definition of "owner" in the no-fault act includes a provision generally defining a person who holds legal title to a vehicle as an owner, that provision excludes "a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days." MCL 500.3101(2)(g)(ii). Thus, it may be arguable that plaintiff was not an "owner" of the semi-tractor solely based on being its titleholder in light of his lease of the semi-tractor to Sweet Express, but we need not resolve that point.

[2] We respectfully disagree with the dissenting opinion. The crux of the dissent is that, in determining whether plaintiff was an employee for purposes of MCL 500.3114(3), it is necessary to examine the relationship between plaintiff and Sweet Express and apply the economic realities test. However, MCL 500.3114(3) does not indicate that the employee cannot also be the employer, nor that the employer must be a person or entity separate from the employee. There is simply no need to examine the relationship between plaintiff and Sweet Express because the identification of an employee and employer (plaintiff) under the statutory provision is already established and thus the insurer of the vehicle is responsible for paying benefits. The dissenting opinion is contrary to the basic premise of *Celina*, which is that a self-employed person can be considered both an employee and an employer under the statute. With respect to the dissent's reference to legislative intent, the words contained in a statute provide us with the most reliable evidence of the Legislature's intent. *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004). If the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and we must enforce the statute as written. *Id.* "A necessary corollary of these principles is that a court may read nothing into an

In light of the above analysis, it is unnecessary to reach Progressive's additional arguments challenging Amerisure's standing to seek to impose liability on Progressive and contending that Sweet Express should be considered to have been plaintiff's employer for purposes of this case.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski

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unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Here, the dissent is reading definitional and limiting language into the statute that does not exist, and this is not permissible.