STATE OF MICHIGAN

COURT OF APPEALS

MARK FENTON,

Plaintiff-Appellant,

v

FARM BUREAU GENERAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 31, 2009

No. 279673
Wayne Circuit Court
LC No. 06-626263-NF

Before: Zahra, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. We reverse and remand for further proceedings.

This case arises out of an automobile accident in which plaintiff and Kayla Fenton (Kayla) were struck by a train while crossing railroad tracks in a 1987 Oldsmobile Ninety-Eight titled to Cathleen Fenton (Fenton), plaintiff's sister. Before the accident, Fenton purchased an insurance policy for the Oldsmobile from defendant. Plaintiff sought personal injury protection (PIP) benefits from defendant for costs arising from his injuries following the accident. In its motion for summary disposition, defendant argued that plaintiff was an owner of the Oldsmobile, and, therefore, precluded from PIP benefits because he did not independently insure the vehicle. See MCL 500.3113(b). The trial court agreed and granted defendant's motion.

On appeal, this Court reviews de novo a lower court's determination regarding a motion for summary disposition. *Hinkle v Wayne Co Clerk*, 467 Mich 337, 340; 654 NW2d 315 (2002). A motion under MCR 2.116(C)(10)[1] tests the factual support for a plaintiff's claim. See *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

[1] Although the court did not explicitly specify that it was granting the motion under this subrule, the context makes clear that this was indeed the case.

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. [*Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).]

Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

The purpose of the Michigan no-fault act "is to broadly provide coverage for those injured in motor vehicle accidents without regard to fault . . . ." *Cole v Auto-Owners Ins Co*, 272 Mich App 50, 55; 723 NW2d 922 (2006).

MCL 500.3113(b) provides, in pertinent part, as follows:

> 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:
>
> * * *
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

Under MCL 500.3101(1), "[t]he 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."

We first note that plaintiff was indeed an "owner" of the vehicle in question. The term "owner" is statutorily defined, in pertinent part, as follows: "[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." MCL 500.3101(2)(h)(*i*). Ownership and "having the use" of a motor vehicle "follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Ardt v Titan Ins Co*, 233 Mich App 685, 690-691; 593 NW2d 215 (1999) (emphasis in original). Also, there may be multiple owners of a vehicle for purposes of the no-fault act. *Iqbal v Bristol West Ins Grp*, 278 Mich App 31, 38; 748 NW2d 574 (2008).

A driver need not *actually* use a vehicle for 30 days in order to be deemed an "owner." *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530-531; 676 NW2d 616 (2004). Rather, ownership is determined by considering whether it was "contemplated that the right to use the vehicle will remain in effect for more than thirty days . . . ." *Id*. at 532. In the instant case, plaintiff had possessory use, as opposed to incidental use, of the Oldsmobile. Fenton did not drive the Oldsmobile or limit plaintiff's use of it. Instead, plaintiff paid for the Oldsmobile to be repaired and used it at his discretion to travel between Traverse City and Detroit for work. It is unclear from the record how long plaintiff had possessory use of the Oldsmobile. Nevertheless, Fenton and plaintiff contemplated that the right to use the vehicle would remain in effect for

more than 30 days. Although the parties did not exchange the title, plaintiff took immediate and primary possession of the vehicle after it was repaired. Moreover, according to their purchase agreement, they planned to complete the sale within 30 days. Therefore, because plaintiff's contemplated right to use the Oldsmobile was possessory and would have remained in effect for more than 30 days, we conclude that plaintiff was an owner under MCL 500.3101(2)(h)(*i*).

However, despite this conclusion, we find that reversal of the trial court's order is warranted. Indeed, in *Iqbal*, *supra* at 39-40, this Court held that where one owner secures insurance on a vehicle under MCL 500.3101(1), if another uninsured owner is in an accident with the vehicle, that owner will not be excluded from benefits pursuant to MCL 500.3113(b).

In the instant case, it is undisputed that Fenton was an owner of the Oldsmobile and she insured it with defendant. Because Fenton maintained security for the payment of PIP benefits according to MCL 500.3101(1), plaintiff is not excluded from benefits under MCL 500.3113(b). Following *Iqbal*, we conclude that the trial court erred when it granted defendant's motion for summary disposition.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter