STATE OF MICHIGAN

COURT OF APPEALS

BEVERLY LUANNE DUFFY,

Plaintiff-Appellant,

v

GRANGE INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
September 21, 2010

No. 290198
Macomb Circuit Court
LC No. 2007-004968-NI

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant. Because MCL 500.3101, as amended by 2008 PA 241, is to be applied prospectively only, we reverse.

In 2007, plaintiff was operating an off road vehicle (ORV) along the Little Manistee Trail when she became involved in an accident, sustaining injuries that left her paralyzed. While the ORV was not insured, plaintiff was insured under a no-fault automobile policy issued by defendant. Defendant, however, refused to pay plaintiff no-fault benefits under the policy, leading plaintiff to initiate the instant matter. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), contending that under the no-fault act, specifically MCL 500.3101(2)(e), ORV's were specifically excluded from the definition of motor vehicles, such that plaintiff was not entitled to no-fault benefits. Defendant acknowledged that the excluding language appeared in an amendment to the statute that became effective many months after the accident at issue, but argued that the amended statute was remedial in nature and was thus to apply retroactively. The trial court agreed, granting summary disposition in defendant's favor. This appeal followed.

On appeal, plaintiff argues that the trial court should not have granted defendant's motion for summary disposition under MCL 2.116(C)(10) because the 2008 amendment to MCL 500.3101 should be applied prospectively. We agree.

This Court reviews the grant or denial of a motion for summary disposition under MCR 2.116(C)(10) de novo. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). A motion brought

under MCR 2.116(C)(10) is reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Additionally, this Court considers only that evidence which was properly presented to the trial court in deciding the motion. *Pena v Ingham County Rd Comm'n*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Summary disposition is proper if there is "no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham*, 480 Mich at 111. There is a genuine issue of material fact when "reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgmt*, 481 Mich 419, 425; 751 NW2d 8 (2008). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

In determining whether a statute should be applied prospectively or retroactively, the intent of the Legislature controls. *Frank W Lynch & Co v Flex Tech, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001). Statutes and amendments to statutes are presumed to operate prospectively. *Davis v State Employees' Retirement Bd*, 272 Mich App 151, 155; 725 NW2d 56 (2006). Both statutes and amended statutes are to be applied prospectively unless the Legislature manifests an intent to the contrary. *Id*. The Legislature's intent must appear from the context of the statute itself and be clear, direct, and unequivocal. *Id*. at 155-156, citing *Chesapeake & Ohio R Co v Mich Pub Service Comm*, 382 Mich 8, 23; 167 NW2d 438 (1969).

However, a statute is to be applied retroactively when it is merely remedial or procedural, it was adopted to clarify an existing statute and resolve a controversy regarding its meaning, or the Legislature expressly or impliedly indicated an intent to give retroactive effect. *Stanton v City of Battle Creek*, 237 Mich App 366, 373-374; 603 NW2d 285 (1999), aff'd 466 Mich 611 (2002); *Allstate Ins, Co v Faulhaber*, 157 Mich App 164, 167; 403 NW2d 527 (1987). A statute is remedial if it is designed to correct an existing oversight in the law, redress an existing grievance, introduce regulations conducive to the public good, or is intended to reform or extend existing rights. *Tobin v Providence Hosp*, 244 Mich App 626, 665; 624 NW2d 548 (2001). A statute is procedural if it relates to the rules of practice or procedure or the means employed to enforce a right. *Id*. However, a law may not apply retroactively if it abrogates or impairs vested rights or creates new obligations, or attaches new disabilities regarding transactions or considerations already past. *Grew v Knox*, 265 Mich App 333, 339; 694 NW2d 772 (2005). A cause of action becomes a vested right when it accrues and all the facts become operative and known. *Tobin*, 244 Mich App at 663. In addition, a statute that affects substantive rights is not remedial. *Lynch & Co*, 463 Mich at 585. Substantive rights are essential rights that affect the outcome of a lawsuit and can be protected or enforced by law. Black's Law Dictionary (3rd ed).

MCL 500.3101(2)(e), as amended and effective as of July 17, 2008, provides:

> "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b. Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code

> pursuant to section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216. Motor vehicle does not include an ORV.

The 2008 amendment, HB 5559 (2008 PA 241), added the last sentence, "[m]otor vehicle does not include an ORV" to MCL 500.3101(2)(e).[1] The Legislature did not provide any clear, unequivocal language suggesting this amendment was to be retroactive. See *Lynch & Co*, 463 Mich 584 ("Most instructive is the fact that the Legislature included no express language regarding retroactivity."). Notably, prior to the 2008 amendment, Michigan courts held that ORVs fit into the definition of a "motor vehicle" under the no-fault act for over 20 years, *Allstate Ins Co v Dep't of Mgt & Budget*, 259 Mich App 705; 675 NW2d 857 (2003); *Mich Millers Mut Ins Co v Farm Bureau Gen Ins Co*, 156 Mich App 823; 402 NW2d 96 (1986), and the Legislature is presumed to act with knowledge of judicial interpretations, *VanBuren Twp*, 258 Mich App at 606-607. It can be presumed, then, that the Legislature knew of the Michigan courts rulings concerning the definition of ORV and, with such knowledge, intentionally and consciously elected to leave out language in the statutory amendment indicating that the amended statute was to apply retroactively.

"In order to determine legislative intent, this Court may examine the legislative history of an act to ascertain the reason for the act and the meaning of its provisions." *Swan v Wedgwood Christian Youth and Family Services, Inc*, 230 Mich App 190, 197; 583 NW2d 719 (1998). According to the Michigan House Legislature's Legal Analysis report, HB 5559 was tie-barred to HB 4323 (2008 PA 240), now codified as MCL 324.81115[2] as of July 17, 2008. HB 4323 authorized certain counties in northern Michigan to adopt ORV ordinances allowing ORVs to travel in the far right lanes of the maintained portions of streets and roads in those counties in order to help boost northern Michigan tourism. The report accompanying HB 5559 stated that

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[1] MCL 500.3101(2)(g) was also amended by HB 5559 as of July 17, 2008, and provides, "'ORV' means a motor-driven recreation vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, an ATV as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101, or other means of transportation deriving motive power from a source other than muscle or wind. ORV does not include a vehicle described in this subdivision that is registered for use upon a public highway and has the security described in section 3101 or 3103 in effect." Thus, this provision was amended simultaneously with MCL 500.3101(2)(e) to allow ORVs to continue to be included in the definition of a "motor vehicle" only if the ORV is registered and insured.

[2] MCL 324.81115 provides, "(1) A person shall not operate an ORV under any of the following conditions unless the ORV is licensed with the department or a dealer as provided under this part: (a) Except as otherwise provided by law, on or over land, snow, ice, or other natural terrain. (b) Except as otherwise provided in this part, on a forest trail or in a designated area. (c) Except as otherwise provided in section 81102, on the maintained portion of a road or street. (2) Licensure is not required for an ORV used exclusively in a safety and training program as required in section 81129."

allowing ORVs to travel on the streets and roads would create an increase in ORV accidents, and the amendment to MCL 500.3101 would prevent uninsured ORV drivers from receiving no-fault benefits if they got into a single-vehicle ORV accident or into an accident with another ORV. However, the report also noted that if an ORV driver were injured from an accident involving a motor vehicle, the ORV driver would still be entitled to no-fault benefits. Thus, the purpose behind amending MCL 500.3101 was to exclude uninsured ORVs from the definition of a "motor vehicle" once MCL 324.81115 (HB 4323) was enacted because it was anticipated that more persons would become injured from the increased ORV traffic. Because the Legislature amended MCL 500.3101 in conjunction with MCL 324.81115 in order to address a new situation under the no-fault act, it cannot be said the Legislature was correcting an oversight, redressing an existing grievance, or introducing regulations conducive to the public good. Likewise, the Legislature did not intend to reform or extend existing rights. Thus, the 2008 amendment to MCL 500.3101 was not remedial in nature and is to be applied prospectively.

Furthermore, even if we were to find that the amendment to MCL 500.3101 was remedial in nature, retroactively would still not be appropriate. As previously noted, a law may not apply retroactively if it abrogates or impairs vested rights, creates new obligations, or attaches new disabilities regarding transactions or considerations already past. *Grew*, 265 Mich App 339. In addition, a statute that affects substantive rights is not remedial. *Lynch & Co*, 463 Mich at 585. Because all of the facts in plaintiff's case were known and operative, her cause of action accrued, and she had a vested right. Regardless, plaintiff's substantive rights would be diminished if the 2008 amendment to MCL 500.3101 were to be retroactively applied to her case because the amendment would result in a dismissal of her cause of action. Therefore, retroactive application of the 2008 amendment to MCL 500.3101 is inappropriate.

Reversed and remanded for proceedings not inconsistent with this opinion. We do not retain jurisdiction. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto