

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TAMIKA BROWN,

Plaintiff-Appellee,

and

ST. JOHN HOSPITAL & MEDICAL CENTER  
and DETROIT MEDICAL CENTER,

Intervening Plaintiffs-Appellees,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellant

and

FARM BUREAU INSURANCE COMPANY,

Defendant.

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UNPUBLISHED  
January 13, 2011

No. 294581  
Wayne Circuit Court  
LC No. 07-729061-NF

Before: K. F. KELLY, P.J., and GLEICHER and STEPHENS, JJ.

PER CURIAM.

In this no-fault insurance case, defendant<sup>1</sup> State Farm Mutual Automobile Insurance Company appeals by right the trial court's order granting summary disposition for plaintiff and intervening plaintiffs. We affirm.

I. BASIC FACTS

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<sup>1</sup> "Defendant" in this opinion refers to defendant-appellant State Farm Mutual Automobile Insurance Company.

This action involves William Ziegler's claim for first party personal protection (PIP) benefits. On the morning of August 20, 2007, Ean Thomas, Ziegler's friend who was then 15 years old, saw Ziegler walking down the street and offered Ziegler a ride. Thomas and Ziegler had been friends for about eighteen months and Ziegler knew that Thomas was around his age, but did not know whether he had a driver's license or permit. Ziegler accepted the ride and got into the front seat passenger side of the vehicle. Ziegler had never seen the car that Thomas was driving and he asked Thomas whose car it was. Thomas replied that the vehicle was his aunt's. Ziegler allegedly saw keys in the vehicle's ignition.

The two boys decided to stop at McDonald's before going to Ziegler's home. On the way, Thomas accidentally rear-ended another vehicle, but he did not stop his car. Instead, they continued on their way but realized the car they had rear-ended was following them. Thomas turned several corners and sped up in an attempt to lose the vehicle. A high-speed chase ensued, Thomas lost control of his vehicle and drove through a brick wall, and the vehicle flipped. Thomas was killed and Ziegler was severely injured. Ziegler was taken to St. John Hospital where he underwent spinal cord surgery and received treatment until September 11, 2007. He was then transferred to a children's hospital at the Detroit Medical Center where he remained until October 31, 2007. Ziegler continues to suffer from paraplegia.

After the accident, it was discovered that the vehicle Thomas was driving had been stolen. It belonged to Shari Davis, who is not Thomas's aunt and who reported the vehicle stolen on August 19th. The vehicle was taken from her driveway although she still had both sets of keys; she had not seen anyone take the vehicle. Ziegler first learned that the vehicle was stolen through his attorney. Police investigation of the vehicle revealed that its ignition had been "punched" so that it could be started without a key.

Plaintiff, Tamika Brown, Ziegler's mother, applied for PIP benefits on Ziegler's behalf but had not received any benefits. On October 30, 2007, she filed a complaint against Farm Bureau Insurance Company, which she alleged had been designated to provide for Ziegler's care by Michigan's Assigned Claims Facility. However, the parties discovered that Ms. Davis's vehicle was insured by defendant, State Farm Mutual Automobile Insurance Company, and that it was the insurer in the highest order of priority. The trial court permitted plaintiff to add defendant as a party and plaintiff filed an amended complaint alleging breach of contract and seeking declaratory relief. Both St. John Hospital and Detroit Medical Center moved to intervene as plaintiffs, asserting their rights to be reimbursed for the reasonably necessary services they provided Ziegler. The trial court granted their request in April 2008.

In November 2008, defendant moved for summary disposition arguing that because Ziegler was riding in a stolen vehicle, MCL 500.3113(a) excluded him from obtaining PIP benefits. In defendant's view, both plaintiff and intervening plaintiffs are barred from recovering PIP benefits because the evidence showed that Ziegler knew that the vehicle was unlawfully taken. The trial court denied defendant's motion, ruling that MCL 500.3113(a) did not bar

intervening plaintiffs and plaintiff from seeking benefits, and it granted summary disposition in their favors.<sup>2</sup> Defendant now appeals by right.

## II. STANDARD OF REVIEW

This Court reviews de novo a lower court's decision on a motion for summary disposition. *Amerisure Ins Co v Plumb*, 282 Mich App 417, 423; 766 NW2d 878 (2009). A motion under MCR 2.116(C)(10) is properly granted if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. *Id.* at 423-424. In reviewing a trial court's decision, we must view all the admissible evidence, including admissions, depositions, interrogatory answers, and all other admissible documentary evidence, in a light most favorable to the nonmoving party. *Manier v MIC General Ins Corp*, 281 Mich App 485, 489; 760 NW2d 293 (2008). "A genuine issue of material fact exists when, giving the benefit of reasonable doubt to the opposing party, the record leaves open an issue on which reasonable minds could differ." *Houdek v Centerville Twp*, 276 Mich App 568, 573; 741 NW2d 587 (2007).

## III. ANALYSIS

Defendant argues that the trial court erred by concluding that MCL 500.3113(a) did not bar recovery of PIP benefits. In its view, summary disposition in its favor was appropriate because Ziegler could not have reasonably believed that he could take and use the vehicle. Further, it contends that questions of fact exist precluding summary disposition for plaintiff and intervening plaintiffs. We disagree.

The provision of the no-fault statute that controls the disposition of this case is MCL 500.3113(a). It provides:

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:

(a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.

This Court recently interpreted the meaning of this provision in *Henry Ford Health Sys v Esurance Ins Co*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2010). The Court noted that the threshold inquiry is whether the injured individual seeking coverage under the no-fault act unlawfully took the vehicle or otherwise was engaged in unlawfully taking the vehicle. *Id.* at \_\_\_; see also *Amerisure Ins Co*, 282 Mich App at 425. If the individual did not take or was not otherwise

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<sup>2</sup> Intervening-plaintiff Detroit Medical Center had filed a responsive motion asking for summary disposition in its favor. At the motion hearing, intervening-plaintiff St. John Hospital sua sponte moved for the same.

involved in unlawfully taking the vehicle, then MCL 500.3113(a) is inapplicable and a claim for benefits is not barred. *Henry Ford Health Sys*, \_\_\_ Mich App at \_\_\_; *Amerisure Ins Co*, 282 Mich App at 425. Thus, in *Henry Ford Health Sys*, the Court ruled that the injured individual seeking coverage, who was a passenger in a vehicle that he knew had been stolen but had not stolen it himself nor had he been involved in stealing it, was entitled to PIP benefits. *Henry Ford Health Sys*, \_\_\_ Mich App at \_\_\_.

Here, Ziegler testified that the first time he saw the vehicle was when Thomas pulled-up alongside him on the day of the incident. He indicated that he was not involved in stealing the vehicle, he believed Thomas when Thomas said it was his aunt's vehicle, and he first learned the vehicle had been stolen through his attorney. No testimony or evidence was produced implicating Ziegler in the theft of the vehicle. In short, nothing in the record demonstrates that Ziegler stole the vehicle himself or otherwise participated in stealing it. "[MCL 500.]3113(a) requires a taking by the person seeking PIP benefits and not just mere use." See *Henry Ford Health Sys*, \_\_\_ Mich App at \_\_\_. Accordingly, MCL 500.5113(a) is simply inapplicable because Ziegler was not "using a motor vehicle . . . which *he* . . . had taken unlawfully . . ." MCL 500.3113(a) (emphasis added). Defendant's argument, which focuses on whether Ziegler could have reasonably believed that he could take and use the vehicle, misses this point because it ignores the threshold inquiry of MCL 500.3113(a).

Indeed, defendant has not produced any contrary evidence showing that Ziegler had taken the vehicle or been engaged in the thievery. Defendant's reliance on the fact that Ziegler and Thomas together stole a different vehicle approximately one month earlier is unavailing. This fact is not evidence that Ziegler was involved in stealing the vehicle involved on the day of the accident. Nor do the facts that Ziegler may have known that the vehicle had been stolen (because its ignition was "punched") or that it was being operated unlawfully (because Thomas was too young to have a license) derogate from our conclusion. Possession of such knowledge is not equivalent to Ziegler unlawfully taking the vehicle himself or participating in unlawfully taking the vehicle. See *Henry Ford Health Sys*, \_\_\_ Mich App at \_\_\_. Further, that a question of fact may exist regarding Ziegler's reasonable belief, given that he may have known the vehicle was stolen, does not preclude summary disposition for plaintiff and intervening plaintiffs where there is no question of fact as to the threshold inquiry, i.e., that Ziegler did not take, or otherwise participate, in stealing the vehicle.<sup>3</sup> Thus, defendant's position that a question of fact exists barring summary disposition for plaintiff and intervening plaintiffs is without merit.

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<sup>3</sup> We note that defendant relies on *Mester v State Farm Mut Ins Co*, 235 Mich App 84; 596 NW2d 205 (1999) to argue that unlawful use alone is enough to preclude benefits under MCL 500.3113(a). Defendant's argument misconstrues the Court's holding in *Mester* and misinterprets the statutory language of MCL 500.3113(a). We see no inherent conflict between the present matter and *Mester*, 235 Mich App at 88-89, where a passenger was denied benefits because she had participated in unlawfully taking the vehicle. However, to the extent that *Mester* could be read to support defendant's position, this Court has already explained that the focus of the discussion in *Mester* is not responsive to the threshold inquiry whether a taking had

Under the circumstances, MCL 500.3113(a) does not prohibit plaintiff and intervening plaintiffs from receiving PIP benefits under the no-fault act. The trial court did not err by denying defendant's motion for summary disposition and by granting plaintiff and intervening plaintiffs summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Elizabeth L. Gleicher  
/s/ Cynthia Diane Stephens

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occurred in the first place, but rather is responsive to whether a reasonable belief existed to take the vehicle. See *Henry Ford Health Sys*, \_\_\_ Mich App at \_\_\_. As already noted, “[MCL 500.3113(a) requires a taking by the person seeking PIP benefits and not just mere use.” *Henry Ford Health Sys*, \_\_\_ Mich App at \_\_\_. Accordingly, defendant's reliance on *Mester* is misplaced.