STATE OF MICHIGAN

COURT OF APPEALS

TITAN INSURANCE COMPANY, Individually and as Subrogee of Troy Hughes,

Plaintiff/Counter-Defendant-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Counter-Plaintiff/Cross-Plaintiff-Appellee,

and

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant/Cross-Defendant.

UNPUBLISHED
March 27, 2012

No. 301978
Oakland Circuit Court
LC No. 2009-101943-NF

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

MURRAY, J. (*dissenting*).

I respectfully dissent from the majority's decision to reverse and remand for entry of judgment in favor of Titan Insurance Company. In my view, the trial court properly held that Bradley Curtiss was not a resident relative with David Curtiss at the time of the accident, and the new argument raised by Titan regarding the State Farm Mutual Automobile Insurance Company policy is inconsistent with the facts and policy language. Accordingly, pursuant to MCL 500.3114(5)(c), Titan should be held liable under the priority provisions of the statute.

The only question presented is who has priority pursuant to MCL 500.3114(5) for the costs for injuries suffered by Troy Hughes when his motorcycle collided with a car that was listed on David Curtiss' auto insurance policy with State Farm. There is no dispute that if State Farm does not fall within subsections (a) or (b) of MCL 500.3114(5), then Titan would be responsible under MCL 500.3114(5)(c). Thus, critical to resolution of this priority dispute is whether State Farm was either "(a) [t]he insurer of the owner or registrant of the motor vehicle

involved in the accident[, or] (b) [t]he insurer of the operator of the motor vehicle involved in the accident." MCL 500.3114(5)(a) and (b).

It is undisputed that David Curtiss was neither the owner nor the registrant of the motor vehicle involved in the accident, and therefore State Farm is not an insurer within subsection (a). Additionally, as the trial court found,[1] State Farm was also not the insurer of Courtney Curtiss, who was the operator of the motor vehicle involved in the accident. Consequently, Titan is the responsible insurer under the priority provisions of MCL 500.3114(5)(c).

The majority opinion concludes otherwise, holding that State Farm was the insurer of Courtney because Courtney qualified as "any other person while occupying your car" under the State Farm policy. As the majority acknowledges, this issue was not raised by Titan in the trial court, and therefore is not properly preserved for appeal. *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010) (court should not, absent manifest injustice, decide an issue raised for first time on appeal in civil case).

Even if this issue were properly preserved, I respectfully disagree with the majority's application of the "your car" policy definition to the facts of this case. "Your car" is defined as "the vehicle or vehicle shown under YOUR CAR on the Declarations page [and] . . . does not include a vehicle that you no longer own or lease." Here, there is no dispute that David Curtiss never owned or leased the vehicle at issue, a 1994 Dodge pick-up truck. Thus, the pick-up truck does not fall within this provision because David Curtiss does not currently, nor did he ever own or lease the pick-up truck. The majority opinion strains the plain language of this provision by concluding that because David Curtiss never owned the pick-up, he could not "no longer" own the truck. That much is true, but that is not what this provision means.

Rather, the plain and unambiguous language means that a listed vehicle does not fall within the "your car" definition if the insured does not own or lease the vehicle at the time of the accident. Thus, for example, if David previously owned the pick-up truck when he obtained his State Farm policy, but subsequently sold it to Bradley, and the accident occurred thereafter, the vehicle – even though it is still listed on the policy – would not fall within its terms because David no longer owned or leased the vehicle. The same holds true under the facts presented in this case, as David never owned nor leased the pick-up truck at issue and therefore it falls outside the terms of this provision.

This reading of the policy does not, as suggested by the majority, improperly add words to the policy. Rather, the conclusion reached is based upon reading the unambiguous terms of this provision in context with the remaining provisions of the contract. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). And, because, as noted earlier, the

---

[1]The trial court ruled that Bradley and Courtney were not resident relatives of David under the State Farm policy, a conclusion which, based upon the facts presented to the trial court, is not susceptible to reversal on appeal. And, the majority does not conclude otherwise.

trial court's decision was otherwise correct under the statute and contract,[2] there is no basis to reverse the trial court's decision. I would affirm.

/s/ Christopher M. Murray

[2] Titan's argument that State Farm cannot seek to avoid payment because of the innocent third party doctrine is without merit. Because State Farm is not seeking to rescind the policy, but is simply arguing that it is not liable under the priority provision of the statute and its policy, the innocent third party doctrine does not apply. *Sisk-Rathburn v Farm Bureau*, 279 Mich App 425, 430; 760 NW12d 878 (2008).