STATE OF MICHIGAN

COURT OF APPEALS

DAIRYLAND INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED April 30, 2013
v	No. 307467 Macomb Circuit Court
AFFIRMATIVE INSURANCE COMPANY and AFFIRMATIVE INSURANCE COMPANY OF MICHIGAN, Defendants-Appellants.	LC No. 2011-000107-NF

Before: SHAPIRO, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM

Defendant[1] appeals as of right the trial court's grant of summary disposition in favor of plaintiff. The parties are both insurers of the same person but of different cars owned by that person. One of those cars was involved in an accident. Plaintiff, the insurer of the car involved in the accident, asserts that defendant, the insurer of the owner's other car, is co-liable for payment of benefits to the third party injured in the accident. The trial court agreed. We conclude that the trial court's thorough and thoughtful opinion correctly determined that the parties were of equal priority, and that defendant's alternative argument that it was not liable at all pursuant to the terms of its insurance policy is without merit. We affirm.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider all evidence submitted by the parties in the light most favorable to the non-moving party and grant summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120. We review de novo as a question of law the proper interpretation of a contract, including a trial court's determination whether contract language is ambiguous. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). We also review de novo

[1] It appears that the two named defendants are actually the same entity.

questions of statutory interpretation. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

The facts in this case are simple and, for purposes relevant to the instant appeal, uncontested. At all relevant times, Bernard Foster owned two Cadillac vehicles. One was a 1997 model insured by plaintiff Dairyland Insurance Company. The other was a 1980 model insured by defendant Affirmative Insurance Company. On October 9, 2008, the driver of the 1997 Cadillac, Danita Latrice Price, struck and seriously injured a pedestrian, Daniel Louis Mihal and he was uninsured. The 1980 Cadillac was not involved in the accident. Mihal filed a claim with plaintiff for personal protection (PIP) benefits pursuant to the No-Fault Act. Plaintiff paid those benefits, but brought this suit against defendant for partial reimbursement on the theory that the two parties were insurers of equal priority.

At issue in this case is initially the proper interpretation of a statute under the No-Fault Act, MCL 500.3101 *et seq*. After examining the applicable statutes, we conclude that the trial court's summary of the issue in its order granting summary disposition cannot be improved upon and adopt it as follows:

> Under Michigan's no-fault act, every "owner or registrant of a motor vehicle required to be registered in this state" must have personal protection insurance. MCL 500.3101(1). An insurer who elects to provide automobile insurance is liable to pay PIP benefits subject to the provisions of the no-fault act. MCL 500.3105(1). Under MCL 500.3114 and MCL 500.3115 an insurer may become liable for the payment of PIP benefits to someone other than an insured. In addition to providing persons with the right to file PIP claims against insurers, these sections also set out priorities that govern claims by a person injured in an automobile accident where the person may be entitled to make PIP claims against multiple insurers. See *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231, 251; 293 NW2d 594 (1980).
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> MCL 500.3115, which governs the priority order for nonoccupants, provides:
>
> > (1) Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
> >
> > (a) Insurers of owners or registrants of motor vehicles involved in the accident.
> >
> > (b) Insurers of operators of motor vehicles involved in the accident.
> >
> > (2) When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable

> amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.
>
> (3) A limit upon the amount of personal protection insurance benefits available because of accidental bodily injury to 1 person arising from 1 motor vehicle accident shall be determined without regard to the number of policies applicable to the accident.

> Here, the parties do not contest that claimant Mihal was not the named insured on any nofault policy, nor did he have a spouse or resident relative with any such insurance; therefore, MCL 500.3114(1) is not applicable. At issue here is whether defendant, which did not insure the vehicle involved in the accident, is responsible for payment of no-fault benefits because it insured the owner of the vehicle involved in the accident. The parties dispute the applicability and interpretation of MCL 500.3115(1)(a).

The simple fact is that both parties *are*, in fact, insurers of the owner of the 1997 Cadillac involved in the accident. The plain language of the statute explicitly contemplates the possibility of multiple insurers, and implicitly places them at the same level of priority purely because they both (or all) insure the same person, *not* the same vehicle. This Court has explicitly held that, pursuant to the plain language drafted by the Legislature, "the statute does not mandate that the vehicle involved in the accident must have been insured by the insurer of the owner before an injured person can seek benefits." *Pioneer State Mut Ins Co v Titan Ins Co*, 252 Mich App 330, 336; 652 NW2d 469 (2002). Defendant attempts to distinguish *Pioneer* on the ground that it involved the Assigned Claims Facility, a fact that appears to have played no role whatsoever in this Court's reasoning in that case. In any event, our Supreme Court arrived at the same result after analyzing the similarly-worded MCL 500.3114(4)(a), which does not even explicitly contemplate multiple insurers, and further noted that the result is consistent with, among other things, a policy of insuring persons rather than vehicles. See generally *Detroit Auto Inter-Insurance Exch v Home Ins Co*, 428 Mich 43; 405 NW2d 85 (1987).

Defendant argues that the Financial Responsibility Act, MCL 257.501 *et seq*, requires plaintiff to assume sole liability. The No-Fault Act and the Financial Responsibility Act are to be construed in *para materia*. *Cason v Auto Owners Ins Co*, 181 Mich App 600, 606; 450 NW2d 6 (1989). Both are intended "to ensure that automobile accident victims receive compensation for their injuries." *Farmers Ins Exch v Farm Bureau Ins Co*, 272 Mich App 106, 118; 724 NW2d 485 (2006). Under the Financial Responsibility Act, "the Legislature only requires an insurer to provide liability coverage to those automobiles listed in the policy." *Id*. at 118-119, citing MCL 257.520(b)(1). To the extent possible, seemingly conflicting statutes should be reconciled. *People v Buckley*, 302 Mich 12, 22; 4 NW2d 448 (1942). The Financial Responsibility Act is not "meaningless" and "continues to present legitimate methods by which vehicle owners may satisfy the insurance obligations created by the no-fault act." *Citizens Ins Co of America v Federated Mut Ins Co*, 448 Mich 225, 232; 531 NW2d 138 (1995). However, the No-Fault Act is the more recently-enacted expression by the Legislature of Michigan's public policy regarding motor vehicle liability insurance. *Id*.; *Farmers Ins Exch*, 272 Mich App at 119.

Consequently, in the event of an irreconcilable conflict, the requirements of MCL 500.3115(1)(a) control over provisions of the Financial Responsibility Act.

Defendant argues that holding it liable for an accident involving a vehicle that it did not insure amounts to holding it liable for a risk that it did not assume. However, the language of MCL 500.3115(1)(a) unambiguously places both parties—because they are both insurers of the owner of the vehicle involved in the accident—in the same level of priority. This Court must apply unambiguously-written statutes exactly as they are written and may consider the unjustness or absurdity of a statute's construction *only* if the statute is ambiguous and there is no clear mandate from the Legislature. *McGhee v Helsel*, 262 Mich App 221, 226; 686 NW2d 6 (2004); *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998) (overruled in part on other grounds in *Rafferty v Markovitz*, 461 Mich 265, 272 n 6; 602 NW2d 367 (1999)). While defendant contends that holding it liable for an accident involving a vehicle that it did not insure amounts to holding it liable for a risk that it did not assume, by selling no-fault insurance in Michigan each insurer agrees to the "risk" of having to pay all of the benefits provided for in the no-fault statute. Although an insurance policy is governed by principles of contract interpretation, mandatory statutory provisions must be read into the policy. *Auto–Owners Ins Co v Martin*, 284 Mich App 427, 433-435; 773 NW2d 29 (2009). Moreover, legislative intent supports the conclusion that persons rather than vehicles be insured against loss. *Pioneer State Mut Ins Co v Titan Ins Co*, 252 Mich App 330, 337; 652 NW2d 469 (2002). Thus, it is irrelevant whether defendant insured the vehicle involved in the accident. The plain language of MCL 500.3115(1)(a) places defendant first in order of priority for purposes of payment of PIP benefits (along with plaintiff) to a third party because it insured the *owner or registrant* of the motor vehicle. We apply the clear, unambiguous language of the statute as written (*Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011)), and, in doing so, find that the majority correctly determines defendant first in order of priority.

However, defendant also argues that its insurance policy contract excludes from coverage third parties entitled to PIP benefits from another policy and coverage for any vehicles not declared in the policy. We disagree.

Defendant's insurance policy contains the following provision under "EXCLUSIONS":

> This coverage does **not** apply to **bodily injury** sustained by:
>
> ***
>
> 11. any **person** other than YOU or any **family member** entitled to Personal Injury Protection Coverage benefits under the terms of another policy.

According to defendant, the above provision contractually limits its liability for third party PIP benefits to situations where it is the *sole* insurer first in the order of priority. Through its policy exclusion, defendant neatly avoids the statutory language specifically contemplating that two or more insurers may be equally liable for PIP benefits to a third party. One insurer is left holding

the responsibility for PIP benefits that both are first in priority to pay simply because the other insurer contractually excluded the payment of such benefits that it would otherwise be statutorily liable to pay. Defendant's argument allows defendant to contractually sidestep its statutory mandated priority, which violates the public policy reasons behind creating a priority statute in the first place.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause