

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN HEAD & SPINE INSTITUTE, P.C.,
and BOTSFORD HOSPITAL,

UNPUBLISHED
September 23, 2014

Plaintiffs-Appellees,

and

BEAUMONT HEALTH SYSTEMS,
UNIVERSITY OF MICHIGAN BOARD OF
REGENTS, and MATT GEDDA,
CONSERVATOR OF THE ESTATE OF STEVE
GEDDA,

Intervening Plaintiffs-Appellees,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

No. 315727
Wayne Circuit Court
LC No. 12-000473-NF

Defendant-Appellant,

and

TITAN INSURANCE COMPANY,

Defendant.

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Defendant-appellant State Farm Insurance Company appeals by leave granted the circuit court's partial summary disposition order under MCR 2.116(C)(10) (no genuine issue of material fact). Because the circuit court's order is insufficient for this Court's review, we vacate the order and remand for further proceedings.

The lawsuit arose from an automobile accident that resulted in injuries to Steve Gedda. When the accident occurred, Steve was driving an uninsured 2001 minivan that was titled in the

name of his mother, Donna Gedda. Steve resided with Donna at the time of the accident, and although the minivan was uninsured, Donna owned two cars that were insured by State Farm. The Michigan Assigned Claims Facility assigned Steve's claim to defendant Titan Insurance Company. Titan took the position that State Farm was responsible for any no-fault benefits to which Steve might be entitled. Plaintiffs moved for partial summary disposition under MCR 2.116(C)(10), seeking a ruling that Steve was not an owner of the uninsured minivan and requesting that the circuit court adjudicate State Farm as first in priority for payment of no-fault benefits. State Farm filed a cross-motion for summary disposition.

The issue before the circuit court was whether the record presented a genuine factual issue regarding the ownership of the minivan for purposes of the no-fault act, MCL 500.3101 *et seq.* The no-fault act defines "owner" to include "[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). A vehicle may have multiple owners for purposes of the no-fault act.¹ *Ardt v Titan Ins Co*, 233 Mich App 685, 691-692; 593 NW2d 215 (1999). A focus of the ownership analysis is "the nature of the person's right to use the vehicle," including "whether it is contemplated that the right to use the vehicle will remain in effect for more than thirty days." *Twichel v MIC General Ins Corp*, 469 Mich 524, 530, 532; 676 NW2d 616 (2004).

In this case, the pertinent portion of the circuit court's written order provided: "IT IS HEREBY ORDERED that Plaintiffs' and Intervening Plaintiffs' The Regents of the University of Michigan's Motion for Partial Summary Disposition Regarding No-Fault Coverage as to Stephen Gedda's entitlement to no-fault benefits is hereby GRANTED for the reasons stated on the record." On the record, the court stated:

On the date of the accident, July 11, 2011, Steven Ghetta [sic] sustained bodily injury arising out of a motor vehicle accident. He had borrowed his mother's car—it was titled in his mother's name—just for that day. There is no evidence that his use was continuous to give rise to a situation of constructive ownership. Therefore, the Court rules that State Farm is first in priority.

The circuit court's reference to "continuous use" is insufficient for this Court to determine whether the circuit court properly considered the no-fault act and the accompanying precedent that governs the ownership analysis. Moreover, the circuit court did not reference the evidence on which it based its determination that Steve had "borrowed" the car "just for that day." In addition, although the parties presented evidentiary challenges in their summary disposition materials, the circuit court did not indicate whether it had assessed the admissibility of any of the evidence in the record. MCR 2.116(G)(6) mandates that the circuit court consider only admissible evidence when ruling on a summary disposition motion. See also *Adair v State*, 470 Mich 105, 120; 680 NW2d 386 (2004). Accordingly, we vacate the circuit court's order and remand for further proceedings consistent with this opinion.

¹ MCL 500.3101(2)(h)(ii) and (iii) also define an "owner" as (ii) a person who holds the legal title to a vehicle, or (iii) a person who has the immediate right of possession of a motor vehicle under an installment sale contract.

Vacated and remanded. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, no party having prevailed in full.

/s/ Donald S. Owens

/s/ Kathleen Jansen

/s/ Peter D. O'Connell