STATE OF MICHIGAN

COURT OF APPEALS

WESTFIELD INSURANCE COMPANY,

Plaintiff-Appellant,

v

LEAGUE GENERAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
July 21, 1998

No. 202387
Otsego Circuit Court
LC No. 96-006606 CZ

Before: White P.J., and Hood and Gage, JJ.

PER CURIAM.

This action involves a priority dispute between two automobile no fault insurers that arose out of an automobile accident. Plaintiff, the insurer of one of the vehicles involved in the accident, appeals as of right from a trial court order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). We affirm.

Robin and David Babcock, husband and wife, were taking their 1990 Pontiac to be repaired, when it ran out of gas. They went to get gas in David's 1995 Ford pickup, and returned to the Pontiac. The pickup was parked facing the Pontiac. Mr. Babcock started putting gas into the Pontiac, while Mrs. Babcock sat in the pickup, so that the Pontiac could be jump-started with the pickup once fuel was added. The Pontiac was titled in the name of Robin Babcock, and was insured by defendant under a family automobile insurance policy in which the name of the insured was "Robin M. Babcock." The Ford pickup was owned by "David Babcock, d/b/a David Babcock Construction" under a commercial automobile policy issued by plaintiff, in which named insured was also "David Babcock, d/b/a Babcock Construction."

While the refueling process was in progress, another automobile came down the roadway and hit the back of the Pontiac. The Pontiac then struck Mr. Babcock, injuring him, and also struck the pickup, injuring Mrs. Babcock. There was no dispute that at the time of the accident, Robin Babcock was an occupant of the 1995 Ford pickup and David Babcock was not an occupant of any motor vehicle. Plaintiff paid, and continues to pay no fault benefits on behalf of both the Babcocks, but claimed that defendant was responsible for benefits paid to David Babcock. Defendant responded to

plaintiff's declaratory judgment action with a motion for summary disposition, which was granted, resulting in this appeal.

Plaintiff first argues that, since a sole proprietorship is a distinct entity from the proprietor himself, the trial court erred in finding that David Babcock, as an individual, was a "named insured" under plaintiff's policy. Plaintiff relies on the recent Supreme Court case of *Celina Mutual Ins Co v Lake States Ins Co*, 452 Mich 84; 549 NW2d 834 (1996), for this proposition. Plaintiff's reliance on *Celina* is mistaken. The question in *Celina* was whether the injured individual could recover under MCL 500.3114(3); MSA 24.13115(3), which allows recovery by an employee from an employer's insurance policy when the employee is an occupant of the employer's vehicle. The *Celina* Court held that the plaintiff insurer was solely responsible for no-fault benefits under the policy and that "employee" under §3114(3) of the no-fault statute could encompass a sole proprietor. *Id.* at 90. The *Celina* Court rejected the holding of this Court, which had stated that:

> . . . Implicit in these definitions [of "employer" and "employee"] is the assumption that the existence of an employer-employee relationship requires more than one individual or entity, and it follows that a sole proprietor cannot be an employee of his proprietorship. [*Celina, supra* at 88, citing this Court's unpublished, per curiam opinion, issued March 23, 1995 (Docket No. 170289).]

In essence then, the *Celina* Court held that the sole proprietor was both employer and employee and that the sole proprietorship could be the same entity as the individual, still allowing the individual to recover as an employee under MCL 500.3114(3); MSA 24.13115(3). See *Raska v State Farm Insurance Co*, 412 Mich 355; 314 NW2d 440 (1982). Since plaintiff's contention that a sole proprietorship is a distinct entity from the proprietor himself is without merit, we hold that David Babcock was a named insured under the stated terms of plaintiff's insurance policy. Therefore, plaintiff bears primary responsibility for paying his no-fault benefits. MCL 500. 3114(1); MSA 24.13115(1). *Cvengros v Farm Bureau*, 216 Mich App 261, 267; 548 NW2d 698 (1996).

Plaintiff also argues that, even if David Babcock was a named insured under plaintiff's policy, he was also a named insured under defendant's policy, through his marital relationship with defendant's named insured, Robin Babcock, and, therefore, defendant is also partly responsible for payment. This argument is also without merit. Defendant's insurance policy makes no mention of David Babcock. According to the terms of defendant's policy itself, a spouse is not automatically a "named insured" for Michigan no-fault insurance coverage. Plaintiff would have this Court ignore the terms of the policy and hold that the "named insured" of an insurance policy encompasses not only those persons listed specifically on the policy, but any person with a marital relationship to the specifically listed individuals. Were we to follow plaintiff's recommendation and expand the term "named insured" to include anyone insured by the policy, this would result in an absurdity by substantially expanding the insurer's exposure to risk without the insurer having any practical means of calculating the risk. *Transamerica Ins Co v Hastings Mutual Co*, 185 Mich App 249, 254; 460 NW2d 291 (1990); *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 685-686; 333 NW2d 322 (1983). Accordingly, we do not choose to extend the definition of a "named insured" to this extent. Therefore, since David Babcock's no-fault benefits must be paid first by his own insurer, plaintiff, without recoupment

from his spouse's insurer, defendant, MCL 500.3114(1);[1] MSA 24.13115(1); *Shinabarger v Citizens Mutual Ins Co*, 90 Mich App 307, 311; 282 NW2d 301 (1979), the trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Helene N. White
/s/ Harold Hood
/s/ Hilda R. Gage

[1] While the trial court mistakenly relied on MCL 500.3114(3); MSA 24.13114(3), since David Babcock was not the occupant of any vehicle, the trial court correctly declined to change its ruling on reconsideration, as MCL 500.3114(1) is concededly the operative provision.