STATE OF MICHIGAN

COURT OF APPEALS

CASSANDRA CARTER, Personal Representative of the Estate of DEVRON JONES, and as Next Friend of DEVONTE JONES, a Minor, Plaintiff-Appellee,	UNPUBLISHED March 21, 2006
v ALECIA LEWIS, Defendant-Appellant, and LORENZO FRIDAY, JR. and ENTERPRISE LEASING COMPANY, Defendants.	No. 259092 Wayne Circuit Court LC No. 03-319693-NI

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant Lewis appeals by leave granted from a circuit court order granting plaintiff's motion for summary disposition on the issue of ownership. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The facts are not in dispute. Lewis's car was damaged in an accident. While it was being repaired, she rented a replacement vehicle from Enterprise. She picked up the car on April 23, 1999, and returned it on May 20, 1999, the same day she picked up her own car from the repair shop. Lewis was dissatisfied with the repair work and took her car back to the shop the next day. Eventually, her insurance company agreed to pay for a rental car for three more days beginning May 25, 1999. Lewis returned to Enterprise, executed a new lease agreement, and obtained another car. Five days later, defendant Friday was involved in an accident while driving the car. Lewis turned in the car to Enterprise on June 1, 1999.

Under the owner liability statute, MCL 257.401(1), an owner is responsible for the negligence of a driver who uses the car with the owner's express or implied knowledge or consent. A person "renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days" is deemed an owner. MCL 257.37(a). The

trial court held that Lewis had a right to use the car for more than 30 days, and granted plaintiff's motion for summary disposition.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson,* 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions, and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

Whether the lessee actually has the car for more than 30 days is not determinative. Rather, the controlling question is whether, at the inception of the lease, it was intended that the lessee have use of the vehicle for more than 30 days. *Twichel v MIC Gen Ins Corp,* 469 Mich 524, 531; 676 NW2d 616 (2004); *Ringewold v Bos,* 200 Mich App 131, 137-138; 503 NW2d 716 (1993). The court should look first to the term as stated in the lease. See, e.g., *Giardina v Avis Rent A Car, Inc,* 135 Misc 2d 1052, 1056; 517 NYS 2d 349 (1986); *Carasso v Sternberg,* 63 Misc 2d 861, 862; 313 NYS 2d 851 (1970). If the lease does not state a term, the court should consider other provisions which imply the general length of time for which the lessee is given exclusive use. See, e.g., *Paul v Bogle,* 193 Mich App 479, 482, 489; 484 NW2d 728 (1992); *Best v Dante Gentilini Trucking, Inc,* 778 F Supp 360, 367 (ED Mich, 1991).

We conclude that the trial court erred in granting plaintiff's motion because there was a genuine issue of fact as to the nature of the arrangement between Lewis and Enterprise. Assuming the original lease term was indefinite, it lasted less than 30 days and Lewis turned in the car without it being involved in an accident. Because she was dissatisfied with the repairs to her own car, she sought another rental vehicle and State Farm agreed to pay for three days' rental charges beginning May 25, 1999. Lewis then rented a different car pursuant to a second rental agreement. Recurrent leases of 30 days or less each are not to be combined to create a lease term in excess of 30 days, *Giardina*, *supra*, especially where, as here, the original lease was for less than 30 days, it was terminated with no expectation of renewal, and the lessee rented a second car under a second lease several days later only by happenstance. The second rental agreement stated that it was for same-day use. Whether that meant that the parties anticipated that Lewis would keep the car for a few hours and return it but ended up keeping it longer or whether the May 25, 1999 return date is simply a mistake is not known. The additional terms on the back of the lease have not been provided, so it cannot be determined if those terms implied a particular lease period. Although Lewis stated in her affidavit that she did not intend to rent the car for more than 30 days, that statement is not determinative in that it was made after the fact. Thus, the facts presented are insufficient to warrant a determination that, at the inception of the second lease, it was intended that Lewis have exclusive use of the car for more than 30 days.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra