STATE OF MICHIGAN

COURT OF APPEALS

CORDELL SAVAGE,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
May 23, 2013

No. 307745
Wayne Circuit Court
LC No. 2011-006865-NF

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for no-fault benefits. Because plaintiff was an "owner" of the uninsured vehicle involved in the accident within the meaning of MCL 500.3101(2)(h)(*i*), we reverse and remand for entry of judgment in defendant's favor.

Plaintiff was injured in an automobile accident while driving a vehicle that his girlfriend's mother had given to her. Plaintiff lived with his girlfriend and had a set of keys to the vehicle, which they parked at their apartment. Defendant argues that plaintiff was precluded from recovering personal injury protection insurance benefits under MCL 500.3113(b) because he was "the owner" of the vehicle, which was uninsured. The definition of "owner" includes "[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*). The trial court denied defendant's motion for summary disposition on the basis that questions of fact existed regarding whether plaintiff was an "owner" of the vehicle.

We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In reviewing a motion brought under MCR 2.116(C)(10), we consider "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

In *Ardt v Titan Ins Co*, 233 Mich App 685, 690-691; 593 NW2d 215 (1999), this Court provided guidance regarding the meaning of the phrase "having the use" of a vehicle in MCL 500.3101(2)(h)(*i*), stating:

> The statutory provisions at issue operate to prevent users of motor vehicles from obtaining the benefits of personal protection insurance without carrying their own insurance through the expedient of keeping title to their vehicles in the names of family members. Because we infer from these provisions that they were enacted in furtherance of the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage, we hold that "having the use" of a motor vehicle for purposes of defining "owner," MCL 500.3101(2)(g)(i),[1] means using the vehicle in ways that comport with concepts of ownership. The provision does not equate ownership with any and all uses for thirty days, but rather equates ownership with "having the use" of a vehicle for that period. Further, we observe that the phrase "having the use thereof" appears in tandem with references to renting or leasing. These indications imply that ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another. [Emphasis in original.]

Further, "it is not necessary that a person *actually* have used the vehicle for a thirty-day period before a finding may be made that the person is the owner. Rather, the focus must be on the *nature of the person's right to use the vehicle*." *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530; 676 NW2d 616 (2004) (first emphasis in original).

The trial court erred by denying defendant's motion for summary disposition. Defendant had the burden of proving that an exclusion to coverage was applicable. See *Auto Club Group Ins Co v Booth*, 289 Mich App 606, 610; 797 NW2d 695 (2010). Defendant supported its motion for summary disposition with plaintiff's testimony that his live-in girlfriend's mother had given the vehicle to his girlfriend, and plaintiff received his own set of keys to the car when "we first got the car." Plaintiff maintained that he was not required to ask permission before using the car, and his right to use the vehicle at will had existed for approximately six months before the accident. Thus, although plaintiff may not have regularly driven the vehicle, the evidence indicated that he had a right to use the vehicle in a manner that comported with concepts of ownership. Plaintiff did not present any evidence to the contrary. Accordingly, the trial court erred by denying defendant's motion for summary disposition.

[1] Pursuant to 2008 PA 241, effective July 17, 2008, the definition of "owner" was moved from subsection (g) to subsection (h).

Reversed and remanded for entry of judgment in defendant's favor. We do not retain jurisdiction. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens