STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY JOHN CARSON, Plaintiff-Appellee,	UNPUBLISHED April 15, 2014
v HOME OWNERS INSURANCE COMPANY, Defendant-Appellant.	No. 308291 Ingham Circuit Court LC No. 10-001064-NF

Before: OWENS, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

In this action under the no-fault act, MCL 500.3101 *et seq.*, we consider the appeal of defendant, Home Owners Insurance Company, as on leave granted pursuant to a remand order from our Supreme Court.[1] Defendant appeals the trial court's denial of its motion for partial summary disposition as to plaintiff's claim for personal protection insurance (PIP) benefits for injuries he sustained in a motor vehicle accident. For the reasons set forth below, we reverse.

Plaintiff was involved in a motor vehicle accident on September 6, 2009, in Las Vegas, Nevada, where he was living at the time. Plaintiff was driving a 2006 Lexus RX330 that he had obtained from his mother, Cynthia Carson, around August 16, 2009, after she shipped it from Michigan. Ms. Carson still maintained insurance on the vehicle with defendant at the time of the accident. Ms. Carson testified that she allowed plaintiff to borrow the vehicle due to his onset of financial difficulties, but it was her intent that he would return the vehicle to her after he no longer needed it. Plaintiff understood that he was only borrowing the vehicle and he would have to return it at his mother's request.

To register the vehicle in Nevada, plaintiff needed proof of insurance in Nevada. See Nev Rev Stat Ann, § 482.385. Plaintiff indicated that he asked his mother to send him the title to the vehicle so that he could register it in Nevada. Per his request, Ms. Carson executed a title assignment to plaintiff, listing herself as the lienholder. The assignment, however, left the date of sale and sale price lines blank. Thereafter, plaintiff registered the vehicle in Nevada, and obtained insurance coverage from State Farm Mutual Automobile Insurance Company.

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[1] *Carson v Home Owners Ins Co*, 494 Mich 859; 830 NW2d 771 (2013).

According to Ms. Carson, she informed her insurance agent that she had sent the vehicle to Nevada for her son to borrow. As of May 12, 2010, the Michigan Secretary of State still listed Carson as holding title to the vehicle. Because Ms. Carson was listed as the lienholder, following the accident, State Farm paid collision damages to her after totaling the vehicle. Plaintiff's health insurer paid his medical bills.

Plaintiff sought to recover PIP benefits and uninsured motorist benefits from defendant. Defendant moved for partial summary disposition as to the claim for PIP benefits, arguing that Ms. Carson was neither the owner nor registrant of the vehicle at the time of the accident, and there was no legal requirement that she maintain coverage on the vehicle. Plaintiff responded that the ability to purchase PIP coverage did not hinge on whether the vehicle was registered in Michigan. The trial court agreed and denied defendant's motion. The trial court found that title of the vehicle did not transfer to plaintiff, and therefore, Ms. Carson had the ability as an owner to maintain the PIP policy, under which plaintiff was entitled to benefits as the occupant of the vehicle.

On appeal, defendant argues that the trial court erred by denying partial summary disposition because plaintiff was not entitled to PIP benefits under the insurance policy for two reasons. First, the insurance policy only provided for the payment of PIP benefits when they are required by statute, and pursuant to MCL 500.3101(1), no-fault insurance was not required for the vehicle because the vehicle was registered in Nevada and was not required to be registered in Michigan. Second, PIP benefits were not required under the policy, because pursuant to MCL 500.3111, Ms. Carson was not an owner of the vehicle.

We review de novo a trial court's decision on a motion for summary disposition and its interpretation of contractual language. *Westfield Ins Co v Ken's Service*, 295 Mich App 610, 615; 815 NW2d 786 (2012); *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). *Maiden* explains:

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id.* at 120 (citations omitted).]

"There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Resolution of this appeal requires us to interpret both the relevant statutory language and the language of Ms. Carson's insurance policy through defendant.

> The primary goal when construing a statute is to ascertain and give effect to the intent of the Legislature. When determining the Legislature's intent, this Court must first look to the statute's specific language. Judicial construction is

> unnecessary if the meaning of the language is clear. However, judicial construction is appropriate when reasonable minds can differ regarding the statute's meaning. Terms contained in the no-fault act are read in the light of its legislative history and in the context of the no-fault act as a whole. Further, courts should not abandon common sense when construing a statute. Given the remedial nature of the no-fault act, courts must liberally construe its provisions in favor of the persons who are its intended beneficiaries. [*Frierson v West American Ins, Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004) (quotation marks and citations omitted).]

The principles governing the interpretation of an insurance contract are comparable:

> Courts treat insurance contracts no differently than any other contract. Accordingly, we should give contractual language that is clear and unambiguous full effect according to its plain meaning unless it violates the law or is in contravention of public policy. A court cannot infer the parties' "reasonable expectations" in order to rewrite a clear and unambiguous contract. Even if the contractual language is poorly worded, it is not ambiguous if it "'fairly admits of but one interpretation[.]'" [*Westfield Ins Co*, 295 Mich App at 615 (citations omitted).]

At issue, is the language contained in Section II of the policy endorsements, which provides in pertinent part,

> Subject to the provisions of this endorsement and of the policy to which this endorsement is attached, **we** will pay personal injury protection benefits to or on behalf of an **injured person** for accidental **bodily injury** arising out of the ownership, operation, maintenance, or use of a **motor vehicle** as a **motor vehicle**, subject to the provisions of Chapter 31 of the Michigan Insurance Code. . . .

Defendant argues that the language "subject to the provisions of Chapter 31 of the Michigan Insurance Code," MCL 500.3101 *et seq.*, unambiguously excludes PIP coverage under the facts of this case. Defendant asserts that the above "policy language does not extend coverage beyond statutory requirements." Defendant then contends that pursuant to MCL 500.3101(1), personal protection insurance is only mandatory for motor vehicles whose owner or registrant is required to register in Michigan. Defendant then notes that pursuant to MCL 257.243, a nonresident owner is not required to register his or her vehicle in Michigan. Defendant proposes that plaintiff, a nonresident of Michigan, is the owner of the vehicle. Therefore, defendant concludes, PIP coverage is excluded.

This argument is flawed for two reasons. First, defendant's premise—that the cited "policy language does not extend coverage beyond statutory requirements"—is based on an erroneous interpretation of the coverage provision. The phrase "subject to" means "subordinate" to and "governed or affected by." Black's Law Dictionary (6th ed). In other words, the phrase is "introduc[ing] a subordinate provision," indicating that the proposition set forth before the phrase can be superseded by a contrary provision in Chapter 31. Garner's Dictionary of Legal Usage (3rd ed), p 616. Thus, if Chapter 31 does not override the provision, then coverage is

owed if the conditions listed are satisfied. If defendant had meant the phrase to limit the scope of coverage to Chapter 31, it could have employed language to that effect, as it did in § 2(d)(1), where the policy references "any other insurance policy providing benefits *under* Chapter 31 of the Michigan Insurance Code" (emphasis added), and the Coordination of Personal Protection Insurance Benefits rider, § 3, where the policy references "the work loss benefits provided . . . *in accordance with* Chapter 31" (emphasis added).

Second, MCL 500.3101(1) provides in part: "The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." Clearly, this statutory language limits the mandate that a vehicle owner or registrant maintain insurance to vehicles "required to be registered" in Michigan. But there is nothing in this language that precludes the owner to contract with an insurance company for "security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance" not mandated by the statutory provision. Moreover, there is no language in Chapter 31 that clearly and unambiguously prohibits an individual with an insurable interest from purchasing personal protection insurance for a vehicle that is not required to be registered in Michigan because the owner is a nonresident. Although the Michigan Insurance Code clearly mandates personal protection insurance to be purchased in certain situations, it does not state that personal protection insurance cannot be purchased in other circumstances, such as those at issue in this case.

Defendant next argues that PIP benefits were not required under the contract, because pursuant to MCL 500.3111, Ms. Carson was not an owner of the vehicle. MCL 500.3111 addresses when PIP benefits are payable for accidents occurring out of state and provides in pertinent part,

> Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident . . . *an occupant of a vehicle involved in the accident whose owner or registrant*[2] *was insured under a personal protection insurance policy* . . . . [Emphasis added.]

The Michigan Insurance Act[3] defines "owner" as any of the following:

[2] The parties concede that Ms. Carson was not a registrant of the vehicle.

[3] Plaintiff briefly argues that this Court should apply Nevada's definition of owner, which includes a lienholder. Nev Rev Stat, § 482.085. However, because MCL 500.3101(h) defines the term "owner" for purposes of the Motor Vehicle Code, MCL 257.1 *et seq.*, there is no need to look to the statutory definitions of another state to determine what our legislature meant when it said "owner" in MCL 500.3111. See *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007) ("When a statute specifically defines a given term, that definition alone controls.").

> (*i*) 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.
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> (*ii*) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
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> (*iii*) A person who has the immediate right of possession of a motor vehicle under an installment sale contract. [MCL 500.3101(2)(h).]

At issue is whether Ms. Carson still held legal title pursuant to subsection (2)(h)(*ii*).[4] MCL 257.226(7) provides that "[a] certificate of title shall remain valid until canceled by the secretary of state for cause or upon a transfer of an interest shown on the certificate of title." MCL 257.233 further provides in pertinent part,

> (8) The owner shall indorse on the certificate of title as required by the secretary of state an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.
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> (9) Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, *the effective date of the transfer of title* or interest in the vehicle *is the date of signature on* either the application for title or *the assignment of the certificate of title by the purchaser, transferee, or assignee*. [Emphasis added.]

Under the facts of this case, it is clear that there was no "effective date of the transfer of title" because there is no "date of signature on . . . the assignment of the certificate of title." MCL 257.233(9). The failure to include the date of signature on the assignment of title, however, is a lesser title-transfer defect that does not void the transfer of title, especially because the parties' conduct indicates an intent to transfer title. See *Whitcraft v Wolfe*, 148 Mich App 40,

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[4] We reject plaintiff's argument that there is a genuine issue of material fact regarding whether Ms. Carson was the owner of the vehicle based on having use of it. MCL 500.3101(2)(h)(*i*). Even viewing the facts in a light most favorable to plaintiff, it is clear that Ms. Carson did not have use of the vehicle for a period greater than 30 days. The agreement between Ms. Carson and plaintiff certainly did not contemplate the immediate use of the vehicle by Ms. Carson, much less a use that would be greater than 30 days. Contra *Twichel v MIC Gen Ins Co*, 469 Mich 524, 530; 676 NW2d 616 (2004) (finding ownership where there was an agreement to use the vehicle); *Chop v Zielinsk*, 244 Mich App 677, 681; 624 NW2d 539 (2001) (finding ownership were there was actual, periodic use of the vehicle).

53; 384 NW2d 400 (1985) (stating that "lesser title-transfer defects, even those involving statutory violations, may not be fatal to a transfer of ownership"). Although plaintiff and Ms. Carson testified that plaintiff was only borrowing the vehicle, "summary disposition cannot be avoided by a party's conclusory assertions in an affidavit that conflict with the actual historical conduct of the party." *Bergan v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004). The only conduct that calls into question the intent to transfer is the fact that Ms. Carson continued to maintain her insurance policy covering the vehicle. Other objective and material evidence of the parties' conduct, however, shows that even though the date of sale line was left blank, the parties intended to transfer title. Specifically, Ms. Carson signed the assignment of title as a seller and plaintiff signed it as the purchaser. Ms. Carson also listed herself as a new lienholder on the assignment of title. Thereafter, plaintiff used the assignment of title to secure a Nevada certificate of title, which listed plaintiff as the sole owner and Ms. Carson as merely a lienholder. Plaintiff also took out an insurance policy on the vehicle in Nevada. The lien release for the vehicle also listed plaintiff as the registered owner and Ms. Carson as the lienholder. Thus, even though the exact date that title was effectively transferred is not indicated on the assignment of title, it is clear that the parties intended to transfer title even though they left some spaces blank.[5] Accordingly, we conclude as a matter of law that Ms. Carson was not the "owner" of the vehicle under MCL 500.3101(2)(h)(*ii*). Therefore, plaintiff was not entitled to PIP benefits under Ms. Carson's insurance policy, and the trial court erred by denying defendant summary disposition for the PIP benefits claim.

Reversed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Donald S. Owens
/s/ Christopher M. Murray
/s/ /Michael J. Riordan

[5] Additionally, we note that the assignment of title included a space for "date of sale" not "date of signature." Accordingly, because this was not a sale, it is not clear whether the average non-sale transferor and transferee would even think to fill out this section of the form.