STATE OF MICHIGAN

COURT OF APPEALS

DETROIT MEDICAL CENTER, Plaintiff-Appellant,	UNPUBLISHED September 17,2013
v	No. 311036 Wayne Circuit Court
TITAN INSURANCE COMPANY, Defendant-Appellee.	LC No. 11-001794-NF

Before: MURPHY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In this action for no-fault benefits, plaintiff Detroit Medical Center (DMC) appeals by right the trial court's order granting summary disposition in favor of defendant Titan Insurance Company (Titan) under MCR 2.116(C)(10). We affirm the trial court's grant of Titan's motion to set aside the default but reverse the trial court's grant of summary disposition.

The underlying action in this case arises out of medical services that DMC provided to an individual named Jose Ibarra after a motorcycle accident that occurred on May 9, 2010. At the time of the accident, Ibarra was operating an uninsured 1986 Honda motorcycle and collided with a motor vehicle owned and operated by an individual insured by Titan. According to DMC, Ibarra's charges stemming from his hospitalization total $294,256.74. After Ibarra was discharged from the hospital, DMC submitted a claim for his medical charges to Titan. Titan responded to the claim and asserted that, at the time of the accident, Ibarra was the owner of an uninsured motorcycle, and therefore not entitled to no-fault benefits pursuant to MCL 500.3113(b). Accordingly, Titan denied payment on the claim.

After receiving Titan's denial, DMC filed a complaint on February 14, 2011, requesting a "declaration and adjudication" that DMC was entitled to no-fault benefits from Titan. Titan failed to respond to the claim. DMC moved for default, which was entered on April 21, 2011. Titan's corporate office received the notice of the default on April 25, 2011. On April 26, Titan's counsel contacted DMC's counsel. On April 28, Titan's counsel went to the office of DMC's counsel for an in-person meeting with regard to setting aside the default. On April 29, DMC's counsel informed Titan that DMC would not agree to set aside the default; consequently, on May 5, 2011, Titan moved the trial court to set aside the default. Titan argued that it had good cause for failing to file an answer to the complaint because an administrative secretary failed to hit the "send" key after logging in the complaint. Accordingly, the three individuals responsible

for responding to DMC's complaint, including Titan's general counsel, did not receive the complaint. Titan also argued that it had a meritorious defense to the complaint because Ibarra was the owner of an uninsured motorcycle, so he was not entitled to no-fault benefits under MCL 500.3113(b). The trial court granted the motion on June 24, 2011.

Titan then moved for summary disposition. Titan argued that Albert Burke III averred via affidavit that he sold the motorcycle to Ibarra on September 18, 2009. At that time, Burke signed over the title of the motorcycle to Ibarra and gave him the keys to, and possession of, the motorcycle. Burke and Ibarra also executed and signed a handwritten sales receipt with regard to the transaction. DMC responded to the motion and argued that Burke's credibility with regard to the affidavit was an issue for the trier of fact. Moreover, DMC asserted that the Secretary of State records contradicted Burke's affidavit because they clearly indicated that Burke was the registered owner of the motorcycle.

The trial court held a hearing with regard to Titan's motion on May 16, 2012. After oral arguments, the trial court granted the motion stating that

> The substantially [sic] admissible evidence shows that Mr. Burke attest [sic] that he sold the motorcycle to Ibarra, delivered possession to him, and there is no genuine issue of material fact that Mr. Ibarra held legal title to the motorcycle on the date of the motor vehicle accident, therefore, the motion is granted.

On appeal, DMC first argues that the trial court abused its discretion in setting aside the default because it did not find good cause and because Titan, in fact, did not show good cause or a meritorious defense. As a preliminary matter, we disagree with DMC's characterization of the trial court's findings. The trial court did not find that Titan failed to show good cause.

With respect to the order setting aside the default, our law is that "[t]he ruling on a motion to set aside a default or a default judgment is entrusted to the discretion of the trial court." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). "Unless there has been a clear abuse of discretion, a trial court's ruling will not be set aside." *Id.* An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MCR 2.603(D) provides, in pertinent part:

> (1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

A meritorious defense includes one which if proved at trial would defeat the plaintiff's claims. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 234-235; 760 NW2d 674 (2008). Good cause to set aside a default includes: (1) "a substantial irregularity or defect in the proceeding upon which the default is based;" or (2) "a reasonable excuse for failure to comply with the requirements that created the default." *Alken-Ziegler*, 461 Mich at 233. A defaulted party's burden to show "good cause" is inversely related to the strength of its asserted meritorious

defense. *Id*. "In other words, if a party states a meritorious defense that would be absolute if proven, a lesser showing of "good cause" will be required than if the defense were weaker, in order to prevent a manifest injustice." *Id.* at 234.

In determining whether "good cause" exists, "[a] party is responsible for any action or inaction by the party or the party's agent." *Id.* at 224. Here, although Titan's good cause was "not all that good," Titan acted promptly in taking steps to defend the action after the default was entered, and the delay was minimal. Moreover, Titan showed a meritorious defense that would be absolute if proven. MCL 500.3103(1) requires owners of motorcycles to maintain insurance:

> An owner or registrant of a motorcycle shall provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person arising out of the ownership, maintenance, or use of that motorcycle. . . .

MCL 500.3113(b) of the no-fault act precludes personal protection insurance benefits when a "person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect."

It is undisputed that Ibarra did not have insurance on the motorcycle. Thus, if Ibarra owned the uninsured motorcycle, Titan would not be liable for his hospital costs. MCL 500.3103; MCL 500.3113; *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 198; 826 NW2d 197 (2012). Therefore, a lesser showing of good cause would suffice in order to avoid manifest injustice, *Alken-Ziegler*, 461 Mich at 233-234, and Titan made such a showing. Consequently, the trial court did not abuse its discretion in setting aside the default.

Next, DMC argues that the trial court erroneously granted summary disposition in favor of Titan because an issue of material fact remains with regard to the ownership of the motorcycle. We agree. "This Court reviews de novo a trial court's grant or denial of a motion for summary disposition." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). This Court reviews "a motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id.* Ultimately, summary disposition is appropriate when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id*. "A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ." *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006). This case also involves a question of statutory interpretation, which is reviewed de novo. *Bronson Methodist Hosp*, 298 Mich App 196.

There is a genuine issue of material fact with regard to whether Ibarra was the "owner" of the motorcycle. MCL 500.3101(2) provides in pertinent part that,

> (h) "Owner" means any of the following:
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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.

The concept of legal title is further defined in the motor vehicle code, specifically MCL 257.233(8) and (9), which provide

> (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.

The evidence presented by Titan in support of summary disposition does not demonstrate that Ibarra actually signed the assigned certificate of title as required by MCL 257.233(9). The record reflects that pursuant to MCL 257.233(8), Burke signed the title assignment section and gave the title to Iberra. But the record is devoid of any evidence that Iberra signed an application for title or the assignment of the certificate of title for purposes of MCL 257.233(9). See *Perry v Golling Chrysler Plymouth Jeep, Inc*, 477 Mich 62, 64; 729 NW2d 500 (2007) (holding that transfer of a vehicle is complete at signing). Thus, the evidence did not support that the transfer was complete or that Ibarra was the person who had "legal title" to the motorcycle. See MCR 2.116(G)(3) and (4) (The moving party must identify the issues as to which it believes there was no genuine issue of fact and support the grounds with affidavits, depositions, admissions or other documentary evidence). Because Titan failed to demonstrate that it was entitled to summary disposition, summary disposition was improper.

Accordingly, we reverse and remand for further proceedings. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Michael J. Riordan