STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and DAHER AL-MAYAHI,

Plaintiffs,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant/Cross-Plaintiff-Appellant,

and

GREAT AMERICAN INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellee,

and

GREAT WEST CASUALTY COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 4, 2014

No. 313208
Oakland Circuit Court
LC No. 2010-115553-NF

Before: MURRAY, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Defendant/cross-plaintiff Auto Club Insurance Association (ACIA) appeals by right the trial court's judgment of October 17, 2012, granting summary disposition in favor of Great American Insurance Company (Great American), denying ACIA's motion for summary disposition, determining that ACIA was first in the order of priority to pay no-fault personal protection insurance (PIP) benefits, and ordering ACIA to reimburse Great American and Great West Casualty Company for the PIP benefits that both companies had paid to the insured, Daher Al-Mayahi (Al-Mayahi), and his medical provider, Michigan Head & Spine Institute, P.C. (MHSI). We reverse and remand for further proceedings consistent with this opinion.

This case began with a complaint filed by MHSI seeking payment from ACIA for treatment of the injuries suffered by Al-Mayahi in a motor vehicle accident.[1] At the time of the accident, Al-Mayahi was driving and occupying a truck that was titled and registered in the name of Good Trucking[2] and subject to a lease agreement with Bryant Transport. The lease provided that Bryant Transport, the lessee, would pay Good Trucking, the lessor, to transport loads for it.

ACIA insured Al-Mayahi's personal, non-business household vehicles. Al-Mayahi also had an occupational accident insurance policy issued by Great American. Under this policy, Great American paid approximately $90,000 in benefits to Al-Mayahi following the accident and then sought reimbursement for those benefits from ACIA. Good Trucking also had an insurance policy on the truck at issue through Great American, and Bryant Transport had an insurance policy on that same truck through Great West. Cross motions for summary disposition were brought pursuant to MCR 2.116(C)(10). The trial court determined that, under MCL 500.3114(1), ACIA was first in priority among the insurers to pay PIP benefits on behalf of Al-Mayahi. The court granted summary disposition for Great American, denied ACIA's motion for summary disposition, and ordered ACIA to reimburse Great American and Great West for payments they had made.

We review de novo the trial court's decision on a motion for summary disposition. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). Issues of statutory construction are similarly reviewed de novo by the appellate courts. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

ACIA first argues that the trial court erred by granting summary disposition in favor of Great American and ordering ACIA to reimburse Great American and Great West for the no-fault benefits that they paid on behalf of the insured. Great American relied on the "Non-Duplication of Workers Compensation Benefits" exclusion found in its occupational accident policy with Al-Mayahi. That exclusion provided that no benefits would be payable with regard to any losses for which the insured "claims coverage under any workers' compensation, employers' liability, occupational disease or similar law." If such a claim was made, the insured was responsible to "immediately reimburse [Great American] for all benefits paid in conjunction with that Accident or Injury." The trial court determined that the no-fault statute was a "similar law" within the meaning of the policy exclusion and that Great American was therefore not required to pay benefits to its insured. The court ordered ACIA to reimburse Great American for the benefits it had paid to Al-Mayahi.

ACIA argues that the no-fault statute is not a "similar law" within the meaning of the policy exclusion since the no-fault law is not specifically named and because the other laws listed are all work-related, unlike Michigan's no-fault act which is not work-related. We agree.

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[1] MHSI settled its initial claim for $33,000. ACIA, Great American, and Great West each contributed $11,000. Thus, the issue before the trial court was the PIP coverage priority of the three insurers.

[2] Good Trucking is a Michigan corporation solely owned by Al-Mayahi.

Exclusionary claims in insurance policies are to be strictly construed against the insurer. *Fire Ins Exch v Diehl*, 450 Mich 678, 687; 545 NW2d 602 (1996). We conclude that Michigan's no-fault insurance scheme is not "similar" in kind or purpose to the work-related and occupational laws listed in the exclusion. The no-fault act provides personal injury and property protection benefits for those injured in motor vehicle accidents, irrespective of whether the accidents are work-related. The trial court erred by concluding that the no-fault law was a "similar law" within the meaning of the exclusion at issue.

Relying on the subrogation clause in its occupational accident policy, Great American argued that it was entitled to recover from ACIA the no-fault benefits that Great American had paid because those benefits should have been paid by ACIA in the first instance. The subrogation clause provided in pertinent part, "To the extent the Company pays for losses incurred, the Company may assume the rights and remedies of the Insured Person relating to such loss." In fact, ACIA did pay no-fault benefits of more than $175,000 to Al-Mayahi. Under the principle of subrogation, Great American, as a subrogee, acquired no greater rights than those possessed by the subrogor, Al-Mayahi. *Auto-Owners Ins Co v Amoco Production Co*, 468 Mich 53, 59; 658 NW2d 460 (2003). Since Al-Mayahi had no right to recover the benefits that he had already received from ACIA, Great American also lacked the right to recover those same benefits from ACIA. The trial court erred by ordering ACIA to reimburse Great American for benefits that ACIA had already paid to Great American's insured and subrogor, Al-Mayahi.

ACIA next argues that the trial court erred by ruling that ACIA had primary no-fault PIP responsibility as the insurer of Al-Mayahi's personal household vehicles, taking priority over both Great American and Great West, who were the insurers of the business vehicle Al-Mayahi was operating at the time of the accident. Again, we agree.

Pursuant to MCL 500.3114(3), when an "employee" is involved in an injury accident while occupying a vehicle "owned" and "furnished" by his "employer," the insurer of the furnished business vehicle, not the personal no-fault insurer, is highest in the order of priority. Further, our Supreme Court has held that, in a business vehicle accident involving injuries to a self-employed person, the highest priority rests on the business vehicle's no-fault insurer, rather than on the injured person's personal no-fault household policy. *Celina Mut Ins Co v Lake States Ins Co*, 452 Mich 84, 89; 549 NW2d 834 (1996) (stating that "it is most consistent with the purposes of the no-fault statute to apply § 3114(3) in the case of injuries to a self-employed person. The cases interpreting that section have given it a broad reading designed to allocate the cost of injuries resulting from use of business vehicles to the business involved through the premiums it pays for insurance"). In this case, therefore, the highest priority does not attach to ACIA, the insurer of Al-Mayahi's personal vehicles, but to Great American or Great West, the insurers of the business truck. The trial court erred by ruling that Al-Mayahi's personal no-fault provider had priority in this case.

In determining priority, the trial court held that Bryant Transport was *the* owner of the truck at issue and that Al-Mayahi, as a self-employed person, was not an employee of Bryant Transport. This holding was against the applicable statutory and caselaw. The no-fault act specifies that there can be more than one statutory owner of a vehicle. *Integral Ins Co v Maersk Container Serv Co*, 206 Mich App 325, 332; 520 NW2d 656 (1994). For the purpose of

maintaining automobile insurance, MCL 500.3101(2)(h) defines the "owner" of a vehicle, in pertinent part, as:

> (*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.
>
> (*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.

In this case, Bryant Transport was *an* owner of the truck as the long-term lessee, MCL 500.3101(2)(h)(*i*), but was not *the only* owner. Good Trucking was also *an* owner as the truck's titleholder and registrant. MCL 500.3101(2)(h)(*ii*). Moreover, Al-Mayahi was *an* owner of the truck based upon his long-term possession, use, and operation of the truck. MCL 500.3101(2)(h)(*i*). Additionally, Al-Mayahi could be considered an equitable owner of the truck as the sole shareholder of Good Trucking.

Al-Mayahi could also be considered an employee of the truck's statutory owners. Al-Mayahi was his own employee as a self-employed independent contractor and also worked for his company, Good Trucking. Determination of whether he could also be considered an employee of Bryant Transport under the no-fault act should be decided by application of the "economic reality test." *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 623-625; 335 NW2d 106 (1983). However, because Al-Mayahi was self-employed, he does not have to qualify as an employee of all of the vehicle's statutory owners for MCL 500.3114(3) to apply, and this determination is strictly unnecessary to our decision. See *Celina*, 452 Mich at 89.

Under the facts and circumstances of this case, MCL 500.3114(3) controls. Thus, the trial court erred when it relied upon MCL 500.3114(1) to determine priority among the insurers. Both our Supreme Court and this Court have held that MCL 500.3114(3) is the appropriate statutory section for determining priority in situations involving self-employed persons injured in a business vehicle. *Celina*, 452 Mich at 89; *Besic v Citizens Ins Co*, 290 Mich App 19, 33; 800 NW2d 93 (2010). Since Al-Mayahi was self-employed, MCL 500.3114(3) applies here. Under MCL 500.3114(3), priority for payment of the PIP benefits at issue falls upon the insurer of the furnished business vehicle, either Great American or Great West, and not on ACIA, insurer of Al-Mayahi's personally-owned vehicles. Because the trial court erroneously found that ACIA had first priority to pay no-fault benefits, it did not proceed to determine priority between the two insurers of the business vehicle.

We reverse the trial court's judgment granting Great American's motion for summary disposition, denying ACIA's motion for summary disposition, holding that ACIA was first in the order of priority to pay PIP benefits, and ordering ACIA to reimburse Great American and Great West. We remand this matter to the trial court for a determination of the priority to pay PIP benefits as between Great West and Great American, the insurers of the business truck.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, defendant/cross-plaintiff ACIA may tax its costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro