# STATE OF MICHIGAN

# COURT OF APPEALS

DAWN MARIE PURCHASE,

Plaintiff/Cross-Plaintiff-Appellee,

and

EDWARD W. SPARROW HOSPITAL ASSOCIATION,

Plaintiff,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellant.

UNPUBLISHED
September 16, 2014

No. 315820
Eaton Circuit Court
LC No. 10-000060-NF

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Cross-defendant Auto-Owners Insurance Company appeals as of right the trial court's March 27, 2012 judgment for cross-plaintiff, Dawn Purchase (Purchase) that was entered after a jury trial.[1] We affirm.

## I. FACTUAL BACKGROUND

Purchase was injured in an automobile accident in 2007. At the time of the accident, the vehicle Purchase was riding in was titled in the name of her niece, who was driving. The niece did not have no-fault insurance on the vehicle. However, Purchase's parents, Earl and Mary Morris, had added the vehicle to their Auto-Owners insurance policy. The vehicle was originally owned by the Morris' grandson, Joshua Morris. Purchase pursued no-fault benefits under her parents' policy, and initially received personal protection insurance (PPI) benefits through Auto-

[1] Plaintiff Edward W. Sparrow Hospital Association was dismissed by stipulation and is not a party to this appeal.

Owners. However, in 2008, after an independent medical examination, Auto-Owners suspended and eventually denied benefits to her.

Purchase filed a first-party no-fault claim against Auto-Owners in 2008. During discovery Purchase requested that Auto-Owners produce the entire claims file, which Auto-Owners apparently did, minus any privileged documents. Subsequently, in February of 2009, Auto-Owners received a medical bill from Sparrow Hospital totaling over $38,000 dollars. Auto-Owners denied payment, noting that the case was in litigation. Sparrow did not send a copy of the bill to Purchase, and discovery materials submitted to Auto-Owners indicated that Purchase had not included the $38,000 Sparrow bill as part of her claimed damages.

In June of 2009, Purchase submitted a second request for production of documents, once again requesting the entire claims file. Auto-Owners purported to comply by disclosing approximately 1,400 pages of the claims file, even though it admitted the actual file consisted of about 5,000 pages. The Sparrow bill was not included in the file produced. The 2008 case proceeded to case evaluation. Purchase did not include the Sparrow bill in excess of $38,000 in her case evaluation summary. The case evaluation panel awarded Purchase $65,000, which both parties mutually accepted, and the case was dismissed with prejudice.

Then, in January 2010, Sparrow Hospital filed suit against both Auto-Owners and Purchase, seeking payment of the $38,000 bill. Purchase filed a cross-claim against Auto-Owners, alleging fraud. Auto-Owners filed motions for summary disposition, claiming that the suit was barred by the acceptance of the case evaluation award, that it did not insure the "owner" of the vehicle involved in the accident, and that Purchase's fraud claim was not pleaded with specificity and was unsupported by the evidence. Purchase also filed a motion for summary disposition, arguing that Auto-Owners had insured the "owner" of the vehicle as a matter of law. The trial court granted Purchase's motion, finding that Earl and Mary Morris, Purchase's parents, were the "owners" of the vehicle within the meaning of the no-fault act, MCL 500.3101 *et seq*. The trial court denied defendant's motion for summary disposition on the issue of fraud. The case proceeded to trial and the jury found in favor of Purchase and Sparrow. Sparrow and Auto-Owners settled post-verdict, resolving Sparrow's claim for the $38,000 unpaid bill.

## II. ANALYSIS

Auto-Owners essentially raises three issues on appeal. First, it argues that the trial court erred in granting summary disposition in favor of Purchase on the issue of who was the "owner" of the vehicle involved in the accident. Second – and third – it argues that the trial court erred in denying its motion for summary disposition, and subsequent motion for directed verdict, on the fraud claim.

### A. STANDARD OF REVIEW

This Court reviews "de novo a trial court's denial of a motion for directed verdict . . . ." *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000). "[W]e view the evidence, as well as any legitimate inferences, in the light most favorable to the nonmoving party and decide whether a factual question exists about which reasonable minds might have differed." *Id*.

We also review de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

B. "OWNER" OF THE VEHICLE

Auto-Owners argues that it had no obligation to provide PPI benefits to Purchase because the Morrises were not the owners of the vehicle pursuant to MCL 500.3114(4). Pursuant to MCL 500.3114(4), "a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claims personal protection insurance benefits from insurers in the following order of priority: (a) The insurer of the owner or registrant of the vehicle occupied." The key question presented here is whether the Morrises were the "owners" of the vehicle. The no-fault act defines "owner" as any of the following:

> (*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.
>
> (*iii*) A person who has the immediate right of possession of a motor vehicle under an installment sale contract. [MCL 500.3101(2)(h).]

Here, it is undisputed that the Morrises never held title to the vehicle. There is also no evidence that they had an immediate right of possession under an installment sale contract. Accordingly, the trial court examined whether the Morrises were "owners" under MCL 500.3101(2)(h)(*i*), i.e., whether they had the use of the vehicle for a period greater than 30 days.

Here, Mary Morris and Purchase's niece, Connie Robinson, both testified that at the time of the accident the vehicle belonged to the Morrises, not Robinson. It was also undisputed that the vehicle was kept at the Morrises residence, they had the only set of keys, they considered the vehicle theirs, Mary Morris used the vehicle for short trips, Robinson had to ask permission every time she wanted to use the vehicle, and the Morrises never had to ask permission to use the vehicle. Viewing these facts in the light most favorable to the non-moving party, there was no genuine issue of material fact that the Morrises were owners of the vehicle as defined by the statute.

Auto-Owners arguments to the contrary are misplaced. First, Auto-Owners argues that because the Morrises had other vehicles there is circumstantial evidence that they were not owners of the vehicle in the accident. However, it is axiomatic that an individual can be an owner of more than one vehicle at a time and Auto-Owners has cited no authority to the contrary. Second, Auto-Owners asserts that Robinson was the owner of the vehicle because she repaired the vehicle after the accident, obtained insurance after the accident, sold the vehicle after the accident, and kept the proceeds after the accident. However, as all of those occurrences happened *after the accident* they are not dispositive as to who owned the vehicle at the time of the accident, which is the relevant time period. Third, Auto-Owners asserts that it was unlawful

for the Morrises to use or own the vehicle because of the immobilization statute, MCL 257.904e,[2] prohibited their grandson, Joshua, from transferring the vehicle to them. The immobilization order is not included in the lower court record, so this issue is not properly supported by record evidence. Without the actual immobilization order, it is unclear whether the vehicle actually was immobilized pursuant to MCL 257.904e, or whether the immobilization period had expired at the time that the Morrises attempted to transfer the vehicle into their name. Moreover, even if we were to assume that the immobilization statute made it unlawful for the Morrises to use the vehicle, MCL 500.3101(2)(h)(*i*) does not provide that the individual must have "lawful" use of the vehicle; it only states that the individual must have "the use" of the vehicle "for a period that is greater than 30 days." This Court must apply the statute as written, *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012), and may not read a lawfulness requirement into it, see *Mich Ed Ass'n v Secretary of State* (*On Rehearing*), 489 Mich 194, 218; 801 NW2d 35 (2011) ("[N]othing may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself."). Accordingly, the trial court did not err in granting summary disposition to Purchase on this issue.

## C. FRAUD

Auto-Owners argues that the trial court erred in denying its motion for summary disposition and its subsequent motion for directed verdict on the fraud claim. This issue is moot.

"As a general rule, an appellate court will not decide moot issues." *B P 7 v Bureau of State Lotter*y, 231 Mich App 356, 359; 586 NW2d 117 (1998). "An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief." *Id.* Here, at the time the parties went to trial, Purchase was still personally liable for the Sparrow bill. However, after the jury returned a verdict in favor of Sparrow (and Purchase), Auto-Owners settled with Sparrow. Accordingly, an event (the settlement) occurred rendering it impossible for Purchase to also obtain payment from Auto-Owners for the Sparrow bill. Because the payment of the

[2] MCL 257.904e provides in relevant part:

> (1) A court shall order a vehicle immobilized under section 904d by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this section, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may order the person convicted of violating section 625 or a suspension, revocation, or denial under section 904 to pay the cost of immobilizing and storing the vehicle.
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> (2) A vehicle subject to immobilization under this section may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under section 3(3)(a) of the use tax act, 1937 PA 94, MCL 205.93, without a court order.

Sparrow bill is now governed by Auto-Owners settlement agreement with Sparrow, it is impossible to afford Auto-Owners any relief. In other words, Purchase does not have a claim left to pursue against Auto-Owners because her liability for the bill was resolved by the settlement between Auto-Owners and Sparrow. Accordingly, because Auto-Owners has already paid the Sparrow bill in accordance with a settlement agreement, we cannot grant Auto-Owners any practical remedy on the fraud issue with regard to Purchase.

Affirmed.

Purchase may tax costs on appeal. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello