STATE OF MICHIGAN

COURT OF APPEALS

LARRY GRUBISH, by his Next Friend, ALBERT GRUBISH

Plaintiff/Appellee/Cross-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,

Defendant/Cross-Plaintiff/Appellant,

and

UNITED STATES FIRE INSURANCE CO.,

Defendant/Cross-Defendant/Appellee/ Cross-Appellant,

and

MERIDIAN MUTUAL INSURANCE CO.,

Defendant.

UNPUBLISHED
February 7, 1997

No. 183116
LC No. 92-210586 CK

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

In this no-fault action, defendant State Farm Mutual Automobile Insurance Company ("State Farm") appeals as of right from a judgment awarding plaintiff $252,688.38 for personal protection insurance benefits, attorney fees and interest. On appeal, defendant State Farm challenges the trial court's denial of its motions for summary disposition pursuant to MCR 2.116(C)(10) with respect to issues of the ownership of the vehicle and plaintiff's employment status for purposes of the no-fault act. Defendant United States Fire Insurance Co. ("U.S. Fire") cross appeals, challenging the trial court's

granting of plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) regarding whether U.S. Fire could coordinate its coverage if it was found to be the first priority insurer. We reverse in part, affirm in part, and remand for further proceedings consistent with this opinion.

On April 24, 1991, plaintiff was seriously injured when the pick-up truck in which he was a passenger was involved in an accident. Plaintiff, a resident of Cleveland, Ohio, was paid by ACI Group Ltd., and assigned to install an underground cable for Advanced Communications, Inc. in Grand Rapids, Michigan, at the time of the accident. When the truck driven from Cleveland by plaintiff's supervisor, Mark Babyak, needed servicing, Thomas Barton, an employee paid by ACI Group and assigned to work at Advanced Communications, provided the pick-up truck for their use.

The pick-up truck was purchased in 1988 by and registered to Jeffrey Gendron, then a shareholder in Advanced Communications, for use in company business. Although the truck was registered in Gendron's name, payments on the loan obtained to finance the purchase were made by Advanced Communications, and the truck was insured under the company's fleet policy issued by U.S. Fire. Gendron drove the truck for approximately six months before it was turned over to other Advanced Communication employees for use in their employment. Thomas Barton obtained the truck in October, 1990, and was still using it six months later when he lent it to plaintiff and Babyak.

Advanced Communications was formed in 1984 and engages in the business of installing cable television systems. In 1989, Advanced Communications and other investors formed Accurate Communications, Inc., in order to provide cable installation services in Cleveland, Ohio. Also formed were IMPRO, Inc. and Advanced Communications of California. Purportedly to efficiently coordinate the activities of all the companies, ACI Group Ltd. was formed for the sole purpose of "leasing" employees to Advanced Communications. The president and sole shareholder of ACI Group is Daniel Sarna, an accountant. Accurate Communications was dissolved, and all employees of Advanced Communications and Accurate Communications were discharged. The workers were then hired by ACI Group, and assigned to work for Advanced Communications. In exchange for $2,000 per month and reimbursement of all employment expenses, ACI Group provided all the workers who conducted business for Advanced Communications, the entity that obtained and retained the cable installation contracts.

The issues raised by defendant State Farm on appeal involve the application of the employer-furnished vehicle provision of the no-fault act, MCL 500.3114(3); MSA 24.13114(3), to the circumstances of the present case. A person injured in an accident involving a motor vehicle will generally recover under his own policy, whether or not his own vehicle was involved in the accident. MCL 500.3114(1); MSA 24.13114(1). However, there are exceptions to this general rule. At issue in the instant case is the employer-furnished vehicle exception, MCL 500.3114(3); MSA 24.13114(3). The statute provides:

> An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which

> the employee is entitled from the insurer of the furnished vehicle. [MCL 500.3114(3); MSA 24.13114(3).]

The benefits are paid by the insurer of the vehicle even when the insurance policy was not obtained by the employer. *State Farm Mutual Automobile Ins Co v Sentry Ins*, 91 Mich App 109, 116; 283 NW2d 661 (1979).

Defendant State Farm initially contends that the trial court erred in denying its motion for summary disposition pursuant to MCR 2.116(C)(10) with respect to the issue of whether ACI group was the owner of the pick-up truck for purposes of the no-fault act. We disagree. A trial court's decision with regard to a summary disposition motion is reviewed de novo. *Borman v State Farm Fire & Casualty Co*, 198 Mich App 675, 678; 499 NW2d 419 (1993). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) test the factual support for a valid claim. The nonmoving party must be given the benefit of any reasonable doubt and the court must be liberal in finding a genuine issue of material fact. *Buczkowski v Allstate Ins Co*, 198 Mich App 276, 278; 502 NW2d 343 (1993). The court must consider all affidavits, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). To grant the motion, the court must find that the record that might be developed will leave open no issues upon which reasonable minds may differ. *Wolfe v Employers Health Ins Co (On Remand)*, 194 Mich App 172, 175; 486 NW2d 319 (1992).

The first step in our analysis is to determine when a person is an owner of a vehicle for purposes of the no-fault act. When interpreting a statute, this Court's objective is to effectuate the Legislature's intent. *Lorencz v Ford Motor Co*, 439 Mich 370, 377; 483 NW2d 844 (1992). The language of a statute is accorded its plain and ordinary meaning. *Vanderlann v Tri-County Community Hosp*, 209 Mich App 328, 332; 530 NW2d 186 (1995). Prior to amendment of the statute in 1988, this Court read the Michigan Vehicle Code's definition of "owner", MCL 257.37; MSA 9.1837, into the no-fault act to determine the priorities between insurance companies. *State Farm*, *supra* at 113-115. In the 1988 amendment, the Legislature defined "owner" for purposes of the no-fault act. P.A. 1988, No. 126. Now, the statute provides that "owner" means any of the following:

> (i) A person renting a motor vehicle or having use thereof, under a lease or otherwise, for a period that is greater than 30 days.
>
> (ii) A person who holds the legal titled 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 contract. [MCL 500.3101(2)(g); MSA 24.13101(2)(g).]

The definition of "owner" provided by the statute is controlling. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996).

Defendant State Farm argues that pursuant to MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i), ACI Group was an owner of the truck because its employee, Barton, had use of it for a period greater than thirty days. We disagree. While Barton unquestionably used the pick-up truck for the required thirty day period, his use was in the course of his work for Advanced Communications. Although paid by ACI Group, Barton was "leased" to Advanced Communications and performing work on its behalf during this period. Thus, ACI Group, the "person" for purposes of the no-fault act, did not use the truck because its employee was acting on behalf of Advanced Communications at the time he used the truck. Accordingly, the trial court properly denied defendant State Farm's motion for summary disposition on this basis because ACI Group was not an owner of the pick-up truck for purposes of the no-fault act.

Defendant State Farm next contends that the trial court erred in denying its motion for summary disposition pursuant to MCR 2.116(C)(10) with respect to the issue of whether Advanced Communications was plaintiff's employer for purposes of the employer-furnished vehicle provision of the no-fault act. We agree. The economic reality test is generally used to determine the existence of an employment relationship for purposes of the no-fault act. *Parham v Preferred Risk Mutual Ins Co,* 124 Mich App 618, 624; 355 NW2d 106 (1983). The economic reality test looks to the totality of the circumstances surrounding the work performed, and considers the following factors: (1) control of a worker's duties, (2) payment of wages, (3) right to hire, fire and discipline, and (4) performance of the duties as an integral part of the employer's business toward accomplishment of a common goal. *Howard v Dundee Manufacturing Co,* 196 Mich App 38, 41; 492 NW2d 478 (1992). No single factor is controlling but rather, all the factors are viewed as a whole. *Id.* Although application of the economic reality test may have the effect of piercing the corporate veil, corporate formalities and structure do not influence the decision. The determination is strictly one of whether the test calls for treatment of a corporate entity as an employer. *Parkkonen v Cleveland Cliffs Iron Co,* 153 Mich App 204, 209-210; 395 NW2d 289 (1986).

The courts of this state have generally held that an employee of a labor broker is also an employee of the broker's customer for purposes of the exclusive remedy provision of the worker's disability compensation act. In *Farrell v Dearborn Manufacturing Co,* 416 Mich 267, 277-278; 330 NW2d 397 (1982), the Court held that temporary workers provided to a customer by a labor broker were employees of the customer because the firms were "so integrally related that their common objectives are only realized by a combined business effort" and to conclude otherwise would disregard the objectives of the workers' compensation scheme. Applying the four factors involved in the economic realities test, this Court reached the same result when considering other labor broker relationships. *Tolbert v U S Truck Co,* 179 Mich App 471, 476; 446 NW2d 484 (1989); *White v Central Transport, Inc,* 150 Mich App 128, 130-131; 388 NW2d 274 (1986). But see *Rambus v Wayne Co General Hosp,* 193 Mich App 268, 271; 483 NW2d 455 (1992). Furthermore, as recognized by the Court in *Farrell,* an employee can have more than one employer for purposes of the exclusive remedy provision. *Farrell, supra* at 277-278; see also *Rambus, supra* at 271.

Viewing the evidence in a light most favorable to defendant U.S. Fire, there was no genuine issue of fact regarding whether Advanced Communications was plaintiff's employer for purposes of the

no-fault act. The first factor of the economic reality test supports the finding of an employer-employee relationship because ACI Group was established solely for the purpose of leasing workers to Advanced Communications and acted in furtherance of its cable installation business. *White, supra* at 130. The second factor similarly supports this finding. Although ACI Group actually paid plaintiff, it was reimbursed by Advanced Communications for all employment related costs and simply received a flat fee for what were essentially accounting services. *Id.* at 131; *Tolbert, supra* at 476. Regarding the third factor, the parties contemplated that Advanced Communications would discipline and terminate workers when they included an indemnity provision in their agreement. Evidence also suggested that plaintiff's supervisor was fired by Michael Falsetti, who was not an officer of ACI Group but rather was the vice president of Advanced Communications. Accordingly, the third factor supports finding an employer-employee relationship. The final factor also strongly supports a employer-employee relationship. Since ACI Group's entire existence is dependent upon the needs of Advanced Communications, the two companies are "so integrally related that their common objectives [were] only realized by a combined business effort." *Farrell, supra* at 277. In fact, the relationship "was so entirely parasitic that it is unlikely any distinct goals or objectives could be identified." *White, supra* at 131. Accordingly, upon review of the totality of the circumstances surrounding plaintiff's work, we conclude that Advanced Communications was his employer for purposes of the no-fault act.

Our decision in the instant case is consistent with the purpose of the employer-furnished vehicle exception. If the workers provided by ACI Group were not considered Advanced Communication employees, the burden of paying benefits would fall on the no-fault insurer of the employee, not the commercial insurer. In fact, because Advanced Communications leases all its workers from ACI Group, the insurer of its vehicles would most likely never have to provide coverage. Thus, contrary to the purpose of the exception, coverage in this commercial setting would depend exclusively on whether the injured person was otherwise insured. *State Farm, supra* at 114-115.

In this case, U.S. Fire conceded in response to a request for admissions that Advanced Communications had use of the pick-up truck for greater than thirty days. As such, Advanced Communications was an owner of the pick-up truck for purposes of the no-fault act. MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i). Accordingly, as plaintiff was injured while a passenger in a vehicle owned by his employer, the trial court erred in denying defendant State Farm's motion for summary disposition because U.S. Fire was the first priority insurer in the instant case. MCL 500.3114(3); MSA 24.13114(3).

In light of our determination that defendant U.S. Fire was the first priority insurer, we must consider U.S. Fire's challenge to the trial court's granting of plaintiff's contingent motion for summary disposition pursuant to MCR 2.116(C)(10). Defendant U.S. Fire contends that the trial court erroneously granted plaintiff's motion because it is entitled to coordinate its coverage with plaintiff's health insurance coverage. We disagree. The coordination rider to the policy issued by U.S. Fire provides as follows:

> MICHIGAN PERSONAL INJURY PROTECTION for you or any "family member" is changed is [sic] follows:

> The insurance does not apply to the extent that any benefits, indicated above by an "X", are paid or payable under any other insurance, service, benefit or reimbursement plan providing similar benefits.

The "medical expenses and work loss benefits" item on the form is marked with an "X."

We decline defendant U.S. Fire's invitation to interpret the phrase "you or any family member" as including plaintiff and other employees. Absent a conflict with the no-fault act, coordination clauses are treated like other contractual provisions. *Smith v Physicians Health Plan, Inc*, 444 Mich 743, 760; 514 NW2d 150 (1994). Construction of an insurance contract is a question of law for the court to decide. *Mueller v Frankenmuth Mutual Ins Co*, 184 Mich App 669, 671; 459 NW2d 95 (1990). Insurance contracts are enforced according to their terms and we will not read ambiguity into them when none exists. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994). We look at the whole contract, giving meaning to all its terms and avoid strained and technical constructions. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992); *Hawkeye-Security Ins Co v Vector Construction Co*, 185 Mich App 369, 381; 460 NW2d 329 (1990).

The clear and unambiguous language of the coordination clause does not give U.S. Fire the right to coordinate its coverage with plaintiff's health insurance coverage. The policy states that the term "you" as used therein refers "to the Named Insured shown in the Declaration." The named insured listed on the coordination rider is Advanced Communications, and the named insureds listed in the declarations are Advanced Communications, Accurate Communications and Advanced Communications of California. Giving the term "you" its contractually agreed upon definition, as we are required to do, *Michigan Millers, supra* at 567, it does not include plaintiff or other employees. Moreover, when given its plain meaning, the term "family members" clearly does not include unidentified employees.[1] Accordingly, the trial court properly granted summary disposition in favor of plaintiff with respect to the issue of whether U.S. Fire could coordinate its coverage with plaintiff's medical insurance coverage.

Affirmed in part and reversed in part. Remanded for further proceedings with regard to defendant State Farm's cross-claim for recovery of benefits paid to plaintiff. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach

[1] Even if we were to find that he contractual language was ambiguous, the construction urged by defendant U.S. Fire would be prohibited by the no-fault act. A no-fault insurer may contractually eliminate payments for health care coverage that is duplicative of coverage provided by a health insurer

only for persons specifically named in the policy and their relatives. MCL 500.3109a; MSA 24.13109(1); *Briley v Detroit Inter-Insurance Exchange*, 140 Mich App 692, 696; 365 NW2d 216 (1985).