

STATE OF MICHIGAN
COURT OF APPEALS

FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellant,

v

DAVID A. NATHANIEL,

Defendant-Appellee.

UNPUBLISHED

June 29, 1999

No. 206785

Wayne Circuit Court

LC No. 96-648598 NF

Before: Doctoroff, P.J., and Markman and J. B. Sullivan*, JJ.

PER CURIAM.

Plaintiff, Farmers Insurance Exchange, appeals as of right from an order granting summary disposition to defendant, David A. Nathaniel. This is a subrogation case, wherein plaintiff is seeking reimbursement for uninsured motorist benefits paid to Maurice Thomas for injuries sustained in an automobile accident that occurred on January 8, 1996. At the time of the accident, Maurice Thomas was driving a 1984 Mazda which Secretary of State records showed as being owned by defendant.

Defendant moved for summary disposition submitting proof, in the form of documentary evidence and affidavits, that he had sold the 1984 Mazda on June 15, 1995, to William Thomas, Maurice Thomas' father. The court granted summary disposition to defendant finding there was no question of fact that defendant was neither the owner or registrant of the vehicle at the time of the accident.

Plaintiff claims on appeal that the trial court erred in finding that defendant properly transferred title to his vehicle prior to the accident. We disagree. On appeal, a trial court's ruling on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.* When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it. *Id.* The trial court must review the record evidence, make all reasonable inferences therefrom, and determine whether a genuine issue of material fact exists, giving the nonmoving party the benefit of

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

reasonable doubt. *Bertrand v Alan Ford Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). The nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine and material issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Plaintiff brought the instant action seeking reimbursement from defendant pursuant to MCL 500.3177; MSA 24.13177, which provides in pertinent part:

(1) An insurer obligated to pay personal protection insurance benefits for accidental bodily injury to a person arising out of the ownership, maintenance, or use of an uninsured motor vehicle as a motor vehicle may recover such benefits and appropriate loss adjustment costs incurred from the *owner or registrant* of the uninsured motor vehicle or from his or her estate (emphasis added).

Plaintiff asserts that defendant was the owner and/or registrant of the uninsured 1984 Mazda at the time of the accident and therefore, defendant is liable to plaintiff for reimbursement of benefits paid to Maurice Thomas.

Defendant presented to the lower court a copy of a written receipt and affidavits from the defendant and William Thomas which established that there was a bona fide, 'arms length' sale of the 1984 Mazda for \$400 on June 15, 1995. On that date, defendant signed the certificate of title and gave it to William Thomas. It is disputed whether defendant removed the license plate or whether he inadvertently left it on the vehicle after signing over the title to William Thomas.¹ Regardless of whether the license plate was left on the vehicle, the lower court found that there was in fact, a bona fide sale which transferred ownership of the vehicle from defendant to William Thomas.

The court further found that defendant was not the registrant of the vehicle at the time of the accident pursuant to MCL 257.234; MSA 9.1934, which provides in part:

(2) Unless the transfer is made and the fee paid within 15 days, the vehicle shall be considered to be *without registration*, the secretary of state may repossess the license plates, and transfer of the vehicle ownership may be effected and a valid registration acquired thereafter only upon payment of a transfer fee of \$15.00 in addition to the fee provided for in section 806 (emphasis added).

Because the vehicle title and registration were not transferred by William Thomas within fifteen days of the sale, the court found that the vehicle was unregistered at the time of the accident, and, therefore, defendant could not have been the registrant of the vehicle.

The court also based its decision upon *Allstate Ins Co v Sentry Ins Co*, 191 Mich App 66; 477 NW2d 422 (1991), which applied MCL 257.234; MSA 9.1934 in finding that the former owner of a vehicle was not the registrant. In *Allstate*, the former owner of the vehicle, Crosby, signed the title of the vehicle over to her daughter, Barbara, shortly before Crosby died of a terminal illness. Crosby had an insurance policy for the vehicle through Sentry which expired after the accident occurred.

Barbara filed an application for a new certificate of title and received it prior to the accident. However, Barbara did not apply for a new registration, nor did she inform Sentry of the transfer of ownership. Barbara's husband was involved in an accident while driving the vehicle. The Court found that Crosby was no longer the registrant at the time of the accident because the vehicle was deemed unregistered when Barbara failed to obtain registration within fifteen days of the transfer of ownership. *Allstate, supra*, at 67-71.

Plaintiff argues that defendant did not properly transfer title to his vehicle because the transfer was not registered with the Secretary of State, and defendant failed to remove his license plate as required by MCL 257.233; MSA 9.1933. Plaintiff relies upon *Cason v Auto Owners*, 181 Mich App 600; 450 NW2d 6 (1989). In *Cason*, Leon transferred ownership of the automobile to his daughter Roxanne a month prior to the accident, but Roxanne did not attempt to transfer title or the registration into her name until approximately two months after the accident. Because the registration of the vehicle was still in Leon's name and Leon's no-fault policy was still in effect at the time of the accident, the court found that Leon's personal protection insurance coverage with Auto Owners was still in effect, and Auto Owners was required to pay PIP benefits to the plaintiff. *Cason, supra*, at 608-09.

The lower court found *Cason* to be distinguishable from *Allstate* "[b]ecause the sale of the automobile was to a family member and the original owner maintained insurance on said automobile until after the accident in question." In our judgment, the lower court's distinction is erroneous. *Allstate*, like *Cason*, involved a sale to a family member and the original owner had an insurance policy on the vehicle which did not expire until after the accident. The fact that the transfer of title was registered with the Secretary of State in *Allstate* is the only distinction between *Allstate* and *Cason*. However, that distinction would have no effect on the application of MCL 257.234; MSA 9.1934 in *Allstate*. Moreover, because *Allstate* was decided after 1990, it takes precedence, pursuant to MCR 7.215(H)(1), over conflicting decisions rendered prior to 1990.

Plaintiff also relies upon *Clevenger v Allstate Ins Co*, 443 Mich 646; 505 NW2d 553 (1993). In *Clevenger*, the Court found the former owner's insurer liable for benefits when the new owner was in an accident within twenty-four hours after purchasing the vehicle. The Court found persuasive the fact that the former owner left her license plate on the car and the registration and insurance certificate in the glove box for the new owner to use during the weekend until he could transfer the registration and obtain insurance on Monday. The Court concluded that the former owner voluntarily remained the insuring registrant of the automobile and found that her insurer had a duty to defend and indemnify her and the purchaser pursuant to the express terms of the insurance contract. *Clevenger, supra*, at 661-62. In another recent case, this Court held that a seller who removes the license plate, registration and certificate of insurance from the vehicle after a bona fide sale loses his status as owner and as registrant, and thus has no remaining interest in the vehicle after the sale. *Allstate Ins Co v State Farm*, 230 Mich App 434, 440-41; 584 NW2d 355 (1998).

The case at bar can be distinguished from *Clevenger* and *State Farm* in that such cases both involved accidents that occurred within hours of the sale of the vehicle and the sellers' insurance policies were not canceled prior to the accidents. The application of MCL 257.234; MSA 9.1934 was not an issue in either case. However, in the case at bar the accident occurred more than six months after the

bona fide sale of the vehicle to William Thomas and defendant had canceled his insurance on the vehicle prior to the accident. Pursuant to MCL 257.234; MSA 9.1934, the vehicle became unregistered when William Thomas failed to register the vehicle in his name within fifteen days of the bona fide sale.

Plaintiff also relies on MCL 257.37; MSA 9.1837 which defines the “owner” of a motor vehicle as “a person who holds the legal title of a vehicle.” However, whether or not the license plate was left on the vehicle, the trial court determined that there was, in fact, a bona fide sale which transferred ownership of the vehicle from defendant to William Thomas, including the signing over of the certificate of title. Plaintiff’s reliance to the contrary upon *AllState Ins Co v Demps*, 133 Mich App 168; 348 NW2d 720 (1984), is unavailing. Indeed, *Demps* directly supports the instant decision. The Court in *Demps* stated that the sale of a motor vehicle which did not include a transfer of the certificate of title was void and the seller remained the owner of the vehicle. However, the Court proceeded to observe:

Michigan courts have held that the sale of a motor vehicle which did not include a transfer of certificate of title as required by law was void, such that the vendor remained the owner of the vehicle. . . . However, the courts have been reluctant to find lesser defects, even those involving statutory violations, fatal to the transfer of ownership. [*Id.* at 174; citations omitted.]

The Court further quoted MCL 257.240; MSA 9.1940 as follows:

The owner of a motor vehicle who has made a bona fide sale by transfer of his title or interest and who has delivered possession of such vehicle and certificate of title thereto properly endorsed to the purchaser or transferee shall not be liable for any damages thereafter resulting from negligent operation of such vehicle by another. [*Id.* at 175; see also *Long v Thunder Bay Mfg Corp*, 86 Mich App 69, 70; 272 NW2d 337 (1978).]

The court then concluded that an otherwise bona fide sale was not affected merely by the seller’s failure to remove the license plates. *Id.* at 175. Thus, the trial court here correctly concluded that defendant was no longer either the owner or registrant of the vehicle at the time of the accident.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman

/s/ Joseph B. Sullivan

¹ According to plaintiff, the fact that defendant failed to remove the license plate from the vehicle at the time of the sale is uncontested. In fact, defendant’s appellate counsel states that defendant inadvertently failed to remove the license plate from the vehicle. However, defendant’s affidavit, which was submitted with a motion to set aside default prior to defense counsel’s appearance in this case, stated that the license plates were removed and kept by defendant and were not present on the vehicle at the

time of sale. Defendant's affidavit raises a question of fact as to whether defendant left the license plate on the vehicle when he sold it to William Thomas. This fact was not material to the ultimate findings in the lower court, although it was an issue in the cases relied upon by plaintiff.