

STATE OF MICHIGAN
COURT OF APPEALS

FRANCISCO J. GUIJOSA, Personal
Representative of the Estate of JOSE ROBERTO
GARCIA,

Plaintiff-Appellant,

v

LAWRENCE A. KAYLOR,

Defendant-Appellee.

UNPUBLISHED
December 19, 2000

No. 218534
Ingham Circuit Court
LC No. 98-087748-NI

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff, the personal representative of the estate of the decedent Jose Roberto Garcia, filed a complaint against defendant under the civil liability act, also known as the owner's liability statute, MCL 257.401; MSA 9.2101(1), alleging that defendant was liable as the owner of a negligently driven vehicle involved in an accident that caused the decedent's death. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that no genuine issue of material fact existed regarding plaintiff's claim under the owner's liability statute, and the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*; MSA 17.237(101) *et seq.*, barred plaintiff's claim. The trial court granted defendant's motion pursuant to MCR 2.116(C)(10), finding no genuine issue of material fact regarding defendant's ownership of the vehicle in question.

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition because there was a question of material fact regarding ownership of the truck. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden, supra* at 119. In evaluating a motion under this subsection, this Court considers affidavits, pleadings, depositions,

admissions and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. MCL 2.116(G)(5); *Maiden, supra* at 119-120.

Under § 401 of the owner's liability statute, liability may be imposed on the owner of a motor vehicle for an accident involving negligent operation of a vehicle by anyone operating the vehicle with the owner's express or implied consent. MCL 257.401; MSA 9.211(1); *Latham v National Car Rental Systems, Inc*, 239 Mich App 330, 334; 608 NW2d 66 (2000). The purpose of this statute is to place the risk of damage or injury on the person who has ultimate control of the motor vehicle as well as the person in immediate control. *DeHart v Joe Lunghamer Chevrolet, Inc*, 239 Mich App 181, 185; 607 NW2d 417 (2000). The definition of "owner" in the Motor Vehicle Code includes "a person who holds the legal title of a vehicle." MCL 257.37(b); MSA 9.1837(b); *Basgall v Kovach*, 156 Mich App 323, 327; 401 NW2d 638 (1986). However, ownership of a vehicle is not "cast in stone," *Goins v Greenfield Jeep Eagle*, 449 Mich 1, 5; 534 NW2d 467 (1995), and may be transferred by complying with the following steps provided in MCL 257.233; MSA 9.1933:

(8) The owner shall indorse on the back of the certificate of title 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.

(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 shall be the date of execution of either the application for title or the certificate of title.

After one validly transfers title, the transferor is no longer considered an owner of the vehicle and is relieved of any liability associated with its use. MCL 257.240; MSA 9.1940.

In this case, the presence of defendant's name on the certificate of title for the vehicle at the time of the accident created a presumption that defendant was an owner of the vehicle. *Brown v Pointer*, 41 Mich App 539, 545; 200 NW2d 756 (1972), rev'd on other grounds 390 Mich 346; 212 NW2d 201 (1973); *Basgall, supra* at 327. However, defendant presented uncontested evidence that he substantially complied with the transfer of title statute sufficient to rebut the presumption of ownership. The undisputed evidence was that defendant purchased the vehicle for his employer Discount Trees at an auction¹ and was fully reimbursed for the purchase. Immediately thereafter, defendant signed a power of attorney authorizing Kimberly Dudley, Discount Trees' account manager, to "sign [defendant's] name to legal documents pertaining to the sale or purchase" of the truck and to remove his name from the title as owner of the vehicle

¹ Defendant was the nursery production manager for Discount Trees and, in this capacity, was responsible for purchasing and acquiring property and equipment for the business.

and replace Discount Trees' name as the owner. Indeed, Dudley testified that she executed the proper paperwork to remove defendant's name from the title when she initially registered and titled the vehicle; however, due to an oversight, his name was not actually removed from the title. Further, the evidence showed that after Dudley filed the paperwork for a change of title, all annual registrations for the vehicle were sent to Discount Trees at its business address, indicating that the Secretary of State recognized Discount Trees as the official owner of the vehicle. Additionally, Discount Trees placed its logo on the truck's door, maintained the vehicle, purchased insurance for the vehicle and paid taxes for the vehicle. Defendant never owned keys to the truck and never paid for gas or other expenses for the truck. Finally, defendant, agents of Discount Trees, and Joshua Ridner, the employee who was driving the vehicle at the time of the accident, all testified by deposition and affidavit that defendant was never considered the owner of the vehicle and it was at all times believed that Discount Trees was the sole owner of the vehicle. Plaintiff presented no evidence to the contrary.²

On this record, we conclude as a matter of law that defendant presented sufficient evidence to rebut the presumption of ownership, *Brown, supra* at 552, and plaintiff failed to submit any evidence to the contrary to establish a genuine factual dispute on this issue. *Maiden, supra*. Defendant substantially complied with the statutory transfer of title requirements because he had done all he could to effectuate the transfer of ownership of the vehicle to Discount Trees and did not receive any notice or indication from his employer that his name remained on the title. See *Brown, supra* at 552.³ Viewing the uncontested evidence in a light most favorable to plaintiff, we conclude that the trial court did not err in granting summary disposition to defendant under MCR 2.116(C)(10).⁴

In light of our decision that the trial court properly granted summary disposition to defendant under the owner's liability statute, we need not address whether plaintiff's claim was barred under the WDCA.

² We additionally note that there is nothing in the record to suggest that Discount Trees and defendant colluded to retain defendant's name on the vehicle for improper purposes.

³ Other cases in which substantial compliance with the Motor Vehicle Code's requirements was sufficient to transfer title to a vehicle include *Schomberg v Bayly*, 259 Mich 135, 139; 242 NW2d 866 (1932) (filing certificate of title after statutorily required period did not invalidate ownership transfer); *Zechlin v Bridges Motor Sales*, 190 Mich App 339, 342; 475 NW2d 60 (1991) (improper vehicle registration is not fatal to transfer of ownership); *Long v Thunder Bay Mfg Corp*, 86 Mich App 69, 70; 272 NW2d 337 (1978) (failure to remove license plates did not prevent ownership transfer where the defendant delivered the vehicle with the certificate of title to the purchaser).

⁴ Given our conclusion that defendant was not an "owner" of the vehicle under the owner's liability statute, it is unnecessary for us to address whether Joshua Ridner was driving the vehicle with defendant's implicit consent at the time of the accident.

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder