STATE OF MICHIGAN

COURT OF APPEALS

RAMON SORIA and FELIPE SORIA, Plaintiffs-Appellants,	UNPUBLISHED October 26, 2001
V AAA MICHIGAN, Defendant-Appellee.	No. 216155 Wayne Circuit Court LC No. 98-800551-CK

Before: White, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendant's motion for summary disposition. We affirm in part and reverse in part.

In January 1996, Felipe Soria, an employee of Ford Motor Company, purchased a Ford Explorer for his father, Ramon Soria, at a discounted price under Ford's "A Plan." Felipe's name was placed on the certificate of title.[1] Funds were deducted from Felipe's paychecks to pay for the vehicle. However, plaintiffs claim that Ramon paid Felipe for the vehicle with "housing and other financial considerations." Plaintiffs further assert that they intended the vehicle to belong to Ramon and that Ramon would be responsible for any loss or damage to the vehicle. The insurance policy for the vehicle was placed in Ramon's name. Felipe was not included on the policy as a driver. Felipe was uninsurable because his driver's license had been revoked.[2] On September 12, 1997, while Felipe was using the vehicle, it was stolen. Defendant denied plaintiffs' insurance claim in regard to the stolen vehicle on the basis that statements Felipe made relative to the claim were not supported by the facts and circumstances revealed by defendant's investigation. Defendant subsequently canceled Ramon's insurance policy.

[1] Plaintiffs claim the vehicle was placed in Felipe's name in order to comply with "A Plan" rules. We make no determination regarding the validity of that claim given defendant does not dispute plaintiff's statement and neither party has produced a copy of the "A Plan" rules. We have scoured the record and find no evidence of the "A Plan" rules and, therefore, are unable to substantiate plaintiff's reason for titling the vehicle in Felipe's name.

[2] A person is not eligible for automobile insurance if his operator's license is under suspension or revocation. MCL 500.2103(1)(b); MSA 24.12103(1)(b).

Plaintiffs filed suit, alleging breach of insurance contract and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*.; MSA 19.418(1) *et seq*. The trial court granted defendant's motion for summary disposition, apparently concluding that Ramon lacked an insurable interest in the vehicle.[3]

On appeal, plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition with respect to their breach of contract claim because there existed questions of fact regarding whether Ramon had an insurable interest in the vehicle and whether plaintiffs misrepresented facts when applying for the insurance policy. We agree.

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). Summary disposition is appropriate only when the movant is entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of MI, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

MCL 500.3101(1); MSA 24.13101(1) requires the owner or registrant of a motor vehicle to carry insurance for personal protection, property protection, and residual liability. "Owner" is statutorily defined to include "[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." MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i); *Chop v Zielinski*, 244 Mich App 677, 679; __ NW2d __ (2001). The statutory phrase "having the use" means "using the vehicle in ways that comport with concepts of ownership . . . ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Id*. at 680, quoting *Ardt v Titan Ins Co*, 233 Mich App 685, 691; 593 NW2d 215 (1999). There may be multiple owners of a vehicle under the no-fault act. *Chop, supra* at 681.

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[3] Defendant moved for summary disposition under MCR 2.116(C)(8), but attached and relied on documentary evidence in arguing that Ramon did not have an insurable interest in the vehicle and misrepresented facts to defendant. Where a party brings a summary disposition motion under the wrong subrule, the trial court may proceed under the appropriate subrule as long as neither party is misled. *Blair v Checker Cab Co*, 219 Mich App 667, 671; 558 NW2d 439 (1996). Here, plaintiffs were not misled as they relied on their pleadings and two affidavits and argued that genuine issues of fact remained regarding whether Ramon was an owner of the vehicle and misrepresented facts to defendant. Although the trial court did not specify under which subsection it granted defendant's motion, this Court will analyze plaintiff's breach of contract claim as if the motion was granted pursuant to MCR 2.116(C)(10) because the trial court relied on facts not found in the pleadings when making its ruling as to that claim. *Velmer v Baraga Area Schools*, 430 Mich 385, 389; 424 NW2d 770 (1988).

An insurable interest is necessary to support a valid automobile liability insurance policy. *Allstate Ins Co v State Farm Mut Auto Ins Co*, 230 Mich App 434, 439; 584 NW2d 355 (1998). Whether an individual has an insurable interest is not determined by the label attached to the insured's property right, but rather, by whether the individual will suffer a direct pecuniary loss as a result of the destruction of the property. *Crossman v American Ins Co of Newark*, 198 Mich 304, 311; 164 NW 428 (1917). An individual may have an insurable interest in a motor vehicle without having title to the vehicle. See *Clevenger v Allstate Ins Co*, 443 Mich 646, 661-662; 505 NW2d 553 (1993).

In the instant case, viewing the evidence in a light most favorable to plaintiffs, we cannot conclude as a matter of law that Ramon was not, pursuant to MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i), an owner of the vehicle with an insurable interest in the vehicle. Despite the fact that the vehicle's title was in Felipe's name, plaintiffs presented evidence that plaintiffs always intended the vehicle to belong to Ramon and that Ramon reimbursed Felipe for the vehicle. Ramon insured the vehicle. On this record, there is a question of fact regarding whether Ramon asserted proprietary and possessory use over the vehicle for a period greater than thirty days as opposed to having mere incidental use under the direction or permission of another. MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i); *Chop, supra* at 679-680.

Plaintiffs further contend that defendant was not entitled to rescind ab initio Ramon's insurance policy because plaintiffs did not misrepresent any facts in procuring the policy. "[W]here an insured makes a material misrepresentation in the application for insurance, including no-fault insurance, the insurer is entitled to rescind the policy and declare it void ab initio." *Lake States Ins Co v Wilson*, 231 Mich App 327, 331; 586 NW2d 113 (1998). Rescission is justified, regardless of the intentional nature of the misrepresentation, as long as it is relied on by the insurer. *Id.* A misrepresentation regarding the number of drivers in the household may warrant rescission. *Id.* at 333-334. An insurance company has the burden of proving a claim of misrepresentation. *Szlapa v Nat'l Travelers Life Co*, 62 Mich App 320, 325; 233 NW2d 270 (1975).

Here, defendant contends that plaintiff misrepresented the facts by failing to disclose to defendant that Felipe, an unlicensed driver, was living with Ramon and would be driving the vehicle. It is undisputed that Felipe was not included on the renewal declaration certificate of insurance as a driver, Felipe's driver's license was revoked at the time the vehicle was stolen, and Felipe was using the vehicle the day it was stolen. However, those circumstances alone do not establish as a matter of law that plaintiffs misrepresented any facts to defendant.

Plaintiffs presented affidavit testimony supporting the conclusion that they communicated all insurance information only to the salesman at the auto dealer. The salesman then passed the information on to defendant. Plaintiffs claim they did not misrepresent any fact to defendant or the salesman. Plaintiffs' affidavits also suggest that it was plaintiffs' intent that the vehicle would belong to Ramon and that plaintiffs did not reside in the same household. According to plaintiffs, Felipe was using the vehicle without Ramon's permission on the date it was stolen. It is undisputed that Felipe lived at 8109 Whittaker, while Ramon lived at 8111 Whittaker at the

time the vehicle was purchased and first insured.[4] There is no evidence that plaintiffs lived in the same household when the policy was first issued.[5]

Plaintiffs argue that under these circumstances, summary disposition based on misrepresentation was inappropriate. Defendant generally argues to the contrary, but has not supported its argument with evidence establishing as a matter of law that plaintiffs misrepresented any fact. In fact, defendant has produced very little evidence supporting its claim of misrepresentation and no evidence directly contradicting plaintiffs' affidavit testimony. Defendant has merely presented one viable theory of what might have occurred in the present case. As such, defendant has failed to establish that dismissal of plaintiffs' breach of contract claim is proper. Because we cannot say as a matter of law that Ramon was not an owner of the vehicle or that plaintiffs misrepresented any fact in regard to the insurance policy, we are required to reverse the trial court's dismissal of plaintiff's breach of contract claim. *Morales, supra*.

Last, plaintiffs have not presented any argument on appeal regarding the trial court's decision to dismiss their MCPA claim. Therefore, we affirm the dismissal of that claim. An appellant may not assert error then leave it to this Court to discover or rationalize the basis of his claims and search for authority to sustain his position. *Palo Group Foster Care, Inc v Dep't of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998).

Affirmed in part and reversed in part.

/s/ Helene N. White
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

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[4] While defendant generally argues that plaintiffs lived in the same household, defendant has not presented any evidence to suggest that the upper and lower flats of the residence where plaintiffs resided were the same household for purposes of the insurance policy. There is also no evidence or argument suggesting that Ramon was not the owner of both flats and was not paying Felipe for the vehicle, in part, through "housing" as plaintiffs contend.

[5] There is some indication in the record that plaintiffs moved into the same household at some time during 1996. However, defendant does not argue that Ramon was required to provide updated information regarding the drivers residing in his household upon such a change in status or suggesting that Ramon misrepresented any facts to defendant after the initial issuance of the policy.