

STATE OF MICHIGAN
COURT OF APPEALS

SULIEMON EPPS,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant,

and

AMERISURE INSURANCE COMPANY,

Defendant.

UNPUBLISHED

October 23, 2007

No. 273014

Wayne Circuit Court

LC No. 05-502370-NF

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Defendant Auto Club Insurance Association challenges the trial court's order denying its motion to amend its answer and affirmative defenses. We reverse the trial court's order, lift the stay imposed by our Supreme Court, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when the van he was driving was struck in the rear by another vehicle. The driver of the other vehicle was uninsured. Plaintiff sought personal injury protection (PIP) benefits from defendant under a policy issued to plaintiff's relatives. Defendant refused to pay benefits on the ground that plaintiff was not a resident relative of its insureds.

Plaintiff filed suit alleging breach of contract.¹ Defendant filed an answer and affirmative defenses, and reserved the right to "assert any other Affirmative Defenses which may become apparent as a result of discovery proceedings."

¹ Plaintiff filed a first amended complaint adding Amerisure Insurance Company as a defendant. Subsequently, Amerisure was dismissed pursuant to a stipulation, and it is not involved in this (continued...)

In his deposition, plaintiff stated that he did not own the vehicle he was driving when the accident occurred; rather, the vehicle was owned by his friend, who obtained it from Della Cargile. Cargile testified in her deposition that the title to the van had not been formally transferred, and that she had given the vehicle to plaintiff for parts nearly one year prior to the accident. Cargile no longer carried insurance on the vehicle as of the date of the accident.

Defendant moved to amend its answer, and specifically its affirmative defenses, to allege that plaintiff misrepresented material facts related to the true ownership of the vehicle plaintiff was driving when the accident occurred. Defendant alleged that Cargile's deposition testimony revealed that plaintiff was an owner of the vehicle at the time the accident occurred, contrary to what plaintiff alleged in his complaint, and that because plaintiff owned the uninsured vehicle at the time the accident occurred, he was precluded from seeking PIP benefits.

The trial court denied defendant's motion, noting that plaintiff had given three depositions and had three medical examinations, that the case had gone to case evaluation and a settlement conference, that plaintiff was not the titled owner of the vehicle when the accident occurred, and that defendant had not established that plaintiff drove the vehicle for more than 30 days. The trial court concluded that allowing defendant to amend its answer would be both prejudicial to plaintiff and futile. The trial court denied defendant's motion for reconsideration.

This Court denied defendant's application for leave to appeal and motion for stay; however, our Supreme Court, in lieu of granting leave to appeal, remanded this case to this Court for consideration as on leave granted, and stayed proceedings in the trial court pending completion of the appeal.

Leave to amend should be freely given when justice so requires. MCR 2.118(A)(2). Leave to amend should not be granted in the face of undue delay, bad faith, futility, or dilatory motive on the part of the movant, or when allowance of the amendment would result in undue prejudice to the opposing party. The prejudice that would justify the denial of leave to amend is not that which would arise from the effect of the amendment on the outcome of trial, or the loss of a meritorious claim or defense. Rather, it is the prejudice that arises when amendment would preclude a fair trial. *Weymers v Khera*, 454 Mich 639, 659; 563 NW2d 647 (1997). An amendment is futile if it is legally insufficient on its face. *PT Today, Inc v Comm'r of Financial & Ins Services*, 270 Mich App 110, 143; 715 NW2d 398 (2006). Delay alone is an insufficient reason to deny leave to amend. *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 663-664; 213 NW2d 134 (1973). We review a trial court's decision on a motion to amend for an abuse of discretion. *Ostroth v Warren Regency, GP, LLC*, 263 Mich App 1, 5; 687 NW2d 309 (2004).

We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

The owner or registrant of a motor vehicle must maintain insurance on that vehicle. MCL 500.3101(1). An owner who does not maintain insurance is precluded from obtaining PIP benefits. MCL 500.3113(b). An "owner" of a motor vehicle is a person who has the use of the

(...continued)

appeal.

vehicle “for a period that is greater than 30 days.” MCL 500.3101(2)(g)(i). A person need not actually have used the vehicle for more than 30 days prior to the accident. Rather, the statute requires only that the person have had the right to use the vehicle for the requisite period. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 528-532; 676 NW2d 616 (2004). A vehicle may have multiple owners for purposes of the no-fault act. *Chop v Zielinski*, 244 Mich App 677, 681; 624 NW2d 539 (2001).

We reverse the trial court’s order denying defendant’s motion for leave to amend the answer and affirmative defenses, lift the stay imposed by our Supreme Court, and remand this matter to the trial court for further proceedings. It is undisputed that the vehicle plaintiff was driving when the accident occurred was uninsured. Thus, if defendant could establish that plaintiff was an “owner” of the vehicle as that term is defined in MCL 500.3101(2)(g)(i), defendant would not be obligated to pay plaintiff PIP benefits under plaintiff’s relatives’ policy. MCL 500.3113(b). The trial court, in denying defendant’s motion to amend, noted specifically that plaintiff was not the titled owner of the vehicle. However, that fact is not determinative of ownership. *Chop, supra*.

At issue is whether plaintiff had the right to use the vehicle for more than 30 days prior to the accident. Cargile testified that she gave the vehicle to plaintiff, but plaintiff testified that Cargile gave the vehicle to his friend. However, other evidence, including two traffic tickets issued to plaintiff in November 2003 and June 2004 and an investigation conducted in June 2005,² constitute evidence that plaintiff used the vehicle.

The evidence created a question of fact as to whether plaintiff had use of the vehicle for more than 30 days prior to the accident. An amendment of defendant’s affirmative defenses to allege that plaintiff owned the uninsured vehicle and thus was precluded from obtaining PIP benefits would be neither prejudicial nor futile. *Weymers, supra*; *PT Today, supra*. Defendant’s delay in bringing the motion to amend was insufficient, in and of itself, to justify denying the motion. *Ben P Fyke & Sons, supra*. We hold that the trial court abused its discretion by denying defendant’s motion to amend its answer and affirmative defenses. *Ostroth, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Richard A. Bandstra
/s/ Alton T. Davis

² This evidence was presented in support of defendant’s motion for reconsideration. The trial court was not required to consider the evidence because it could have been presented in support of the original motion for leave to amend. See *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).