STATE OF MICHIGAN

COURT OF APPEALS

PIONEER STATE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

END ZONE AUTO, INC.,

Defendant,

and

HARTFORD INSURANCE OF THE MIDWEST,

Defendant-Appellee.

UNPUBLISHED
October 30, 2007

No. 274802
Presque Isle Circuit Court
LC No. 05-002694-ND

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

PER CURIAM.

Plaintiff Pioneer State Mutual Insurance Company claims an appeal from the trial court's order granting summary disposition in favor of defendant Hartford Insurance of the Midwest. We reverse the trial court's decision, and remand this matter for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On the evening of December 27, 2004, Derec Kramer, an employee of defendant End Zone Auto, Inc., was repairing a truck at the home of David Crull, the owner of End Zone. The truck was owned by Leo Peters, and insured by Hartford. Peters had purchased the truck at End Zone, and had taken the truck to End Zone, complaining of a leak in the fuel tank. Kramer left the truck unattended for a short time, and during his absence, a fire broke out in the garage.

Pioneer, the insurer of Crull's home, paid benefits to Crull for the damage to the garage and then, as subrogee of Crull, filed suit against Hartford and End Zone. Pioneer alleged that the damage was not caused by the activity of an automobile repair business, and that pursuant to MCL 500.3121, Hartford was liable for payment of benefits for the damage to the garage. Pioneer also alleged that End Zone was liable under the doctrine of respondeat superior for Kramer's negligence, and was obligated to reimburse Pioneer for the benefits paid to Crull.

Both End Zone and Hartford moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). End Zone argued that MCL 500.3135(3) abolished tort liability for all claims arising from the ownership, maintenance, or use of a motor vehicle for which the security required by MCL 500.3101 was in effect. Hartford adopted the argument put forth by End Zone. Hartford also argued that the damage to Peters' truck occurred within the course of a business of vehicle repair. Therefore, Hartford concluded, pursuant to MCL 500.3121, that it was not obligated to reimburse Pioneer for payments made to Crull.

The trial court granted the motions for summary disposition, concluding that Hartford was entitled to summary disposition because the truck was being repaired during the course of End Zone's business of selling and servicing vehicles, MCL 500.3121, and that End Zone was entitled to summary disposition because tort liability had been abolished for claims arising from the ownership, maintenance, or use of a vehicle. MCL 500.3135(3).

Pioneer moved for reconsideration. Pioneer noted that Crull testified in his deposition that End Zone did not offer repair services, and that the repair work on Peters' truck was not done in the course of End Zone's business. Furthermore, Pioneer noted that in *Allied Property & Casualty Ins Co v Pioneer State Mut Ins Co*, 272 Mich App 444, 450; 726 NW2d 83 (2006), this Court held that a no-fault insurer is not liable to pay benefits for property damage caused by an auto repair business, even if the business is conducted in a private residence. Pioneer reasoned that because the damage to the garage was not caused by an auto repair business, Hartford was liable for those damages, and was obligated to reimburse Pioneer for benefits paid to Crull. The trial court denied Pioneer's motion for reconsideration, finding that its previous decision that the repairs to Peters' truck were performed in the course of End Zone's business was consistent with the holding in *Allied Property*, *supra*.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). We also review an issue of statutory interpretation de novo. *Anderson v Myers*, 268 Mich App 713, 714; 709 NW2d 171 (2005).

MCL 500.3121(1) provides:

> Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125, and 3127. However, accidental damage to tangible property does not include accidental damage to tangible property, other than the insured motor vehicle, that occurs within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles.

This statute clearly provides that a no-fault insurer is not liable to pay benefits for accidental property damages that occur within the course of a business of repairing or servicing vehicles. This is the case regardless whether the business is conducted at an auto dealership, a repair shop, or a residence. *Allied Property*, *supra* at 449-450.

Pioneer argues that the trial court erred by granting Hartford's motion for summary disposition.[1] We agree.

In *Allied Property, supra*, the homeowner's son operated a vehicle repair business in the garage of the insured residence. While performing a repair for a friend, the insured's son caused a fire that damaged the home. The homeowner's insurer paid benefits for the loss, and then filed suit seeking reimbursement from the vehicle insurer. The vehicle insurer maintained that the damage occurred during the course of business of repairing motor vehicles; therefore, it was not liable for payment of benefits under MCL 500.3121(1). The trial court granted the vehicle insurer's motion for summary disposition. This Court affirmed, finding that no genuine issue of fact existed as to whether the homeowner's son operated a vehicle repair business in the garage. The son admitted that he stored equipment in the garage, had regular customers, and charged fixed rates for his work. This Court found that the facts that the son was not a licensed mechanic, did not have a registered business, did not keep regular business hours, and performed the repair that caused the damage gratuitously did not mandate a conclusion that he did not operate a business. *Allied Property, supra* at 450-452.

We reverse the trial court's decision granting summary disposition for Hartford, and remand this matter to the trial court for further proceedings. The undisputed evidence showed that Kramer, an employee of End Zone, repaired Peters' truck at Crull's residence. Crull testified that End Zone did not offer repair services, and was not a licensed repair facility. Crull indicated that Kramer agreed to repair Peters' truck as a personal favor to him. However, Peters informed the Presque Isle Sheriff's Department that prior to December 27, 2004, he had taken the truck to End Zone for repairs on two other occasions. Peters stated that he did not know that the truck was to be repaired at Crull's residence on December 27, 2004. Kramer informed the Sheriff's Department that he repaired vehicles at End Zone,[2] and that on December 27, 2004, Crull asked him to work overtime to repair Peters' truck at Crull's residence.

This evidence creates a genuine issue of fact as to whether the damage to Crull's garage occurred in the course of a vehicle repair business. On the one hand, the facts that End Zone was not a licensed repair facility, that the repair took place at a location other than End Zone's facility, and that the repair was (apparently) to be performed at no cost to Peters do not preclude a conclusion that the repair was performed in the course of a vehicle repair business. *Allied Property*, *supra* at 450-451. But, on the other hand, the record does not reveal whether End Zone had regular repair customers or an established rate for repairs, as did the homeowner's son in *Allied Property*.

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[1] Pioneer does not challenge the trial court's decision granting summary disposition for End Zone.

[2] The incident report does not clarify whether by this statement Kramer meant that he repaired vehicles for customers, or whether he repaired vehicles so that they could be sold by End Zone. Kramer's deposition was not taken because he could not be located.

The trial court erred in finding that no genuine issue of fact existed as to whether the damage to Peters' truck occurred during the course of a vehicle repair business, and we reverse the trial court's decision granting summary disposition to Hartford.

We reverse and remand. We do not retain jurisdiction.

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