

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM BLAKE, Personal Representative of
the Estate of JAMES HARDY III,

UNPUBLISHED
November 6, 2007

Plaintiff-Appellant,

v

No. 275036
Wayne Circuit Court
LC No. 06-605529-NF

ESURANCE INSURANCE COMPANY,

Defendant-Appellee,

and

PROGRESSIVE INSURANCE COMPANY,

Defendant.

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

PER CURIAM.

Plaintiff appeals as of right from a circuit court order that granted defendant Esurance Insurance Company's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent was fatally injured while riding a motorcycle. An automobile that left the scene allegedly caused the accident. This appeal concerns plaintiff's attempt to recover uninsured motorist benefits and personal injury protection benefits under a policy issued by defendant to the mother of the decedent, Beverly Hardy.

Defendant filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10). Defendant asserted that an exclusion to uninsured motorist coverage applies and that plaintiff was not the real party in interest with respect to the recovery of survivors' loss benefits. The trial court granted defendant summary disposition, based in part on a determination of the decedent's residency, an issue that had not been challenged by defendant.

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).

I. Uninsured Motorist Coverage

On appeal, plaintiff contends that the trial court erred in determining that plaintiff's decedent "owned" the motorcycle for the purposes of applying the following exclusion to uninsured motorist coverage:

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:

1. By an "insured" while "occupying," or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. . . .

Plaintiff contends that the exclusion did not apply because plaintiff's decedent was not the legal title owner of the motorcycle. The motorcycle was registered in the name of Latanya Harris. Plaintiff relies on *Auto-Owners Ins Co v Hoadley*, 201 Mich App 555; 506 NW2d 595 (1993), an action for personal protection benefits following a motorcycle accident in which the Court discussed the definitions of "owner," "motorcycle" and "motor vehicle" in the no-fault act, MCL 500.3101(2).

However, plaintiff's argument is flawed because the provisions of the no-fault act are not applicable in determining uninsured motorist coverage. "Uninsured motorist benefit clauses are construed without reference to the no-fault act because such insurance is not required under the act." *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 533; 676 NW2d 616 (2004). Where there is nothing in the plain language of the policy to support the application of a statutory definition of "owner" to the nonstatutory uninsured motorist coverage, the statutory definition should not be imported into the policy. *Id.* at 534.

As explained in *Twichel, supra*, dictionary definitions of ownership indicate "*possession, control, and dominion* are among the primary features of ownership." Although the motorcycle was registered in Harris's name, she provided a statement, confirmed with an affidavit attesting to the accuracy of the transcription, indicating that plaintiff's decedent purchased the motorcycle, kept it in his possession, and made all of the payments. The motorcycle was registered in her name because plaintiff's decedent was unable to get credit approval in the amount that he required. She did not have a set of keys for it and had never ridden it. He arranged for the insurance. Under these circumstances, which plaintiff did not dispute, the trial court correctly concluded that plaintiff's decedent "owned" the motorcycle.

II. Personal Injury Protection Benefits

On appeal, plaintiff argues that the trial court erred in ruling as a matter of law that the benefits were not available because the decedent did not reside with Beverly Hardy. We agree with plaintiff that the record showed a question of fact concerning the decedent's residence.

The State of Michigan Traffic Crash Report lists the decedent's address as "6682 Lakeview Blvd, Apt 16206, Detroit [sic] 48185." The Detroit Police Department Crime Report lists the decedent's address as 16145 Heyden, Detroit 48228. The decedent's driver's license listed his address as 6682 Lakeview Blvd Apt 16206, Westland, Michigan 48185. Beverly

Hardy testified that as of May of 2005, the decedent was living with her on Heyden. He had his own bedroom and slept there the night before the accident; he never lived anywhere else. The decedent's father, James Hardy, Jr., also testified that in the five years before the accident, the decedent never lived anywhere else. According to the recorded statement of Harris, confirmed by her affidavit, the decedent lived on Heyden Street with his mother, but the time period to which Harris was referring is unclear. And, when the interviewer discussed insurance on the motorcycle and referenced the decedent providing an address of 7320 Wilderness Park in Westland, Harris responded, "That was his address. He was living between there and I guess his mother's house. I don't know that address." The conflicting evidence presented a genuine issue of material fact concerning the decedent's residence, and the trial court erred in resolving the issue as a matter of law.

Defendant argues that even if this Court determines that the trial court's ruling was erroneous, this Court should not reverse the dismissal of plaintiff's claim for survivors' loss benefits because plaintiff was not the real party in interest to pursue that claim. This argument was the focus of defendant's motion for summary disposition with respect to the personal protection benefits.

An action must be prosecuted in the name of the real party in interest. MCR 2.201(B). "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). A personal representative may sue in his own name without joining the party for whose benefit the action is brought. MCR 2.201(B)(1). However, MCR 2.201(B)(1) does not allow a personal representative to sue on behalf of a person on a claim that has no relationship to the estate. *Noble v McNerney*, 165 Mich App 586, 601-602 n 4; 419 NW2d 424 (1988).

MCL 500.3108 governs survivors' loss benefits, which are losses and expenses to "dependents":

Except as provided in subsection (2), personal protection insurance benefits are payable for a survivor's loss which consists of a loss, after the date on which the deceased died, of contributions of tangible things of economic value, not including services, that dependents of the deceased at the time of the deceased's death would have received for support during their dependency from the deceased if the deceased had not suffered the accidental bodily injury causing death and expenses, not exceeding \$20.00 per day, reasonably incurred by these dependents during their dependency and after the date on which the deceased died in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit if the deceased had not suffered the injury causing death. . . .

MCL 500.3110 addresses the requirements for being a "dependent."

(1) The following persons are conclusively presumed to be dependents of a deceased person:

(a) A wife is dependent on a husband with whom she lives at the time of his death.

(b) A husband is dependent on a wife with whom he lives at the time of her death.

(c) A child while under the age of 18 years, or over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom he lives or from whom he receives support regularly at the time of the death of the parent.

(2) In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts as they exist at the time of death.

(3) The dependency of a surviving spouse terminates upon death or remarriage. The dependency of any other person terminates upon the death of the person and continues only so long as the person is under the age of 18 years, physically or mentally incapacitated from earning, or engaged full time in a formal program of academic or vocational education or training.

The decedent's estate was not within the categories conclusively presumed to be a dependent. The facts as they exist at the time of death, MCL 500.3110(2), do not support a determination that the estate was a dependent of the decedent; the estate did not exist at the time of death.

In response to defendant's argument in its motion for summary disposition, plaintiff stated: "That concerning survivor benefits, as the estate consist [sic] of dependents, there exist [sic] a create [sic] a genuine issue of material fact that a financial loss to the Plaintiff resulted from James Hardy, III's fatal injuries." By this, plaintiff seems to contend that the fact that beneficiaries of the estate include dependents means that the estate may be deemed a dependent. However, plaintiff does not cite any authority to support that contention, and this Court need not develop the argument and search for authority to support it. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

With respect to plaintiff's request for survivors' loss benefits, the trial court reached the right result, albeit for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). However, inasmuch as defendant did not challenge plaintiff's right to recover other personal protection benefits, including medical and funeral expenses, the trial court's summary disposition order rejecting those claims is reversed.

We affirm in part, reverse in part, and remand. We do not retain jurisdiction.

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