STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR BURNETT, JR., Plaintiff-Appellee,	UNPUBLISHED July 17, 2008
v	No. 278647 Wayne Circuit Court
FARMERS INSURANCE EXCHANGE, Defendant-Appellant.	LC No. 06-617948-NF

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment for plaintiff following the grant of plaintiff's motion for partial summary disposition on the issue of vehicle ownership. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

An insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105(1). If a person is entitled to claim benefits under § 3105 but no personal protection insurance is applicable to the injury, the person may recover benefits through an assigned claims plan. MCL 500.3172(1). A person who is disqualified from receiving benefits under a policy pursuant to §§ 3105 through 3116 is likewise disqualified from receiving benefits under the assigned claims plan. MCL 500.3173.

MCL 500.3113(b) provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident . . . [t]he person was the owner or registrant of a motor vehicle . . . involved in the accident with respect to which the security required by section 3101 . . . was not in effect.

There is no dispute that the vehicle at issue in this case, which was registered to plaintiff's mother, was required to be insured under MCL 500.3101(1), but was not insured. We must determine whether plaintiff qualifies as an owner of that vehicle.

MCL 500.3101(2)(g)(i) provides that an owner includes "[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." In *Ardt v Titan Ins Co*, 233 Mich App 685, 690-691; 593 NW2d 215 (1999), this Court stated that when ownership is predicated on this subsection,

> "having the use" of a motor vehicle . . . means using the vehicle in ways that comport with concepts of ownership. The provision does not equate ownership with any and all uses for thirty days, but rather equates ownership with "having the use" of a vehicle for that period. Further, we observe that the phrase "having the use thereof" appears in tandem with references to renting or leasing. These indications imply that ownership follows from proprietary or possessory usage, as opposed to merely incidental usage under the direction or with the permission of another. [Footnote omitted.]

In *Ardt*, the plaintiff was the title owner of the uninsured vehicle. The plaintiff's son Robert, who lived with the plaintiff, was driving the truck when he was involved in an accident. *Id.* at 687. The plaintiff testified that her son "drove the truck only a few times and then normally only for such minor purposes as having it washed, albeit over the space of more than thirty days," whereas a defense witness's testimony indicated that "Robert was a regular driver of the truck for more than thirty days." *Id.* at 689. In light of the construction of the statute, this Court determined that "the spotty and exceptional pattern of Robert's usage to which [his mother] attested may not be sufficient to render Robert an owner of the truck" but "the regular pattern of unsupervised usage to which the defense witness attested may well support a finding that Robert was an owner for purposes of the statute" and, therefore, a question of fact existed for the jury. *Id.* at 691.

Where the undisputed evidence shows that the driver has nearly exclusive use of the vehicle for more than 30 days, using it for his or her regular transportation needs, the driver is considered an owner as a matter of law. *Kessel v Rahn*, 244 Mich App 353, 357-358; 624 NW2d 220 (2001); *Chop v Zielinski*, 244 Mich App 677, 680-682; 624 NW2d 539 (2001).

The Supreme Court has since held that the person "having the use" of the vehicle need not actually have used it for more than 30 days. Indeed, the person need not have used the vehicle at all. "The statute merely contemplates a situation in which the person *is renting or using* a vehicle for a period that is greater than thirty days." *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530-531; 676 NW2d 616 (2004) (emphasis in original). The focus is "on the nature of the person's right to use the vehicle" at the inception of the arrangement. *Id.* at 530-531.

The evidence in this case was not sufficient to create a genuine issue of fact regarding plaintiff's ownership of the vehicle and, therefore, the trial court properly granted summary disposition for plaintiff on that issue. The evidence showed that plaintiff lived with his mother, the titled owner of the uninsured vehicle. He did not have keys to the car or even have access to the two sets of keys, which were in his parents' possession or locked in their bedroom. He did not have permission to use the car as needed and when he asked to use the car, his requests were

denied. He had used the car no more than five times since it was purchased, and then only at his mother's request to run an errand for her. This evidence clearly indicates that there was no arrangement between plaintiff and his mother under which plaintiff had a continuing right to use the vehicle for more than 30 days. At most, they had a series of discrete arrangements under which plaintiff was given the right to use the vehicle for a limited time for a limited purpose. In other words, plaintiff's use of the vehicle was "spotty and exceptional" rather than regular and unsupervised. Therefore, the trial court did not err in finding that there was no genuine issue of fact regarding plaintiff's ownership of the vehicle and properly granted judgment for plaintiff on that issue.

Affirmed.

/s/ Henry William Saad
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello