

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANTHONY RICHARDSON, Deceased Minor by  
his Mother, ANDREA JONES,

Plaintiff-Appellee,

v

CARLOS R. CROCKETT,

Defendant,

and

WILLIAM T. BOSLEY,

Defendant-Appellant.

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UNPUBLISHED  
September 9, 2008

No. 279479  
Wayne Circuit Court  
LC No. 04-434938-NI

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant, William T. Bosley, appeals as of right from the trial court's order granting plaintiff a consent judgment following the denial of his motion for summary disposition. We affirm.

On October 19, 2003, the minor decedent, Anthony Richardson, was walking down the street when a vehicle driven by defendant Crockett struck him.<sup>1</sup> Plaintiff filed a complaint alleging that defendant was the legal owner of the vehicle at the time of the accident. In his deposition, defendant, a firefighter, acknowledged that he purchased cars from auction and sold the vehicles to other individuals, although he did not have a license to sell vehicles. Defendant further testified that he sold the vehicle to Crockett. However, he did not have a bill of sale, receipt, or cancelled check to verify the sale. Rather, he testified that Crockett paid cash for the vehicle. Although defendant testified that he gave Crockett title to the vehicle, there was no witness to any signature on the alleged transfer of title.

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<sup>1</sup> A default judgment was entered against defendant Crockett, and that judgment is not at issue in this appeal. Accordingly, we will refer to Bosley as "defendant."

In his affidavit, defendant opined that he did not own or have possession of the vehicle driven by Crockett. Rather, “in August 2003,” defendant opined that he sold the vehicle allegedly involved in the auto accident “to a gentleman who [he] believe[d] to be” Crockett. However, in his deposition when asked to provide an estimate of the date of the sale, defendant was unable to do so. When questioned regarding a season, defendant testified, “The fall. Late summer, early fall.” However, when asked to describe what Crockett looked like, defendant responded, “I don’t remember.”

Defendant moved for summary disposition, asserting that he was not the owner of the vehicle at the time of the auto accident. The trial court denied the motion for summary disposition. After entry of a consent judgment, defendant appeals as of right from the trial court’s judgment that expressly preserved the right to appeal the summary disposition ruling.

Defendant alleges that the trial court erred in failing to grant summary disposition in light of MCL 257.240. We disagree. A trial court’s decision on a motion for summary disposition is reviewed de novo. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 196; 747 NW2d 811 (2008). “[W]here the truth of a material factual assertion of a movant’s affidavit depends on the affiant’s credibility, there inheres a genuine issue to be decided at a trial by the trier of fact and a motion for summary judgment cannot be granted.” *Brown v Pointer*, 390 Mich 356, 354; 212 NW2d 201 (1973). Summary disposition is suspect where motive and intent are at issue or where the credibility of the witness is crucial. *Vanguard Ins Co v Bolt*, 204 Mich App 271, 276; 514 NW2d 525 (1994). The trial court may not make findings of fact or weigh credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005). This Court is liberal in finding a genuine issue of material fact that requires a trial to resolve. *Id.*

The goal of statutory construction is to discern and give effect to the intent of the Legislature by examining the most reliable evidence of its intent – the words of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). If the statutory language is unambiguous, appellate courts presume that the Legislature intended the plainly expressed meaning, and further judicial construction is neither permitted nor required. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000).

At the time of the incident giving rise to this action, MCL 257.240<sup>2</sup> provided:

The owner of a motor vehicle who has made a bona fide sale by transfer of his or her title or interest and who has delivered possession of the vehicle and the certificate of title thereto properly endorsed to the purchaser or transferee shall not be liable for any damages or a violation of law thereafter resulting from the use or ownership of the vehicle by another.

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<sup>2</sup> Effective October 1, 2005, MCL 257.240 was amended to provide that an owner was not liable provided that the owner went to the secretary of state with the purchaser to effectuate the transfer of title and maintained a record of the sale for a minimum of 18 months. MCL 257.240(2)(a), (b). This statute was not in effect at the time of the alleged transfer of title at issue.

Defendant contends that his affidavit and deposition testimony establish that he is not liable for any damages because he made a bona fide sale by the transfer of the vehicle before the accident. Specifically, it is asserted that defendant “transferred a properly endorsed certificate of title to” Crockett. However, the truth of the assertions raised in the affidavit and the deposition testimony present an issue to be decided by the trier of fact. *Brown, supra*. Here the credibility of defendant is crucial because it is the sole evidence of any transfer, and therefore, summary disposition is suspect. *Vanguard, supra*. In the present case, the trial court could not weigh the credibility of defendant’s deposition testimony when ruling on the motion for summary disposition. *Handelsman, supra*.

In the present case, defendant immediately filed a summary disposition motion in lieu of an answer to the complaint. With this motion, defendant Bosley submitted an affidavit indicating that his transfer of the vehicle in question occurred “in August 2003,” with a person “believe[d]” to be Crockett. However, in deposition, when asked to provide an estimate of the date of the transfer, defendant could not provide a date and estimated “the fall, or late summer” when prompted by counsel to provide a season. Moreover, when asked to describe Crockett, defendant could provide no description. Additionally, defendant rented a lot from which he sold vehicles that he purchased at auction for an estimated two-year period. In light of defendant’s lack of clarity regarding the time frame of the sale, the inability to describe the purchaser, and the fact that he sold other vehicles, the issue of whether a bona fide sale occurred before the accident presents a credibility issue for the trier of fact. Accordingly, the trial court did not err in denying defendant’s motion for summary disposition.

Next, defendant contends that the trial court erroneously relied on irrelevant and improper information provided by plaintiff to deny the dispositive motion. Review of the record reveals that the trial court agreed with plaintiff that factual issues were presented for the trier of fact because the affidavit was the only evidence offered in support. The trial court went on to state that a bill of sale or other evidence, such as a filing or service of the secretary of state was required. When defense counsel advised the trial court that there was no requirement that the transfer of title be recorded, the trial court held that the motion was still denied. Irrespective of whether the trial court applied the statutory provisions of MCL 257.240 that did not take effect until October 1, 2005, (after the accident occurred), the trial court correctly held that factual issues, specifically the credibility of defendant, precluded summary disposition. Accordingly, defendant’s second claim of error is without merit.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Christopher M. Murray  
/s/ Karen M. Fort Hood