STATE OF MICHIGAN

COURT OF APPEALS

AMERISURE INSURANCE CO,

Plaintiff/Counter-Defendant/Cross-Defendant,

v

SHARON LAMSON, Next Friend of the Estate of JAMES RAYMOND LAMSON, Legally Incapacitated Person,

Defendant/Counter-Plaintiff/Cross-Plaintiff-Appellant,

and

AUTO-OWNERS INSURANCE CO,

Defendant/Cross-Defendant-Appellee,

and

DEPARTMENT OF COMMUNITY HEALTH,

Intervenor.

UNPUBLISHED
November 18, 2008

No. 279588
Livingston Circuit Court
LC No. 05-021833-NF

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

Defendant/Counter-Plaintiff/Cross-Plaintiff, Sharon Lamson, as next friend of the Estate of James Lamson (Lamson), appeals as of right the trial court's July 6, 2007 order granting Defendant/Cross-Defendant, Auto-Owners Insurance Company's (Auto-Owners) motion for summary disposition. More specifically, the trial court found that James Lamson was the owner of an uninsured 1994 bright pink Ford Aspire at the time of the accident, and as a consequence, he was disqualified from receiving personal protection insurance (PIP) benefits under MCL 500.3113 (b). We affirm.

I. FACTS

James Lamson lived with his cousin Jennifer Ferree in Virginia for approximately six months in 2005. Ferree owned a 1994 bright pink Ford Aspire. In August 2005, James quit his job and drove the vehicle from Virginia to Michigan to move into his mother's condominium in Fenton. On August 27, 2005, while driving the vehicle, James got into a severe accident, which caused traumatic brain injuries, rendering him unable to complete daily living activities. At the time of the accident, the vehicle was registered in Virginia and had a Virginia license plate. James had been in Michigan for 7 to 10 days before the accident occurred. On October 12, 2005, Sharon Lamson, James's mother, filed an application for PIP benefits with the Michigan Assigned Claims Facility. On October 20, 2005, the Michigan Assigned Claims Facility assigned the case to Amerisure Insurance Company (Amerisure).

On December 16, 2005, Amerisure filed a complaint for declaratory relief, requesting that the trial court find that James Lamson was not entitled to PIP benefits because he owned an uninsured car at the time of the accident. Amerisure argued in the alternative that if the trial court did find that James was entitled to benefits, then it should also find that Sharon Lamson's insurer, Auto-Owners was the sole insurer. On January 31, 2006, Lamson counter-claimed against both Amerisure and Auto Owners, compelling them to pay PIP benefits. On February 9, 2006, Auto-Owners responded, requesting that Lamson and Amerisure be denied relief.

During discovery, several witnesses were deposed to establish facts as to ownership of the vehicle. James Lamson could not testify because of his injuries. Jennifer Ferree testified that James purchased the 1994 Ford Aspire from her. She also testified that she did not maintain insurance on the vehicle, as she did not use it for her own personal use. According to Ferree, James purchased the car for $500 in cash to be paid on a weekly basis. But Ferree could not recall how much he paid per week or whether he paid for the vehicle in full. She confirmed that there was no written agreement for the sale. However, she delivered a certificate of title with her signature. She also relayed her understanding that James "was going to move back home to Michigan" intending to live there.

Sharon Lamson testified that she was unaware that James purchased the vehicle. She testified that James called and said "he quit his job and that he was coming home. She then testified that she asked James "how he was going to get home, and he said he was going to bring Jennifer's car. He said, I'm going to drive [Ferree's car]." Since Ferree owned the vehicle, Sharon was asked, "Did he say anything about Jennifer coming home with him?" She replied "No." Sharon also testified that she did not question how James would return the vehicle back to Virginia.

Jonathan Lamson, James's father, testified that James could not have purchased the vehicle, as he did not like the car. He testified that "[James] didn't want nobody to see him in [the vehicle]."

On July 26, 2006, Amerisure moved for summary disposition, arguing that because James resided with his mother, Amerisure was not responsible for PIP benefits. Auto-Owners also moved for summary disposition, asserting that James was precluded from recovering PIP benefits because he was the owner of an uninsured vehicle. The trial court granted Amerisure's

motion for summary disposition, finding that James resided with his mother, which effectively made Auto-Owners the sole insurer. However, it denied Auto-Owners' motion, concluding that there was a "very, very, very thin question of fact" as to whether James was the owner of the vehicle.

On May 10, 2007, Lamson moved for summary disposition under MCR 2.116(C)(9) and (10), arguing that under Virginia law, no sale occurred between James and Ferree, so he was not the owner of the vehicle. Auto-Owners opposed Lamson's motion. On July 6, 2006, the trial court granted Auto-Owners' motion for summary disposition under MCR 2.116(C)(10) and (I)(2), finding that James Lamson owned the vehicle. Lamson now appeals.

II. STANDARD OF REVIEW

We review a trial court's decision on a summary disposition motion de novo. *Healing Place at North Oakland Medical Ctr v Allstate Ins Co*, 277 Mich App 51, 55; 744 NW2d 174 (2007). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties, to the extent that the material would be admissible as evidence, in a light most favorable to the nonmoving party. *Id.* at 56. The motion should be granted only "where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Further, summary disposition is properly granted to the opposing party under MCR 2.116(I)(2) "if the court determines that the opposing party, rather than the moving party is entitled to judgment as a matter of law." *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

III. ANALYSIS

Lamson argues that the trial court erred in granting Auto-Owners' motion for summary disposition. More specifically, Lamson raises two arguments on appeal. First, Lamson argues that the trial court erred in not applying MCL 500.3102(1)[1] to this case because Ferree, a nonresident, was the owner of the vehicle. Second, Lamson argues that even if MCL 500.3101(2)(g)(i) does apply to this case, there is a genuine issue of material fact as to whether he had the right to use the vehicle for more than 30 days. We disagree with both arguments.

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[1] MCL 500.3102(1) provides as follows:

A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter.

Under the no-fault act, MCL 500.3101 *et seq.*, the owner of a motor vehicle that is required to be registered in Michigan must carry personal protection, property protection, and residual liability insurance. MCL 500.3101(1); *Arndt v Titan Ins Co*, 233 Mich App 685, 689; 593 NW2d 215 (1999). MCL 500.3113(b) prohibits an owner of an uninsured vehicle from receiving PIP benefits:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

MCL 500.3101(2)(g)[2] defines an "owner" as any of the following:

> (i) 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.
>
> (ii) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (iii) A person who has the immediate right of possession of a motor vehicle under an installment sale contract.

Further, our Supreme Court has made clear that to be an owner under MCL 500.3101(2)(g)(i), a person need not have actually used the vehicle for more than 30 days; rather, the person need only have the right to such use. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530-531; 676 NW2d 616 (2004).

Based on the evidence presented in this case, the trial court did not err in concluding that James Lamson was an owner of the vehicle because he had the right to use of the vehicle for more than 30 days. Ferree testified that she sold the vehicle to James for $500 and delivered a signed certificate of title to him.[3] Further, James quit his job to move from Virginia to Michigan, Ferree did not accompany James to Michigan, and there was no evidence that James intended to return the vehicle to Ferree within 30 days.

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[2] Pursuant to an amendment effective July 17, 2008, "owner" is now defined in (h) of the statute.

[3] We note that James Lamson was thus also an "owner" of the vehicle under MCL 500.3101(2)(g)(ii).

Lamson's proffered witnesses do not negate Ferree's testimony that she sold the vehicle to James for $500. At best, the testimony shows that James did not like the vehicle. However, this is irrelevant to the test articulated in *Twichel,* which focuses on whether James had the right to use the vehicle for 30 days or more. *Twichel*, *supra* at 530-531. Accordingly, the trial court did not err in concluding as a matter of law that James was an owner of the vehicle.

Moreover, we reject Lamson's argument that the trial court erred in not applying MCL 500.3102(1) to this case. Lamson's argument presumes that there can only be one owner of a motor vehicle, and this Court has concluded otherwise. *Chop v Zielinski*, 244 Mich App 677, 681; 624 NW2d 539 (2001) (holding that "[t]here may be multiple owners of a vehicle for purposes of the no-fault act."). Therefore, even if Ferree was a non-resident owner of the vehicle, that does not mean that James Lamson, a resident, could not also be an owner under MCL 500.3101(2)(g)(i).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Bill Schuette