STATE OF MICHIGAN

COURT OF APPEALS

HEIDI ALLEN, as Conservator of the Estate of BENJAMIN STROTHER,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
October 4, 2005
9:05 a.m.

No. 253015
Lapeer Circuit Court
LC No. 03-032939-NF

Official Reported Version

Before: Borrello, P.J. and Bandstra and Kelly, JJ.

BANDSTRA, J.

In this automobile negligence action, plaintiff seeks to recover first-party no-fault personal protection insurance (PIP) benefits.[1] The trial court determined that the no-fault act, MCL 500.3101 *et seq.*, precluded Benjamin Strother's recovery of PIP benefits and granted defendant summary disposition pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right, and we affirm.

The facts of this case are largely uncontested. Strother was injured while driving a car solely owned by Heidi Allen and insured by defendant. Both Strother and Allen concede that Strother did not have Allen's permission to use Allen's car, primarily because Strother lost his driver's license as a result of alcohol-related offenses. At the time of the accident, Strother and Allen were unrelated, though they resided in the same house.

The question presented to the trial court was whether Strother was entitled to recover PIP benefits from Allen's State Farm policy. MCL 500.3114 provides in relevant part:

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[1] The statutory phrase is "personal protection insurance benefits," but they are also known as "first-party" or "PIP" benefits. *McKelvie v Auto Club Ins Ass'n*, 459 Mich 42, 44 n 1; 586 NW2d 395 (1998).

> (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. . . .
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> * * *
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> (4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
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> (a) The insurer of the owner or registrant of the vehicle occupied.

Clearly, Strother is not provided coverage under MCL 500.3114(1) because, at the time of the accident, he was not the person named in the policy and he was not the spouse of Allen, who was the owner of the vehicle and the person named in the policy. Although domiciled in the same house, Strother was not a relative of Allen by marriage, consanguinity, or adoption. Therefore, his sole recourse for PIP benefits would be through subsection 4.

However, under MCL 500.3113, PIP benefits are precluded under certain circumstances. MCL 500.3113 provides:

> 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:
>
> (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.

Under MCL 500.3113(a), PIP benefits will be denied if (1) a person took a vehicle unlawfully and (2) that person also did not have a reasonable basis for believing that he or she could take and use the vehicle. *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 626; 499 NW2d 423 (1993). Defendant moved for summary disposition on the basis that Strother was precluded under MCL 500.3113(a) from recovering PIP benefits because he took Allen's vehicle unlawfully without a reasonable belief that he was entitled to take and use it.

The term "taken unlawfully" is not defined in the statute. The leading case interpreting the phrase, as used in MCL 500.3113(a), is *Priesman v Meridian Mut Ins Co*, 441 Mich 60; 490 NW2d 314 (1992). In that case, our Supreme Court addressed whether an underage, unlicensed driver was excluded from recovering PIP benefits when he was injured after unlawfully taking

his mother's vehicle. Three members of the Court created a judicial exception to MCL 500.3113(a) for "joyriding" family members, generally, teenagers taking their parents' vehicles without permission. The three justices[2] believed that because joyriding was such a common occurrence in families, benefits should not be denied in that situation, because that was not what the Legislature presumably intended. *Priesman, supra* at 68.

This Court, in *Butterworth Hosp v Farm Bureau Ins Co*, 225 Mich App 244, 248-249; 570 NW2d 304 (1997), recognized that *Priesman* was not binding precedent, but, nonetheless, felt compelled to follow its reasoning. This Court held that when a vehicle is taken by a family member, benefits will only be denied under MCL 500.3113(a) if there was an actual intent to steal the vehicle. *Id.* 249-250. The majority declined to accept the concurring judge's position that the exception for joyriding offenses should extend beyond family members. *Id.* at 249 n 2. Similarly, this Court specifically declined to extend the joyriding exception to individuals who are not family members in *Mester v State Farm Mut Ins Co*, 235 Mich App 84, 88; 596 NW2d 205 (1999).

There is no evidence to suggest that Strother ever intended to permanently deprive Allen of her vehicle, and his conduct could be termed "joyriding" as the exception has been discussed following *Priesman.* However, Strother is not a "family member" entitled to the joyriding exception. Neither party contends that Strother and Allen are legally or biologically related in any way. Accordingly, pursuant to *Butterworth* and *Mester*, the joyriding exception does not apply, and Strother is precluded from recovering PIP benefits under MCL 500.3113(a).

Notwithstanding these binding precedents, the dissenting opinion would extend the judicially created joyriding exception to unrelated adults by expansively defining the limits of a "family." The dissent contends that we are imposing, by "judicial edict," a limited definition of what a "family" is. *Post* at ___ n 1. We are not. Instead, we are acknowledging the universally accepted and common definition of a "family," i.e., people who are biologically or legally related. It is the dissent that wants to enlarge that definition by judicial edict. Any such enlargement, as it would apply to a statutory scheme like the no-fault act at issue here, is properly within the province of the people's elected legislative representatives, not the courts.

As the dissent points out, the Legislature *has* enlarged the definition of "family member" in the Mental Health Code. MCL 330.1100b(3). However, the Mental Health Code definition has nothing to do with this no-fault case, see MCL 330.1100, except to illustrate that the Legislature knows how to expand the definition of a "family member" when, for limited statutory purposes, that is considered an appropriate public policy.

In essence, the dissent concludes that the family member exception should be expanded to include nonrelatives residing in the same household who "[think] of themselves as 'family,'" despite the lack of any biological or legal relationship. *Post* at ___. However, under the Mental Health Code definition of "family member," persons need not be related, reside with each other,

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[2] Justice Boyle concurred in the result only.

or even "think of themselves as 'family'" to meet that definition if a "financial support" relationship exists. MCL 330.1100b(3). Again, while such an expansive approach is what the Legislature intended for purposes of the Mental Health Code, a similar intent has not been shown for the no-fault act. To so conclude is not to judicially impose any "social values" as the dissent charges; it is to respect the policy choices made by the people's representatives in enacted statutes. See *post* at ___ n 1.

Pursuant to *Butterworth* and *Mester*, the joyriding family member exception does not apply. Because Strother is precluded from recovering PIP benefits pursuant to MCL 500.3113(a), the trial court did not err in granting defendant's motion for summary disposition.

We affirm.

/s/ Richard A. Bandstra