

**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.

BORRELLO, P.J. (*dissenting*).

I dissent in this matter because I believe that Benjamin Strother is entitled to coverage under the family member joyriding exception to MCL 500.3113(a). Therefore, I would reverse the trial court's order granting summary disposition in favor of defendant on the basis of MCL 500.3113(a) and would remand for a jury trial.

This case arose out of an automobile accident in which Strother was injured. The vehicle that Strother was driving belonged to his live-in companion, Heidi Allen. The automobile was covered by a no-fault insurance policy issued by defendant. Strother was not licensed on the day of the accident, and he took the vehicle without Allen's knowledge or consent. Strother and Allen have two children together. The circumstances of their living arrangements indicate that Strother provided all the household income, and Allen was responsible for many household tasks, including paying bills.

The trial court granted summary disposition on the basis of MCL 500.3113, which provides in relevant part:

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.

The phrase "taken unlawfully" is not defined in the no-fault act itself. *Landon v Titan Ins Co*, 251 Mich App 633, 638; 651 NW2d 93 (2002). In *Butterworth Hosp v Farm Bureau Ins Co*, 225 Mich App 244, 245-246; 570 NW2d 304 (1997), the injured party was the car owner's son, who lived in a separate house and took the vehicle in violation of the owner's express refusal to permit him to do so. The trial court concluded that the injured party was not entitled to coverage because he was not a member of the owner's household. *Id.* at 247. We reversed on the ground that the injured party had not intended to steal the car, but only to joyride in it contrary to MCL 750.413, and our Supreme Court had "found a 'family member' joyriding exception to [MCL 500.3113(a)]." *Butterworth Hosp, supra* at 248, citing *Priesman v Meridian Mut Ins Co*, 441 Mich 60, 70; 490 NW2d 314 (1992) (Griffin, J., dissenting). Thus, because the injured party was the insured's son, he could not have taken the vehicle "unlawfully" within the meaning of MCL 500.3113(a). *Butterworth Hosp, supra* at 249. In *Mester v State Farm Mut Ins Co*, 235 Mich App 84, 87; 596 NW2d 205 (1999), we observed that in *Butterworth Hosp*, we had extended the family member joyriding exception to MCL 500.3113(a) to adult family members from another household who joyride in a relative's car without permission; however, we declined to extend the family member joyriding exception to all joyriders. *Mester, supra* at 88.

Thus, the controlling issue in this case is whether Strother and Allen are "family members" within the meaning of the exception to MCL 500.3113(a). In contrast to the majority's holding in this case, I would conclude that they are family members. This Court has previously recognized that "the reality of the nature of families existing in today's society" precludes restricting the definition of "family" to "include only persons related by consanguinity." *Youngblood v DEC Properties*, 204 Mich App 581, 583; 516 NW2d 119 (1994). Rather, "the relevance of 'family' does not pertain to blood or lineage, but rather to members of a household . . . ." *Id.* In addition, the definition of "family member" contained in the Mental Health Code, MCL 330.1001 *et seq.*, also suggests that the Legislature would recognize Strother and Allen as family members. MCL 330.1100b(3) provides that a "[f]amily member means a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual upon whom a primary consumer is dependent for at least 50% of his or her financial support." Contrary to the majority's assertion that MCL 330.1100b(3) is inapplicable to the facts of this case, I find that it is instructive regarding the Legislature's views regarding the definition of "family."<sup>1</sup>

---

<sup>1</sup> In response to the majority's contention that my view would expand coverage to "unrelated adults," *ante* at \_\_\_, I would respond that perhaps the majority should consider a more expansive definition of what constitutes a "family member" to more accurately reflect the myriad types of families that actually exist in society today. The majority seems content to narrowly define the term "family member" by judicial edict in a manner that comports with its social values, with no consideration or recognition of the fact that families are created by more than blood. Furthermore, the majority seems reluctant to consider a legislative definition of the term "family member" that is contrary to its restrictive construction of what a family should be. MCL 330.1100b(3), while not controlling on this issue in this case, provides sound legislative guidance regarding the emerging definition of "family member" in contemporary society. At the very least, I believe this Court should consider how the Legislature has defined the term, even if the

(continued...)

Although *Youngblood* was concerned with the service of a notice, it is consistent with the definition in MCL 330.1100b(3), which suggests a definition of "family" that is more expansive than merely the traditional "nuclear" family, or even persons related solely by blood or legal formalities. Moreover, in *Youngblood*, this Court was concerned with whether serving a member of a person's household would likely result in actually notifying the proper person. *Youngblood*, *supra* at 582-583. *Youngblood* and the definition of "family member" in MCL 330.1100b(3) both suggest that any inquiry into whether a given individual is a family member must not rely merely on legal formalities, but must take into account the practicalities of the involved relationships and the changing nature of the composition of families in today's society.

Although Strother and Allen were not married, they thought of themselves as "family" and acted as a traditional family. They raised two children together and lived with each other while sharing household responsibilities for nine years. Their testimony showed that Allen was financially dependent on Strother, while Strother depended on Allen to do such household tasks as paying the bills. Under the circumstances, the practicalities of their situation mandate the conclusion that they are family members. Therefore, I would reverse the decision of the trial court and allow the matter to proceed to trial.

/s/ Stephen L. Borrello

---

(...continued)

statute defining it is not directly applicable to the facts of this case.