STATE OF MICHIGAN

COURT OF APPEALS

KEVIN LEE MORRISON and CANDICE SUE MORRISON,	FOR PUBLICATION December 29, 2009
Plaintiffs-Appellees,	
v	No. 286936 Ingham Circuit Court
SECURA INSURANCE,	LC No. 07-000532-CK
Defendant-Appellant.	Advance Sheets Version

Before: TALBOT, P.J., and O'CONNELL and DAVIS, JJ.

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

I respectfully dissent from the majority opinion, which finds the retention of an insurable interest despite a change in the registration of ownership of a vehicle, impliedly based on a familial relationship between the insured and the registered owner.

"[U]nder Michigan law, an insured must have an 'insurable interest' to support the existence of a valid automobile liability insurance policy." *Allstate Ins Co v State Farm Mut Automobile Ins Co*, 230 Mich App 434, 439; 584 NW2d 355 (1998). "An insurable interest in property is broadly defined as being present when the person has an interest in property, as to the existence of which the person will gain benefits, or as to the destruction of which the person will suffer loss." *Madar v League Gen Ins Co* , 152 Mich App 734, 738; 394 NW2d 90 (1986), citing *Crossman v American Ins Co*, 198 Mich 304, 308-309; 164 NW 428 (1917). Moreover, the insurable interest must be that of a "named insured." *Allstate Ins Co, supra* at 440. Insurance policies "founded upon mere hope and expectation and without some interest in the property," are contrary to public policy and deemed void. *Crossman, supra* at 308; see also *Allstate Ins Co, supra* at 438-439.

In *Clevenger v Allstate Ins Co*, 443 Mich 646; 505 NW2d 553 (1993), our Supreme Court found that the registrant of an automobile had an insurable interest in an automobile she did not own because MCL 500.3101(1) required a registrant to carry no-fault insurance and MCL 500.3102(2) made it a misdemeanor to fail to do so. The Court concluded:

> As the registrant of a vehicle she permitted to be operated upon a public highway, [the seller] was required by the act to provide residual liability insurance on the vehicle under the threat of criminal sanctions, §§ 3101 and 3102. In this limited context, [her] insurable interest was not contingent upon title of ownership

> to the automobile but, rather, upon personal pecuniary damage created by the no-fault statute itself. [*Clevenger, supra* at 661].

This ruling is consistent with *Crossman's* definition of an "insurable interest" as requiring some benefit or loss to inure to the insured. The circumstances of this case are readily distinguishable. Warfield's mother was no longer a registrant of the vehicle at the time of the accident. Merely because she voluntarily remained the insurer is not analogous to a statutory requirement that she do so upon penalty of a criminal sanction and, therefore, does not meet the benefit/loss requirement to establish the existence of an insurable interest.

Plaintiffs contend, and the majority concurs, that Warfield's mother had an insurable interest in the vehicle because she had a legitimate concern, impliedly as a parent and member of the same household, in saving her adult daughter from financial ruin that might result from liability for the automobile accident. However, there is no legal precedent for finding an insurable interest on this basis.[1] As explained in *Clevenger*, an insurable interest based on potential pecuniary loss comprises a loss that the named insured might incur. There is no recognized precedent for attempting to ensure the pecuniary loss of another without any commensurate benefit or risk of loss to a named insured.[2] In fact, public policy directly contradicts this concept. See *Crossman, supra* at 308, 311. Because a legal basis does not exist for finding the requisite insurable interest in this case, I would reverse the trial court's ruling.

/s/ Michael J. Talbot

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[1] Plaintiffs assert that an insurable interest can be found on the basis of considerations apart from ownership and registration. See *Madar, supra*; *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713; 635 NW2d 52 (2001); *Roberts v Titan Ins Co (On Reconsideration)*, 282 Mich App 339; 764 NW2d 304 (2009). However, these cases are distinguishable because they deal with personal protection insurance (PIP) benefits and not liability coverage.

[2] Plaintiffs also rely on *Stover v Secura Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued June 9, 2005 (Docket No 252613), for the proposition that an insurable interest need not be premised on being an owner or registrant. However, in *Secura*, the insurable interest was based on the named insured's risk of pecuniary loss resulting from having commingled funds with the owner of the vehicle. Unpublished cases are not binding precedent. MCR 7.215(C)(1).