

STATE OF MICHIGAN
COURT OF APPEALS

LYNNE JUDGE, Personal Representative of the
Estate of JOHN PHILIP HOUSE, deceased,

UNPUBLISHED
March 2, 1999

Plaintiff-Appellant,

v

No. 195577
Grand Traverse Circuit Court
LC No. 94-012929-NF

MICHIGAN MILLERS MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant under MCR 2.116(C)(10) and denying plaintiff's motion for summary disposition. We affirm.

Plaintiff is the personal representative of the estate of John Philip House, who was severely injured in, and eventually died from, an August 17, 1994, accident in which his 1988 Jeep Comanche pickup truck was struck by a train. House had purchased the pickup truck on July 13, 1994. House was the sole titled owner of the truck, however, he never purchased no-fault insurance for it.

When House purchased the truck, he was living with his girlfriend, Yvonne Demlow, and her children. At her deposition, Demlow stated that she contacted defendant through her local insurance agent and asked the agent to add the pickup truck to her then-existing no-fault insurance policy covering her own automobile, a 1992 Chevrolet Lumina. The insurance agent never asked whether Demlow was the title owner of the Jeep Comanche, and Demlow did not offer the information. Defendant added the pickup truck to Demlow's no-fault policy with an effective date of July 13, 1994. The only named insured on the policy is "Yvonne A. Demlow."

After the accident, defendant obtained a copy of the title and discovered the Demlow did not own the pickup truck. Defendant subsequently rescinded coverage for the pickup truck, claiming that Demlow had no insurable interest in it and that Demlow fraudulently procured the policy by concealing House's status as the pickup truck's owner and primary operator.

Plaintiff then filed this first-party no-fault action, as personal representative of the estate, for recovery of personal injury protection (PIP) benefits essentially to cover House's medical bills. The parties filed cross-motions for summary disposition on two separate occasions. The trial court ultimately granted defendant's second motion for summary disposition. The trial court specifically ruled that Demlow had no insurable interest in the pickup truck, she was not the statutory owner of it, no innocent third-party's rights were at stake, and that even if Demlow was a statutory owner House could not be a permissive user of a vehicle titled in his name for purposes of receiving PIP benefits. The trial court did not reach the issue of whether Demlow procured the policy through fraud or misrepresentation, finding that issue to be moot.

Appellate review of a trial court's ruling on a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Id.* The court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence presented to it to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* The court is not permitted to assess credibility or make factual determinations on a motion for summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). The evidence and all reasonable inferences therefrom must be construed in a light most favorable to the nonmoving party. *Henderson v State Farm Fire & Casualty Co*, 225 Mich App 703, 708; 572 NW2d 216 (1997).

First, we disagree with the trial court's conclusions that Demlow had no insurable interest in the pickup truck and that she was not an owner of it. We find that Demlow had an insurable interest in the pickup truck because she purchased no-fault insurance for it specifically for PIP benefits for herself had she been injured while driving the pickup truck. See *Madar v League General Ins Co*, 152 Mich App 734, 739; 394 NW2d 90 (1986) (A person obviously has an insurable interest in her own health and well-being and this is the insurable interest which entitles persons to PIP benefits regardless of whether a covered vehicle is involved in the accident). Moreover, a person who operates an automobile with the knowledge that the owner or registrant does not have insurance, such as here where House did not have insurance covering his pickup truck, is guilty of a misdemeanor. MCL 500.3102(2); MSA 24.13103(2). Thus, Demlow, who drove the pickup truck, would have been subjected to the fine provisions of this statute had she knowingly driven the pickup truck without being covered by insurance.

We also hold that Demlow was an "owner" of the pickup truck as that term is defined in MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i):

(g) "Owner" means 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.

Taken in a light most favorable to plaintiff, the evidence is that Demlow used the pickup truck for a period of greater than thirty days. Demlow drove the pickup truck twenty to twenty-five times from July 13, 1994 until August 17, 1994. House was living with Demlow during that time period and they

had possession of the pickup truck. Thus, under a plain reading of the statute, Demlow can be considered to be an owner of the pickup truck.

The trial court also ruled, however, that even if Demlow was considered to be a statutory owner of the pickup truck, House could not be considered to be a permissive user of the truck to which he was the sole titled owner such that he could be eligible for PIP benefits. We affirm the trial court on this ground only.

In *Clevenger v Allstate Ins Co*, 443 Mich 646, 652; 505 NW2d 553 (1993), our Supreme Court noted the following:

The Insurance Code requires that a motor vehicle insurer provide its insured with minimum liability coverage for bodily injury, death, and property damage. This coverage must extend to all permissive drivers unless the person is expressly excluded on the face of the policy or the declaration page or certification of insurance. See MCL 500.3009; MSA 24.13009.

In this case, House was the sole titled owner of the pickup truck and had primary use of it. We agree with the trial court's ruling on this issue:

While the Michigan No-Fault Act has been and should be liberally interpreted to afford coverage to innocent third parties and persons procuring insurance who reasonably rely upon the coverage bound to them, it defies logic to postulate that the [L]egislature requires every owner and registrant of a motor vehicle to maintain no-fault insurance on pain of losing entitlement to personal protection benefits if his uninsured motor vehicle is involved in an accident, MCL 500.3113(b); MSA 24.13113(b), and then construe an uninsured operator and owner as a permissive user of his own car so that he may obtain coverage under someone else's policy.

Again, this is not a case where Mr. House was a permissive user of a vehicle registered in Ms. Demlow's name. No case has been cited to this Court which stands for the proposition that an owner or registrant may be deemed a permissive user of his own vehicle. It strains common sense and logic as well as the plain meaning of the words "permissive user" to suggest that one who owns a thing ever needs permission to use it.

Finally, our Supreme Court's decision in *Clevenger, supra*, does not compel a different result in this regard because the uninsured titled owner was a permissive driver, was involved in an accident shortly after acquiring ownership, and the insurance policy of the insured registrant (who sold the vehicle to the uninsured title holder) was still in effect at the time of the accident. In the present case, House clearly had sufficient time to purchase no-fault insurance and cannot be considered to be a permissive driver of a vehicle to which he was the sole titled owner, especially where House did not purchase (recently or otherwise) the vehicle from Demlow.

On the narrow ground that House cannot be considered to be a permissive user of his own pickup truck under the facts of this case to be eligible for PIP benefits, we affirm. Therefore, we need not address the question, also unaddressed by the trial court, whether Demlow procured the insurance policy through fraud or misrepresentation.

Affirmed.

/s/ Janet T. Neff

/s/ Kathleen Jansen