STATE OF MICHIGAN

COURT OF APPEALS

RICHARD R. SHAFER,

Plaintiff-Appellant,

v

RUSH TRUCKING CORPORATION and MATTHEW D. NYE,

Defendants-Appellants.

UNPUBLISHED
March 23, 2001

No. 215882
Macomb Circuit Court
LC No. 97-004537-NI

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Plaintiff Richard Shafer appeals as of right from the trial court order granting defendants Rush Trucking Corporation and Matthew Nye summary disposition pursuant to MCR 2.116(C)(10) in this automobile negligence action. We reverse and remand.

I. Basic Facts And Procedural History

Deborah Rolando owned a 1996 Pontiac car. She lived with, but was not married to, Shafer. On January 7, 1997, Shafer was driving Rolando's car when a tractor-trailer truck, which Rush Trucking owned and Nye was driving, slammed into the rear-end of Rolando's car while Shafer was stopped at a red light. Shafer allegedly sustained severe injuries in the accident. Only after the accident did Shafer learn that Rolando "had not paid the renewal automobile insurance premium," causing the policy to lapse before the accident.

When Shafer instituted this action for negligence against defendants, they moved for summary disposition arguing that he was not entitled to noneconomic damages under MCL 500.3135(2)(c); MSA 24.13135(2)(c) because he constructively owned Rolando's car. In support of the motion, defendants presented evidence that Shafer testified at his deposition that he had driven Rolando's car two or three times a week for about six months. Further, Rolando composed and Shafer signed a letter that was sent to his workers' compensation carrier, requesting "a two to three week paycheck in advance" because "[m]y car was totaled last week." However, the evidence on the record at the time of summary disposition also demonstrated that Shafer did not have a set of keys to Rolando's car, Rolando did not allow him to drive the car without her permission, he did not have exclusive use of the car, he "never" referred to it as his car, and Rolando permitted other people to drive the car. While Shafer and Rolando held a joint

bank account, to which both contributed, Rolando claimed that if she used money from the account to pay for the car, it was her own money. Shafer asserted that he did not pay any part of the cost of Rolando's car, its license plate, or insurance.

The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(10). It concluded that, as a matter of law, Shafer owned Rolando's car by applying the definition of an "owner" under MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) and rejecting the idea that ownership under the statute required a lease or continuous use for at least thirty consecutive days. The trial court also denied Shafer's subsequent motion for reconsideration

II. Vehicle Ownership

A. Standard Of Review

The issue on appeal in this case is a narrow one. Did the trial court err when it concluded that Rolando's uninsured car was Shafer's "own vehicle" within the meaning of MCL 500.3135(2)(c); MSA 24.13135(2)(c) at the time of the accident by applying MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) to this case? This is a question of law because it requires us to apply a statute, and so requires review de novo.[1] Furthermore, de novo review is appropriate because the trial court made its decision on this legal issue within the context of a motion for summary disposition.[2]

B. Legal Standards

A motion for summary disposition under MCR 2.116(C)(10) tests the factual underpinnings of a claim other than an amount of damages, and the deciding court considers all the evidence, affidavits, pleadings, admissions, and other information available in the record.[3] The deciding court must look at all the evidence in the light most favorable to the nonmoving party, who must be given the benefit of every reasonable doubt.[4] Only if there is no factual dispute, making the moving party entitled to judgment as a matter of law, would summary disposition be appropriate.[5] However, the nonmoving party must present more than mere allegations in order to demonstrate that there is a genuine issue of material fact in dispute, making trial necessary.[6]

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[1] *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (2000).

[2] *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

[3] MCR 2.116(G)(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999).

[4] *Atlas Valley Golf & Country Club, Inc v Village of Goodrich*, 227 Mich App 14, 25; 575 NW2d 56 (1998).

[5] See *Auto Club Ins Ass'n v Sarate*, 236 Mich App 432, 437; 600 NW2d 695 (1999).

[6] MCR 2.116(G)(4); *Etter v Michigan Bell Telephone Co*, 179 Mich App 551, 555; 446 NW2d 500 (1989).

The process of applying a statute intersects with this legal standard for summary disposition at the point where the trial court deciding a motion for summary disposition considers whether the moving party is entitled to judgment as a matter of law. In other words, the trial court must understand what the law is in order to determine which party is entitled to judgment when there is a settled factual record.[7] While there is a well-known framework for construing statutes in order to apply them, we are fortunate in this case because other panels of this Court have already construed MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i). Thus, we examine the appellate interpretations of the statute in order to determine whether the trial court in this case erred when it concluded that MCL 500.3135(2)(c); MSA 24.13135(2)(c), based on the statutory definition of ownership, barred Shafer's cause of action.

C. One's "Own Vehicle"

Overall, MCL 500.3135; MSA 24.13135 sets the conditions under which an individual injured in an automobile accident is entitled to noneconomic damages. Subsection 2(c) provides:

> Damages shall not be assessed in favor of a party who was operating *his or her own vehicle* at the time the injury occurred and did not have in effect for that motor vehicle the security required by section 3101 at the time the injury occurred.[8]

Among the definitions of an owner the Insurance Code provides in MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) is the definition that an "owner" is "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."

This Court addressed the meaning of an owner under MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) in *Ardt v Titan Ins Co*.[9] At issue in *Ardt* was whether the plaintiff, who was driving his mother's uninsured truck at the time of his debilitating accident, owned the truck, which is the reason the insurer cited when denying coverage.[10] Like Shafer, the plaintiff lived with the vehicle's title holder and drove it regularly, albeit for "minor purposes" such as having it washed, over a period in excess of thirty days.[11] Referring to MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i), the *Ardt* Court framed the issue on appeal as "whether any degree of usage for more than thirty days satisfies the statutory definition of 'owner,'. . . or whether the definition requires something more."[12] To answer this question, the Court reasoned:

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[7] See, generally, *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 737-744; 613 NW2d 383 (2000) (interpreting statute in order to determine whether trial court erred in granting summary disposition).

[8] Emphasis added.

[9] *Ardt v Titan Ins Co*, 233 Mich App 685; 593 NW2d 215 (1999).

[10] *Id*. at 687.

[11] *Id*. at 687, 689.

[12] *Id*. at 690.

> The statutory provisions at issue operate to prevent users of motor vehicles from obtaining the benefits of personal protection insurance without carrying their own insurance through the expedient of keeping title to their vehicles in the names of family members. Because we infer from these provisions that they were enacted in furtherance of the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage, we hold that "having the use" of a motor vehicle for purposes of defining "owner," MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i), means using the vehicle in ways that comport with concepts of ownership. The provision does not equate ownership with any and all uses for thirty days, but rather equates ownership with "having the use" of a vehicle for that period. Further, we observe that the phrase "having the use thereof" appears in tandem with references to renting or leasing. These indications imply that ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another. . . . [13]

In adopting this definition requiring evidence of ownership that encompasses "proprietary or possessory usage," the Court noted the mischief that would occur if it were to look exclusively at a *period* of use without giving meaning to what constituted use in the first place.[14] Contrasting the evidence that the plaintiff in *Ardt* used the truck in which he was injured only intermittently with the lack of supervision of his use, the Court concluded that there was a question of material fact left to be tried in the case, making the trial court's order granting the defendant summary disposition inappropriate.[15]

Recently, this Court applied this analysis of ownership from *Ardt* in *Kessel v Rahn.*[16] In *Kessel*, the plaintiff's mother owned the title to the car, but had purchased it for her daughter, the plaintiff, to use.[17] The plaintiff used the car extensively, apparently on a daily basis, almost exclusively, and without supervision.[18] Furthermore, the plaintiff was responsible for buying gasoline, paying for insurance, and maintaining the car.[19] Accordingly, this Court concluded that the evidence of the plaintiff's pattern of using the car in question indicated that she was its owner under MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) for the purpose of excusing liability for noneconomic damages under MCL 500.3135(2)(c); MSA 24.13135(2)(c).[20]

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[13] *Id*. at 690-691.

[14] *Id*. at 691, n 1.

[15] *Id*. at 691.

[16] *Kessel v Rahn*, __ Mich App __; __ NW2d __ (Docket No. 220013, issued January 23, 2001), slip op at 3.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 3-4.

As in *Ardt*, but unlike *Kessel*, there is conflicting evidence in the record concerning whether Shafer exercised proprietary or possessory use of Rolando's car. On one hand, Shafer could have, but claims that he did not, contribute to the cost of purchasing and maintaining the car; Rolando was apparently supposed to pay for insurance. Shafer did not have a set of keys to the car and there is no evidence that he was allowed to use the car without Rolando's permission. Shafer also stated that he lacked a valid drivers' license and preferred for Rolando to drive him places. Shafer claimed that he was driving on the day of the accident only because he had to go to a doctor's appointment and Rolando could not drive him there. Even ignoring the cost of maintaining a car, it is not clear whether Shafer maintained the car by repairing it or taking it to be repaired. These factors suggest that he essentially borrowed Rolando's car from her on an as-needed basis and did not tend to use it as if he owned it.

On the other hand, Shafer's deposition testimony that there was only one set of keys to Rolando's car makes his lack of a set of keys questionable when it comes to determining his relationship to the car as an owner. Necessity, not ownership, may have been the decisive factor in who possessed keys to Rolando's car and at what time. Shafer also drove the car with a level of frequency, two or three times a week, and over a period that might indicate some sort of possessory claim. Unlike *Ardt*, the record in this case lacks evidence that Shafer's use was minimal and related only to maintenance of the vehicle.[21] Rather, he used Rolando's car to meet his ordinary transportation needs. There is no evidence on the record that Rolando consistently, if ever, denied him permission to use the car when he asked to use it. These factors suggest that even if he did not use Rolando's car in a proprietary manner, he may have used it as if he possessed it. We see no reason to give conclusive effect to the fact that the money for the car, its gasoline, and maintenance may have come from their joint bank account when determining ownership because both Rolando and Shafer contributed money to the account. Nevertheless, when added to these other factors, the source of this money may support a conclusion that Shafer had a true ownership interest in the car.

The legal standard that we must apply to analyze this issue resolves this appeal. We must give Shafer, as the nonmoving party, the benefit of the doubt when it comes to viewing the evidence on the record.[22] The foregoing facts establish that there is a clear dispute in the record concerning the ownership issue, making summary disposition inappropriate.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper

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[21] *Ardt, supra* at 691.

[22] *Atlas Valley Golf & Country Club, supra*.