

STATE OF MICHIGAN
COURT OF APPEALS

SHEROLYN FLORENCE, as Next Friend of
LYDELL FLORENCE, Minor,

UNPUBLISHED
March 1, 2002

Plaintiff-Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Intervening Plaintiff,

v

No. 227383
Wayne Circuit Court
LC No. 99-913133-NF

HATFIELD USED CARS, INC.,

Defendant-Appellee,

and

JOHN DZON,

Defendant.

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant Hatfield Used Cars, Inc. under MCR 2.116(C)(10). We reverse and remand.

This case arises out of an automobile accident that occurred on May 15, 1998. Lydell Florence, who was eleven years old at the time, was crossing a street and struck by a GMC van driven by John Dzon. Dzon purchased the van from Hatfield Used Cars on May 13, 1998, but Dzon was uninsured at the time of the accident.¹ Because the van was an out-of-state vehicle, there was no Michigan certificate of title to be signed from Hatfield Used Cars to Dzon. Rather,

¹ Intervening plaintiff ACIA was the assigned carrier obligated to pay personal injury protection benefits on behalf of Lydell Florence and ACIA seeks to recover the amount it has paid to Florence from Hatfield Used Cars.

Hatfield Used Cars, the owner, was required to complete an application for Michigan title to transfer title to Dzon.

Dzon signed the application for Michigan title, but he did not date his signature. Diane Davis, Hatfield Used Car's agent, also signed the application and the date typewritten at the top by Davis is May 18, 1998. The date of filing by the Secretary of State is May 20, 1998. Davis testified at her deposition that she typed the application on May 18, 1998, and that she must have delivered it to the Secretary of State's office on May 18, 1998, as well. In her affidavit sworn on December 31, 1999 (about one month after she gave her deposition), Davis averred that all the documents were prepared and signed by Dzon on May 13, 1998. Davis also averred that she took the documents to the Secretary of State's office on May 18, 1998.

Plaintiff filed suit against Hatfield Used Cars and Dzon on April 29, 1999, but Dzon is uninsured and an entry of default was filed on June 7, 1999. The issue in this case is whether Hatfield Used Cars was the owner of the GMC vehicle at the time of the accident. Hatfield Used Cars moved for summary disposition under MCR 2.116(C)(10) contending that all the necessary paperwork to transfer title occurred on May 13, 1998, and that it was not the owner of the vehicle. Plaintiff's response was that the date of transfer, as typewritten on the application for Michigan title, was May 18, 1998, which was three days after the accident occurred. Plaintiff contended that there was at least a question of fact regarding the question of ownership; however, plaintiff also moved for summary disposition contending that the trial court should find that Hatfield Used Cars was the owner as a matter of law.

The trial court ruled that the purchase agreement showed a date of execution of May 13, 1998, and that transfer of title is effective on the date of execution. The crux of the trial court's ruling appears to be that the day the application for Michigan title was signed is the date of execution. Plaintiff now appeals, arguing that the trial court erred in granting summary disposition to Hatfield Used Cars because, under the Michigan Vehicle Code, the date of execution of an application for Michigan title is the date that the application is completed and filed with the Secretary of State, which in this case was May 18, 1998.

We review de novo a trial court's ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden, supra*, p 120. The court is to consider the pleadings, affidavits, admissions, depositions, and other evidence submitted by the parties, MCR 2.116(G)(5), in a light most favorable to the party opposing the motion. *Maiden, supra*, p 120. If the proffered evidence fails to establish a genuine issue regarding any material fact, then the moving party is entitled to judgment as a matter of law. *Id.* Further, this case involves statutory interpretation, which is also reviewed de novo. *Adams Outdoor Advertising, Inc v Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001).

Defendant Hatfield Used Car's liability turns on whether it was the owner of the vehicle at the time of the accident as provided by MCL 257.401(1):

This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the

negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge. . . .

Owner is defined in MCL 257.37 as:

(a) Any person, firm, association, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days.

(b) Except as otherwise provided in section 401a, a person who holds the legal title of a vehicle.

(c) A person who has the immediate right of possession of a vehicle under an installment sale contract.

The definition of owner in the Vehicle Code has been broadly construed and there may be more than one owner of a motor vehicle. *Goins v Greenfield Jeep Eagle*, 449 Mich 1, 5; 534 NW2d 467 (1995), quoting *Basgall v Kovach*, 156 Mich App 323, 327; 401 NW2d 638 (1986).

Ownership can be transferred and an automobile dealership can effectuate such a transfer by complying with the necessary steps as provided in MCL 257.217(4):

A dealer selling or exchanging vehicles required to be titled, within 15 days after delivering a vehicle to the purchaser, . . . shall apply to the secretary of state for a new title, if required, and transfer or secure registration plates and secure a certificate of registration for the vehicle . . . in the name of the purchaser. . . . The purchaser of the vehicle . . . shall sign the application, including, when applicable, the declaration specifying the maximum elected gross weight, as required by subsection (1)(f), and other necessary papers to enable the dealer or person to secure the title, registration plates, and transfers from the secretary of state.

A transfer of ownership becomes official when either the application for title has been executed or the actual certificate of title has been issued. *Goins, supra*, p 6. MCL 257.233(9) provides:

Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the assignment of the certificate.

This case turns on the date of the execution of the application for title because there was no Michigan title for Hatfield to sign over to Dzon. In *Goins, supra*, p 14, the Supreme Court stated that the “application for title was executed when defendant [auto dealer] sent the necessary forms to the Secretary of State.” Similarly, in *Zechlin v Bridges Motor Sales*, 190 Mich App 339, 342; 475 NW2d 60 (1991), this Court held that the effective date of transfer of title or interest in a motor vehicle is the date of execution of either the application for title or the

certificate of title. In *Zechlin*, the defendant filed the application for title on September 6, 1998, with the Secretary of State, and this act was held to constitute the transfer of title.

Further, in *Gazdecki v Cargill*, 28 Mich App 128, 131; 183 NW2d 805 (1970), this Court held that legal title does not pass upon mere delivery of the automobile and that the purchaser of the vehicle must sign the applications and other necessary documents to enable the dealer to secure the transfer of title. Lastly, this Court's opinion in *Messer v Averill*, 28 Mich App 62; 183 NW2d 802 (1970), is also factually similar. In *Messer*, defendant Averill purchased on automobile on June 8, 1966, was involved in an accident on June 17, 1966, and the application for new title was made with the Secretary of State on June 18, 1966. This Court initially noted that MCL 257.233 provides for the transfer of ownership of a vehicle and that this statute must be followed to transfer title to a vehicle. This Court specifically held that title was not transferred until June 18, 1966, when the dealer made the application for new title to the Secretary of State. See *Messer*, *supra*, p 64-65.

We hold that the trial court erred in granting summary disposition in favor of Hatfield Used Cars because the trial court erred in using the date of the sale (May 13, 1998) as being the date of execution. The Supreme Court made clear in *Goins* that the application for title is executed when it is sent to the Secretary of State, not when delivery of the vehicle is effectuated. In the present case, although the vehicle was sold to Dzon on May 13, 1998, and he took possession of the vehicle on that date, the undisputed evidence shows that the application for title was not executed until May 18, 1998, when Davis delivered the forms to the Secretary of State. Moreover, even accepting Davis' affidavit as true that Dzon signed the application for title on May 13, 1998, that date is not dispositive with regard to execution of the application for title. Here, the execution of the application for title occurred on May 18, 1998, three days after the accident.

Accordingly, the trial court erred in granting summary disposition in favor of defendant Hatfield Used Cars because the undisputed facts of the case show that execution of the application for title occurred on May 18, 1998, three days after the accident occurred. Therefore, Hatfield Used Cars was an "owner" of the vehicle involved in the accident within the meaning of the Vehicle Code. Because there is no material factual dispute with regard to when the execution of the application for title occurred, we agree with plaintiff that she is entitled to summary disposition as a matter of law with respect to the question of Hatfield Used Car's ownership of the vehicle. We reverse the trial court's grant of summary disposition in favor of Hatfield Used Cars, remand for entry of summary disposition in favor of plaintiff with respect to Hatfield Used Car's ownership of the vehicle and for further proceedings.²

² We emphasize that we are not holding that plaintiff is entitled to summary disposition on the entire matter, but only that she is entitled to summary disposition with regard to Hatfield Used Car's ownership of the vehicle. Questions concerning Hatfield Used Car's ultimate liability will have to be resolved on remand.

Reversed and remanded for further proceedings. Jurisdiction is not retained.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Patrick M. Meter