

STATE OF MICHIGAN
COURT OF APPEALS

MARIA CHESTER, Conservator of the Estate of
TYLER A. CHESTER, Minor,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
November 30, 2004

No. 249180
Arenac Circuit Court
LC No. 02-008128-CK

Before: Meter, P.J., and Wilder and Schuette, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition and denying her motion for partial summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In August 2002 plaintiff filed suit seeking a declaration that Terry William Cowan, who died in an automobile accident on May 30, 1994, was the natural father of her son Tyler, who was born on May 27, 1994, and that defendant, Cowan's no-fault insurer, was obligated to pay Tyler no-fault survivor's benefits. Plaintiff moved for partial summary disposition on the issue of paternity. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that no objective evidence existed or could be obtained to substantiate plaintiff's allegation that Cowan was Tyler's father. The trial court denied plaintiff's motion and granted defendant's motion, concluding that even if it had jurisdiction of the matter, it could not hold that Cowan was Tyler's father because no objective evidence existed to substantiate plaintiff's allegation.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

No-fault survivor's loss benefits are payable to dependents of the deceased at the time of the deceased's death. MCL 500.3108. If a person cannot be conclusively presumed to be a dependent of the deceased, the fact and extent of dependency must be determined "in accordance with the facts as they exist at the time of death." MCL 500.3110(2).

We affirm.¹ Tyler's dependency on Cowan could not be conclusively presumed;² therefore, the question of his dependency was to be determined by the facts as they existed at the time of Cowan's death. MCL 500.3110(2) set out no guidelines by which to determine paternity. However, other statutes that set out methods for determining paternity in order to set support obligations or to grant status as an heir for purposes of intestate succession rely on objective methods such as genetic testing or formal acknowledgment. See, e.g., 722.714(7) and MCL 700.2114. Genetic testing cannot be performed because Cowan's body was cremated, and before his death Cowan took no steps to acknowledge formally that Tyler was his child. Plaintiff cites no authority to support her assertion that her unsubstantiated claim is sufficient to establish dependency under MCL 500.3110. Summary disposition was properly granted.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette

¹ The trial court's finding that in all probability it lacked jurisdiction was erroneous. The issue before the trial court was whether Tyler was Cowan's dependent under the no-fault act. A circuit court has jurisdiction to determine disputes arising out of the no-fault act, including the dependency status of a person seeking to recover survivor's loss benefits. See, generally, *Evola v Auto Club Ins Ass'n*, 184 Mich App 779; 458 NW2d 676 (1990). Nevertheless, the trial court's ultimate decision is affirmed because it correctly granted defendant's motion for summary disposition.

² See MCL 500.3110(1)(c).