STATE OF MICHIGAN

COURT OF APPEALS

BRIAN C. ADAMS,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
March 4, 2010

No. 290037
Wayne Circuit Court
LC No. 08-110619-NF

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

In this insurance dispute, plaintiff appeals as of right from the trial court's order granting summary disposition for defendant and dismissing plaintiff's claim for no-fault personal injury protection ("PIP") benefits. We affirm.

Plaintiff was injured while occupying a Chevrolet Impala that was purchased by his mother. Plaintiff was seated in the Impala, which was parked in his mother's driveway, when another vehicle lost control, left the road, and struck the Impala. At the time of the accident in December 2007, plaintiff was living with his mother and providing assistance to her for medical and other needs. Because the Impala was uninsured, plaintiff filed a claim for PIP benefits with the assigned claims facility, and the claim was assigned to defendant.

After defendant denied plaintiff's claim, plaintiff filed this action. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff was a statutory owner of the Impala for purposes of MCL 500.3113(b) and, having failed to obtain insurance, was not entitled to PIP benefits. Plaintiff denied that he was an owner of the vehicle, but also argued that his status as an owner was irrelevant because the Impala was legally parked when it was struck by the other vehicle and, therefore, was not "involved in the accident" as required by MCL 500.3113(b). At the hearing on defendant's motion, plaintiff's counsel advised the trial court that, while there were other issues, the main issue for which a decision was then sought was the issue of ownership. The trial court granted defendant's motion for summary disposition with respect to plaintiff's status as a statutory owner and, pursuant to an order submitted by defendant under the seven-day rule, MCR 2.602(B)(3), dismissed plaintiff's claims against defendant.

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because there was a genuine issue of material fact with respect to his status as an owner for purposes of MCL 500.3113(b). We disagree.

We review a trial court's summary disposition decision de novo. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 424; 751 NW2d 8 (2008). "A motion made under MCR 2.116(C)(10) tests the factual support for a claim." *Healing Place at North Oakland Medical Ctr v Allstate Ins Co*, 277 Mich App 51, 55; 744 NW2d 174 (2007). The pleadings, affidavits, depositions, admissions, and other evidence filed by the parties are considered to the extent that they would be admissible as evidence and are reviewed in a light most favorable to the nonmoving party. *Id.* at 56; see also MCR 2.116(G)(6). "A genuine issue of material fact exists, when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Pursuant to MCL 500.3173 and MCL 500.3113(b), an injured "owner" of an uninsured vehicle "involved in [an] accident" is not entitled to PIP benefits under the assigned claims. *Cooper v Jenkins*, 282 Mich App 486, 489; 766 NW2d 671 (2009). The term "owner" is defined by MCL 500.3101(2)(h)(i)[1] as "[a] person renting a motor vehicle of having the use thereof, under a lease or otherwise, for a period that is greater than 30 days." In *Ardt v Titan Ins Co*, 233 Mich App 685, 690; 593 NW2d 215 (1999), this Court construed the phrase "having the use thereof" to mean use that comports with concepts of ownership. The Court stated that "ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another." *Id.* at 691 (emphasis in original). Later, in *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530; 676 NW2d 616 (2004), our Supreme Court held that the "focus must be on the nature of the person's right to use the vehicle," not whether the person actually used the vehicle for a 30-day period before the accident.

More recently, in *Roberts v Titan Ins Co (On Reconsideration)*, 282 Mich App 339, 343, 356; 764 NW2d 304 (2009), this Court found that there was no question of fact with respect to an individual's status as a statutory owner where the deposition testimony established that the title owner gave keys to a vehicle to an individual for her use after her own vehicle broke down, and she thereafter had exclusive use of the vehicle and used it for all of her daily needs. Further, in *Detroit Medical Ctr v Titan Ins Co*, 284 Mich App 490, 493-494; 775 NW2d 151 (2009), this Court affirmed a trial court's summary disposition order in favor of the plaintiff, and denial of the insurer's cross-motion for summary disposition, where the alleged statutory owner had a significant relationship with the titleholder and kept the uninsured vehicle at her residence. In that case, however, the plaintiff had to get permission and the vehicle's keys from the titleholder to use it. *Id.*

In this case, although plaintiff correctly observes that summary disposition is inappropriate when the motion depends on witness credibility, *SSC Assoc Ltd Partnership v Gen*

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[1] This statute was amended by 2008 PA 241, effective July 17, 2008, such that the definition of "owner" was moved from subsection (g) to subsection (h).

Retirement Sys, 192 Mich App 360, 365; 480 NW2d 275 (1991), we conclude that the evidence in this case, viewed in a light most favorable to plaintiff, fails to establish a genuine issue of material fact regarding plaintiff's status as an owner.

At most, plaintiff's deposition testimony raises questions regarding whether he was so busy taking care of his mother that he did not have time for personal activities. Plaintiff also expressed his belief that he could not physically modify the Impala because it belonged to his mother. But there was no genuine issue of material fact that plaintiff had exclusive use of the Impala for at least 30 days. The fact that plaintiff's use was accompanied by responsibilities owed to his mother does not create a genuine issue of material fact, especially in the absence of any evidence that restrictions were imposed on his use of the vehicle or that he was required to ask for permission to use the vehicle. Reasonable minds could not differ in concluding that plaintiff's possessory use of the Impala comported with the concept of ownership. Indeed, the very act that plaintiff claims caused him to be in the Impala at the time of the accident comports with the concept of ownership. Plaintiff testified that he went out to the Impala to smoke a cigarette. He did not indicate that he asked or needed his mother's permission to do so. The trial court did not err in finding that there was no genuine issue of material fact with respect to plaintiff's status as a statutory owner for purposes of MCL 500.3113(b).

We also reject plaintiff's argument that his status as an owner is irrelevant because the Impala was not "involved in the accident" within the meaning of MCL 500.3113(b), inasmuch as the vehicle was legally parked at the time of the accident.[2] As indicated previously, MCL 500.3113(b) precludes a person from receiving PIP benefits if he was an owner of a motor vehicle involved in the accident and the vehicle was uninsured. MCL 500.3106 provides that where a vehicle is parked, it is not "involved in an accident" unless an exception to the parked vehicle provision applies. *Heard v State Farm Mut Automobile Ins Co*, 414 Mich 139, 144; 322 NW2d 1 (1982); see also *Mack v Travelers Ins Co*, 192 Mich App 691, 694; 481 NW2d 825 (1992) ("A parked vehicle is not 'involved in an accident' for purposes of § 3113(b) unless one of the statutory exceptions to the parked vehicle provision . . . is applicable."). One exception to the parked vehicle provision is when an injury is sustained by a person while occupying the parked vehicle. MCL 500.3106(1)(c). According to plaintiff's deposition testimony, the Impala was parked on a driveway and occupied by plaintiff at the time of the accident. Therefore, as a matter of law, the Impala was "involved in the accident." *Childs v American Commercial Liability Ins Co*, 177 Mich App 589, 592; 443 NW2d 173 (1989).[3]

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[2] Whether plaintiff has properly preserved this issue for appeal is questionable. During the December 11, 2008 motion hearing, plaintiff's counsel indicated to the trial court that there was no immediate need to decide the "involved in an accident" issue, as the focus was on "constructive ownership." As a result, the trial court did not explicitly decide the issue. *Hines v Volkswagon of America*, 265 Mich App 432, 443; 695 NW2d 84 (2005).

[3] This case was originally submitted as a case for which no oral argument would be held, but we issued an order placing this case on our February case call and asked the parties to brief several issues. We have considered the parties supplemental briefs, and conclude that the issues addressed are not dispositive of this appeal.

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray