STATE OF MICHIGAN

COURT OF APPEALS

ST. JOHN HOSPITAL & MEDICAL CENTER, Plaintiff-Appellee,	UNPUBLISHED July 27, 2010
v	No. 292218 Wayne Circuit Court
FARMERS INSURANCE EXCHANGE, Defendant-Appellant.	LC No. 08-105840-NF

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

In this action for recovery of first-party no-fault benefits, defendant appeals as of right from a judgment awarding plaintiff $30,401.75, after the court granted plaintiff's motion for partial summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Id.* at 120. A reviewing court must consider the affidavits, depositions, admissions, and other documentary evidence submitted by the parties and, viewing that evidence in the light most favorable to the nonmoving party, determine whether there is no genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Id.*

Garrick McMillon was injured while driving an automobile that was titled in his mother's name. At the time of the accident, the vehicle was uninsured. Defendant was assigned the claim through the Assigned Claims Facility. The issue presented is whether McMillon may be considered an "owner" of the vehicle under MCL 500.3101(2)(h)(i), because he was a person "having use" of the vehicle "under a lease or otherwise, for a period that is greater than 30 days." If so, MCL 500.3113(b) bars recovery of first-party benefits because the vehicle was uninsured.

Under MCL 500.3101(2)(h), "ownership follows from proprietary or possessory usage, as opposed to merely incidental usage under the direction or with the permission of another." *Ardt v Titan Ins Co*, 233 Mich App 685, 690-691; 593 NW2d 215 (1999). This case is similar to *Detroit Med Ctr v Titan Ins Co*, 284 Mich App 490; 775 NW2d 151 (2009), in which this Court set forth the relevant facts as follows:

> Taking facts discerned from interviews of [the injured party Maria] Jimenez and Jose Gonzalez in the light most favorable to defendant, it was established that Gonzalez had title to the car and canceled the insurance; he was the father of Jimenez's two children and may have lived with her; the car was kept at Jimenez's residence; she used the vehicle, primarily for grocery shopping, approximately seven times over the course of about a month; she had to get permission and the keys from Gonzalez to use the vehicle, although permission may never have been denied; she fueled the car, but Gonzalez was otherwise responsible for maintenance; and he had stopped using the vehicle, as he had use of another. [*Id*. at 491-492.]

This Court concluded that Jimenez was not an "owner" of the vehicle, reasoning.

> Here, Jimenez did not "hav[e] the use" of the vehicle "for a period that is greater than 30 days." There was no transfer of a right of use, but simply an agreement to periodically lend. The permission was not for a continuous 30 days, but sporadic. Similar to the vehicle in *Chop* [*v Zielinski*, 244 Mich App 677; 624 NW2d 539 (2001)], the car was kept at Jimenez's residence. Moreover, she clearly had a significant relationship with Gonzalez such that permission to use the vehicle apparently was never denied. However, unlike the driver in *Ardt,* there was no evidence that Jimenez had "regular" use of the car. Also, contrary to the plaintiff in *Chop,* Jimenez did not believe that she had any right of ownership and she did not have unfettered use. She had to ask permission and had to be given the keys. While there are facts in common with *Chop* and *Ardt*, these facts, by themselves, do not establish ownership. The need for permission distinguishes this case from *Chop* and *Twichel* [*v MIC Gen Ins Corp*, 469 Mich 524; 676 NW2d 616 (2004)], and the lack of any evidence of regular use distinguishes this case from *Ardt.* Accordingly, the trial court did not err when it concluded that Jimenez was not an owner of Gonzalez's vehicle. [*Detroit Med Ctr*, 284 Mich App at 493-494.]

The evidence in this case established that McMillon did not have a right of use of the vehicle, which was titled in his mother's name, but rather was allowed to use the vehicle periodically with his mother's permission, which was sometimes denied. McMillon was required to request permission to use the car and borrow the keys, and any permissive use given was not for a continuous period. Accordingly, the trial court did not err in granting partial summary disposition in favor of plaintiff.

Although defendant argues that cases such as *Ardt,* 233 Mich App 685, and *Chop,* 244 Mich App 677, are based on flawed reasoning because the requirement of proprietary or possessory usage is not part of the statutory definition of owner, we are not persuaded that *Ardt* and its progeny were wrongly decided.

Affirmed.

/s/Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens