STATE OF MICHIGAN

COURT OF APPEALS

JUNIOR JAMIL SALMO, Plaintiff-Appellant,	UNPUBLISHED October 17, 2017
v	No. 333214 Oakland Circuit Court
SEAN WILLIAM OLIVERIO, JENNIFER LYNN EMERICK, and AUTO-OWNERS INSURANCE COMPANY, Defendant-Appellees.	LC No. 2015-148124-NI

Before: GLEICHER, P.J., and FORT HOOD and SWARTZLE, JJ.

PER CURIAM.

Junior Salmo owned a vehicle that his ex-wife insured under her business's no-fault policy. Because Salmo was the vehicle's only "owner," he was required to secure statutorily required no-fault insurance. As he failed to do so, the circuit court summarily dismissed his tort claim against a third-party who injured Salmo in a motor vehicle accident and his claim for underinsured motorist benefits against the vehicle's insurer. This result is mandated by *Barnes v Farmers Ins Exch*, 308 Mich App 1; 862 NW2d 681 (2014), and we affirm.

I. BACKGROUND

Plaintiff Junior Salmo owned a 2013 Chevy Malibu that was insured by defendant Auto-Owners Insurance Company. The Malibu struck a Ford Mustang driven by defendant Sean Oliverio when Oliverio failed to yield the right of way at an intersection. Salmo sustained a shoulder injury. He brought an action for tort damages against Oliverio and the owner of the Mustang, defendant Jennifer Emerick. His complaint also included a claim against defendant Auto-Owners for underinsured motorist (UIM) benefits.

Auto-Owners successfully moved for summary disposition on the ground that although Salmo *owned* the Malibu, he had not personally insured it.[1] The pertinent facts underlying this

[1] Salmo actually leased the vehicle, but under MCL 500.3101(k)(*i*) he is an "owner." The statute defines an "owner" to include "[a] person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days."

disputed issue are few and uncontested. JRKS Liquor, Inc., a business owned by Rita Salmo, plaintiff's ex-wife, purchased the no-fault policy covering the Malibu. The policy listed Randy Salmo as a driver of the Malibu; plaintiff Junior Salmo claims that the name "Randy" in the policy refers to him. Salmo testified at his deposition that he "help[ed] out" at Rita Salmo's liquor store by working there occasionally, but he was not an employee. In exchange for his liquor store labors, Rita paid some of his bills and allowed him to live in her home. Salmo owned no other vehicles or insurance policies.

Auto-Owners' summary disposition motion asserted that Salmo's failure to personally insure his vehicle disqualified him from recovering tort damages and UIM benefits.[2] The circuit court agreed, ruling:

> MCL § 500.3101 expressly states that the owner or registrant of a motor vehicle – not anyone else – must maintain insurance on the motor vehicle. Therefore, this Court finds – as a matter of law – that plaintiff failed to establish a genuine issue of material fact that he – as the registered owner of the motor vehicle – maintained insurance on the Chevy Malibu. As such, this Court finds – as a matter of law – that MCL § 500.3135(2)(c) precludes damages from being assessed in favor of plaintiff because he was operating his "own motor vehicle at the time the injury occurred *and did not have in effect for that motor vehicle the security required* by [MCL 500.3101] at the time the injury occurred."

The circuit court also granted summary disposition to Emerick and Oliverio.

Salmo moved for reconsideration, contending that the language of MCL 500.3101 required only that the owner "maintain" insurance on his vehicle, and Salmo had done so by allowing JRKS Liquor to insure the vehicle. The circuit court rejected this argument, and Salmo now appeals.

II. STANDARDS OF REVIEW

> We review de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). . . .
>
> We also review de novo matters of statutory interpretation. *Stanton v City of Battle Creek*, 466 Mich 611, 614; 647 NW2d 508 (2002). The goal of statutory interpretation is to discern and give effect to the intent of the Legislature. *Odom v Wayne Co*, 482 Mich 459, 467; 760 NW2d 217 (2008). To that end, the first step in determining legislative intent is the language of the statute. *Id.* If the statutory language is unambiguous, then the Legislature's intent is clear and judicial construction is neither necessary nor permitted. *Id.* [*Barclae v Zarb*, 300 Mich App 455, 466-467; 834 NW2d 100 (2013).]

[2] Defendants Oliverio and Emerick concurred in Auto-Owners' motion.

We review de novo questions of contract interpretation and considerations regarding the legal effect of a contractual provision. *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 611; 792 NW2d 344 (2010). Because a no-fault insurance policy is a contract, the general rules of contract interpretation apply. *Rory v Continental Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). Clear and unambiguous provisions of an insurance policy must be enforced according to their plain meanings. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 354; 596 NW2d 190 (1999).

III. ANALYSIS

In *Barnes v Farmers Ins Exch*, 308 Mich App 1, 7-8; 862 NW2d 681 (2014), this Court held that MCL 500.3101(1) requires that the owner of a vehicle provide the "security" (insurance) mandated by the no-fault act, MCL 500.3101 *et seq*. *Barnes*' interpretation of this statutory language controls the outcome of this case and supports the circuit court's summary dismissal of the matter.

The vehicle owner in *Barnes* sought personal injury protection (PIP) benefits after she was injured in an accident while driving a vehicle she owned. A family friend, Richard Huling, had purchased the insurance coverage for the vehicle. *Id*. at 3. This Court affirmed a grant of summary disposition in favor of the insurer based on its construction of the language of MCL 500.3101(1) and MCL 500.3113. The issue presented here is slightly different, as Salmo seeks tort damages under MCL 500.3135 and UIM benefits, which are contractual. But because the operative statutory language does not differ meaningfully from that construed in *Barnes*, the same outcome must obtain.

MCL 500.3101(1) demands that "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under [PIP], property protection insurance, and residual liability insurance." *Barnes* construed this sentence as a gateway provision. If an "owner or registrant" fails to maintain the security required, the door to the benefits available under the no-fault act remains locked. See *Barnes*, 308 Mich App at 6. Different statutory provisions confer different no-fault benefits. But they share a central feature: each references the language of § 3101(1) and preclude access to the benefit if the precondition described in § 3101(1) is unfulfilled at the time of the accident.

For example, MCL 500.3113 states:

> A person is not entitled to be paid [PIP] benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by [MCL 500.3101 or MCL 500.3103] was not in effect.

Barnes explains that with regard to a claimant's entitlement to PIP benefits, § 3113 "sets forth a consequence in the event that the required insurance is lacking." *Barnes*, 308 Mich App at 6.

This "plain language," *Barnes* held, means that if no vehicle owner "maintains the requisite coverage, no owner may recover PIP benefits." *Id*. at 8-9.

As did the plaintiff in *Barnes*, Salmo cites *Iqbal v Bristol West Ins Group*, 278 Mich App 31; 748 NW2d 574 (2008), in support of his argument that as long as *someone* insured his vehicle, it cannot be considered "uninsured" for the purposes of the no-fault act's penalty provisions. *Barnes* soundly rejected this argument by factually distinguishing *Iqbal.* In *Iqbal*, the plaintiff was injured while driving a BMW titled, registered and insured in the name of the plaintiff's brother. *Id*. at 32. However, the plaintiff "had the use of his brother's vehicle for a period greater than 30 days," which resulted in the plaintiff's ownership of the vehicle under MCL 500.3101(2)(g)(*i*). *Id*. The defendant insurance company contended that as an owner, the plaintiff was required to maintain insurance on the vehicle, and that his failure to do so disqualified him from receiving PIP benefits. *Id*. at 32-33. This Court held that because a titled owner *did* maintain the coverage, "the security required by MCL 500.3101(1) was in effect for the purposes of MCL 500.3113(b)[.]" *Id*. at 40.

Salmo relies on obiter dicta in *Iqbal* which, when taken out of context, would seem to support his argument that the *existence* of coverage is all that the no-fault act requires:

> The statutory language links the required security or insurance solely to the vehicle. Thus, the question becomes whether the BMW, and not plaintiff, had the coverage or security required by MCL 500.3101. As indicated above, the coverage mandated by MCL 500.3101(1) consists of "[PIP], property protection insurance, and residual liability insurance." While plaintiff did not obtain this coverage, there is no dispute that the BMW had the coverage, and that is the only requirement under MCL 500.3113(b), making it irrelevant whether it was plaintiff's brother who procured the vehicle's coverage or plaintiff. Stated differently, the security required by MCL 500. 3101(1) was in effect for purposes of MCL 500.3113(b) as it related to the BMW. [*Id*. at 39-40.]

But in *Barnes*, this Court declined to read *Iqbal* "so broadly as to apply to even nonowners" who purchase coverage. *Barnes*, 308 Mich App at 8. *Barnes* highlighted that the Court in *Iqbal* "made it clear that it was addressing the problem of whether the statute required 'each and every owner' to maintain insurance on a vehicle." *Id*. As interpreted by *Barnes*, the Court in *Iqbal* rejected that all of a vehicle's owners bear a duty to insure it; "to so hold would preclude an owner who obtained insurance from receiving PIP benefits as long as any other co-owner did not maintain coverage as well." *Id*. The Court summarized,

> Therefore, while *Iqbal* held that each and every owner need not obtain insurance, it did not allow for owners to avoid the consequences of MCL 500.3113(b) if no owner obtained the required insurance. Thus, under the plain language of MCL 500.3113(b), when none of the owners maintains the requisite coverage, no owner may recover PIP benefits. [*Id*. at 8-9.]

In *Barnes*, *Iqbal*, and here, the statutory analysis begins with MCL 500.3101(1), which sets forth the compulsory coverage component of the no-fault act:

> The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under [PIP], property protection insurance, and residual liability insurance.

A claimant's failure to fulfil this mandate gives rise to consequences addressed in various sections of the act. MCL 500.3113 addresses a claimant's eligibility for PIP benefits and governed the outcome in *Barnes*. MCL 500.3135(2)(c) controls a claimant's entitlement to noneconomic damages in a tort action and is at issue here. The latter statute provides in relevant part:

> (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.
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> (2) For a cause of action for damages pursuant to subsection (1) filed on or after July 26, 1996, all of the following apply:
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> * * *
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> (c) **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 [MCL 500.3101] at the time the injury occurred.** [Emphasis added.]

Pursuant to *Barnes*, "the security required by [MCL 500.3101]" is a policy of insurance purchased by at least one owner of the vehicle involved in the accident. Because Salmo was the sole owner of the vehicle he was driving when injured and Salmo had not purchased no-fault coverage for that vehicle, *Barnes* compels the conclusion that tort damages may not be assessed in his favor.

The same analysis applies to Salmo's claim for UIM benefits. The Auto-Owners insurance policy issued to JRKS Liquor provides in relevant part as follows:

> **2. COVERAGE**
>
> **a. We** will pay compensatory damages, including but not limited to loss of consortium, [to] any person [who] is legally entitled to recover from the owner or operator of an **underinsured automobile** because of **bodily injury** sustained by an injured person while **occupying** an **automobile** that is covered by **SECTION II – LIABILITY COVERAGE** of the policy. [Emphasis in original.]

Salmo is not "legally entitled" to recover third-party benefits from Emerick or Oliverio. Therefore, he is not entitled to collect the UIM benefits otherwise available under the JRKS Liquor policy.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Karen M. Fort Hood
/s/ Brock A. Swartzle