STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA, Plaintiff-Appellee, v GENEVIEVE SCHUMACHER and MICHELLE ESTELLE RAMIREZ, Defendants, and SECURA INSURANCE, Defendant-Appellant.	UNPUBLISHED October 18, 2011 No. 299549 Isabella Circuit Court LC No. 2009-007368-NF

Before: SHAPIRO, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Secura Insurance appeals the trial court's grant of summary disposition to Citizens Insurance Company of America. For the reasons set forth below, we affirm.

I. FACTS

On October 26, 2005, Timothy Johnson sustained injuries in a motor vehicle accident. Johnson was driving a 1993 Cadillac Seville with the permission of Genevieve Schumacher. Schumacher was at work at the time, and Johnson was driving the Cadillac to an auto shop so that a mechanic could look at the car's transmission. One central issue in the case is whether Schumacher owned the Cadillac when the accident occurred. The car was registered to Schumacher with the Secretary of State's Office and hers is the only name on the title. However, Schumacher testified that, in September 2005, she sold the Cadillac to her daughter's boyfriend, Jeremy Qualls, and she cancelled the insurance coverage on the vehicle that she had through Secura Insurance. Schumacher also owned a Buick LeSabre that was insured by Secura.

When she purportedly sold the Cadillac to Qualls, Schumacher signed the title assignment section on the back of the vehicle title and she printed her address, a selling price of $1, and the date of September 14, 2005. Schumacher gave the title to Qualls, though she did not write his name or address on the title as the purchaser of the vehicle, she did not disclose the

odometer reading, and she did not remove her license plate from the car. It is undisputed that Qualls never paid Schumacher any money for the Cadillac, he never signed the title as the purchaser, he never transferred the title to himself at a Secretary of State's Office, and he never insured the vehicle.

Schumacher testified that, when she sold the Cadillac to Qualls, her daughter Michelle Ramirez was in jail. When Ramirez was released, she and Qualls ended their romantic relationship. At around that time, Ramirez learned that Qualls never transferred the vehicle title to himself. On the basis of that information, Schumacher instructed Ramirez to "get the car" back. The record reflects that Qualls did not challenge Schumacher's right to take back the car. Indeed, he denies that he ever agreed to buy the Cadillac from Schumacher and he testified that Schumacher merely let him use the car while he was dating Ramirez. In any case, Qualls told Ramirez he would leave the vehicle in his driveway with the keys inside. Ramirez picked up the car and the keys and title were inside. At the time, the car's transmission was slipping and the heating system was blowing cold air. Schumacher testified that she intended to pay for repairs to the Cadillac and drive the car herself. A couple of days after Ramirez retrieved the Cadillac from Qualls, Johnson was driving it to the mechanic and was involved in the auto accident. Schumacher testified that she intended to insure the Cadillac, but she had not done so by the time the accident occurred.

Johnson sought no-fault benefits from Secura, but, because Schumacher cancelled coverage on the Cadillac in September, Secura denied his claim. Johnson had no other insurance coverage, so he filed a claim with the Assigned Claims Facility, which assigned the claim to Citizens. Thereafter, Citizens paid no-fault benefits to Johnson. Citizens then filed this action against Secura, Schumacher, and Ramirez.[1] With regard to Secura, Citizens argued that Secura is the higher priority insurer and that it must reimburse Citizens for the no-fault benefits paid to Johnson. The trial court ultimately agreed and granted summary disposition to Citizens.

II. ANALYSIS

The trial court granted summary disposition to Citizens pursuant to MCR 2.116(C)(10) and MCR 2.116(I)(2). We review a grant of summary disposition de novo. *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 23; 800 NW2d 93 (2010). As this Court explained in *Besic* at 23:

> Subrule (C)(10) tests a claim's factual support. "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh* [*v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).]

[1] Schumacher and Ramirez are not parties to this appeal.

"Under MCR 2.116(I)(2), summary disposition is properly granted in favor of the nonmoving party if that party, rather than the moving party, is entitled to judgment." *Auto-Owners Ins Co v Martin*, 284 Mich App 427, 433; 773 NW2d 29 (2009).

As this Court explained in *Farmers Ins Exch v Farm Bureau Ins* Co, 272 Mich App 106, 111; 724 NW2d 485 (2006):

> "'[O]ur primary task in construing a statute [] is to discern and give effect to the intent of the Legislature.'" *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004), quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "If the statutory language is unambiguous, we must presume that the Legislature intended the meaning it clearly expressed and further construction is neither required nor permitted." *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). In construing a statute, a court must give effect to every word, phrase, and clause and avoid a construction that would render any part of the statute surplusage or nugatory. *Griffith* [*v State Farm Mut Automobile Ins Co*, 472 Mich 521, 533-534; 697 NW2d 895 (2005)].

The no-fault act states 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 personal protection insurance, property protection insurance, and residual liability insurance." MCL 500.3101(1). The act further provides that "an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3105(1). Under the no-fault act, the Assigned Claims Facility represents the insurer of last priority. *Spencer v Citizens Ins Co*, 239 Mich App 291, 301; 608 NW2d 113 (2000). Indeed, pursuant to MCL 500.3172(1), a person may make a claim to the assigned claims facility if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed."

A person entitled to no-fault benefits generally first looks to his own insurer for coverage. MCL 500.3114(1). If, as here, the injured person has no insurance coverage, he may then seek benefits from the insurer of his spouse or, if his spouse is not insured, to the insurer of a relative who lives at the same residence. *Id*. It is undisputed that Johnson did not have auto insurance and that he had no other coverage available under MCL 500.3114(1). Accordingly, MCL 500.3114(4) applies. This subsection states:

> [A] person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
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> (a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied.

Citizens argued in the trial court that, as the assigned claims insurer, it was not obligated to pay Johnson's claim because Secura is a priority insurer under MCL 500.3114(4). On the basis of the plain language of the statute cited above, if Schumacher was the owner or registrant of the 1993 Cadillac, Johnson was entitled to recover no-fault benefits first from Schumacher's insurer. It is undisputed that Schumacher cancelled the Secura policy on the Cadillac before Johnson's car accident. However, the trial court ruled that, because Schumacher owned the Cadillac and because she maintained a Secura policy on her Buick LeSabre, Secura is the "insurer" of Schumacher as the owner or registrant of the Cadillac pursuant to MCL 500.3114(4).

To support its holding, the trial court cited *Farmers Ins Exch*, 272 Mich App 106. *Farmers* involved a motorcycle accident and this Court applied MCL 500.3114(5) which, similar to MCL 500.3114(4), stated that the insurer first in priority is "[t]he insurer of the owner or registrant of the motor vehicle involved in the accident." Relying on *Pioneer State Mut Ins Co v Titan Ins Co*, 252 Mich App 330, 337; 652 NW2d 469 (2002), the *Farmers* Court ruled that the no-fault act binds the insurer of the owner of the occupied vehicle, even if, as here, the policy actually covers another vehicle belonging to that owner, not the vehicle involved in the accident. The *Farmers* Court explained at 113-114:

> Pursuant to the plain language of the statute, all that is required for an insurer to be first in priority to pay no-fault benefits is to insure "the *owner or registrant* of the motor vehicle involved in the accident." In other words, the plain language of MCL 500.3114(5)(a) states that the insurer need not insure the vehicle in the accident, but must insure the owner or registrant. Here, because defendant insured [John] Petiprin, who owned the van involved in the accident, defendant is first in priority to provide benefits under MCL 500.3114(5)(a). Had the Legislature intended MCL 500.3114(5)(a) only to require an insurer to provide no-fault benefits if the insurer actually insured the motor vehicle involved in the accident, it could have chosen the following language for MCL 500.3114(5)(a): "The insurer of the motor vehicle involved in the accident," deleting the first prepositional phrase, "of the owner or registrant." Clearly, the Legislature did not choose that language, and for us to adopt defendant's position would be to render the phrase "of the owner or registrant" in the statute nugatory. [Emphasis in original.]

Secura contends that *Farmers* was wrongly decided, but we are unpersuaded by Secura's arguments. We further observe that we are bound by the rulings in *Farmers* and *Pioneer* under the rule of stare decisis. MCR 7.215(J)(1); *Wesche v Mecosta County Road Com'n*, 480 Mich 75, 82 n 7; 746 NW2d 847 (2008).[2] Moreover, to the extent Secura argues that 500.3114 is

[2] Secura relies on *Heard v State Farm Mut Auto Ins Co*, 414 Mich 139, 144; 324 NW2d 1 (1982) and *Turner v Auto Club Ins Ass'n*, 448 Mich 22; 528 NW2d 681 (1995). We find those cases factually distinguishable and inapplicable because they involved the interpretation of sections of

inconsistent with the language of Schumacher's policy, it is well-settled that the provisions of the no-fault act prevail over conflicting policy language. *Pioneer*, 252 Mich App at 337.

Secura further argues that there is a genuine issue of material fact about whether Schumacher owned the car at the time of the accident. Secura takes the position that Schumacher sold the Cadillac to Qualls and that she never regained ownership of the vehicle. Transfers of ownership are set forth in the vehicle code under MCL 257.233:

> (8) The owner shall indorse on the certificate of title as required by the secretary of state an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.
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> (9) 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 is the date of signature on either the application for title or the assignment of the certificate of title by the purchaser, transferee, or assignee.

The record reflects that, pursuant to MCL 257.233(8), Schumacher signed the title assignment section on the back of the vehicle title and gave the title to Qualls. However, Qualls never signed the application for title or the assignment of the certificate of title for purposes of MCL 257.233(9). Indeed, there is no name printed or signed to designate a purchaser of the vehicle, which is consistent with Qualls's testimony that he never intended to buy the car from Schumacher and evidence from both Schumacher and Qualls that Qualls never paid for the car. In any case, even if Schumacher intended to sell the Cadillac to Qualls, the transfer did not technically become effective under MCL 257.233(9).[3]

Were we to conclude that a sale to Qualls did occur, it remains undisputed that Qualls never registered the vehicle in his name, he never signed the title or made any other indication that he owned the vehicle and, without any hesitation, he agreed to return the vehicle to Schumacher. It is further significant that Schumacher testified that she owned the vehicle at the

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the no-fault act not directly bearing on the questions here. Also, as stated in the opinion, because this Court has interpreted the applicable statutory language in prior, published opinions that have not been overruled by our Supreme Court, we are bound by those decisions. MCR 7.215(J(1).

[3] We further note that Schumacher failed to comply with MCL 257.233a, which required her to give, among other things, the odometer reading at the time of the transfer as well as the transferee's name and address. While this did not render the sale automatically void, the transaction was voidable for this failure as stated in *Whitcraft v Wolfe*, 148 Mich App 40; 384 NW2d 400 (1985).

time of the accident, she was in the process of having the vehicle assessed for repairs, and she again intended to insure the vehicle. Though Qualls did not sign the back of the title as the transferor when he returned the vehicle to Schumacher, this is consistent with his testimony that he never believed he was the owner of the vehicle. Further, because Qualls was never listed as the purchaser of the vehicle in the initial transaction, and because he did not sign the title as the purchaser, the title continued to show Schumacher as the registered owner of the vehicle, which reflected the intent of the parties when Schumacher regained possession.

While the unusual facts in this case and certain technical failures by Schumacher and Qualls make it difficult to assign liability for no-fault benefits, all of the testifying witnesses agree that it was everyone's intent and understanding that Schumacher regained ownership of the vehicle just before the accident occurred and that her ownership continued through the time the accident occurred. The "owner" of a motor vehicle is defined in 500.3101(h) as meaning a person who has the use of a vehicle for a period that is greater than 30 days. If the evidence shows that the right of use will extend beyond 30 days, the definition of "owner" is satisfied. *Twichel v MIC General Ins Corp*, 469 Mich 524, 530-531; 676 NW2d 616 (2004). Considering also that "ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage . . . ." it is clear that, at the time of the accident, Schumacher had full control and access to the vehicle and Qualls did not. *Ardt v Titan Ins Co*, 233 Mich App 685, 691; 593 NW2d 215 (1999). Not only did Schumacher have actual possession of the vehicle, the title was in her name, the car remained officially registered with the Secretary of State in her name and, as compared to Qualls, she had the exclusive use and custody of the vehicle. Schumacher testified that she intended to repair the vehicle and use it and Qualls testified unequivocally that the vehicle belonged to Schumacher. Thus, despite the failure of either witness to fully comply with the statutes, Schumacher clearly owned the vehicle at the time of the accident. Because Secura covered Schumacher's other vehicle, Secura was the priority insurer for purposes of Johnson's injuries and the trial court correctly granted summary disposition to Citizens. *Farmers Ins Exch*, 272 Mich App at 113-114.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Jane M. Beckering