STATE OF MICHIGAN

COURT OF APPEALS

TITAN INSURANCE COMPANY, Individually and as Subrogee of Troy Hughes,

Plaintiff-Counterdefendant-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Counterplaintiff-Crossplaintiff-Appellee,

And

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant-Crossdefendant.

UNPUBLISHED
March 27, 2012

No. 301978
Oakland Circuit Court
LC No. 2009-101943-NF

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff and counterdefendant, Titan Insurance Company (Titan), appeals as of right the trial court's order finding that Titan was solely responsible, as opposed to defendant and counterplaintiff, State Farm Mutual Automobile Insurance Company (State Farm), with respect to the payment of personal protection insurance (PIP) benefits under MCL 500.3114(5) for injuries incurred by motorcyclist Troy Hughes. Titan maintained that State Farm was liable on the claim for PIP benefits and that State Farm was the higher priority insurer for purposes of MCL 500.3114(5). We reverse and remand for entry of judgment in favor of Titan.

On September 20, 2007, Troy Hughes, while operating his motorcycle, collided with a 1994 Dodge pickup truck and sustained serious injuries. No traffic citations were issued in connection with the accident. Hughes did not carry insurance on the motorcycle, but he did maintain insurance on another vehicle that he owned through a policy issued by Titan. The Dodge pickup truck was driven by Courtney Van Eck. Five days before the accident, she had married the owner and registrant of the truck, Bradley Curtiss. Although it was Bradley Curtiss

who owned the truck, David Curtiss, Bradley's father, obtained and maintained an insurance policy on the truck that was issued by State Farm. The State Farm policy listed David Curtiss as the named insured, the policy indicated that David, pursuant to his representations, was the owner and operator of the truck, and the policy did not identify Bradley Curtiss or Courtney Van Eck as drivers. David Curtiss never owned or operated the truck. Courtney and Bradley were not covered by any other insurance policies. At the time the State Farm policy was issued on the pickup truck, June of 2006, Bradley and Courtney lived with David at his home located in Middleville. The parties dispute whether Bradley Curtiss and Courtney Van Eck lived with David Curtiss on the date of the accident.

After the accident, State Farm paid PIP benefits to Hughes in the amount of approximately $1 million. State Farm stopped paying after determining that, in its opinion, it was not liable to Hughes for PIP benefits. Titan then paid $200,000 in PIP benefits to Hughes before filing suit against State Farm for reimbursement of the PIP payments, arguing that State Farm had higher priority under MCL 500.3114(5). State Farm filed a counterclaim, asserting that Titan alone was responsible for paying PIP benefits. The parties subsequently filed competing motions for summary disposition, raising a variety of arguments. Aside from presenting an argument predicated on the equity-driven innocent third-party rule, Titan maintained that State Farm was the insurer of the truck's owner and registrant, Bradley Curtiss, where Bradley was a resident relative domiciled in David Curtiss's home. Therefore, according to Titan, State Farm had priority to pay PIP benefits to Hughes under MCL 500.3114(5)(a).[1] State Farm argued that Bradley was not living with David at the time of the accident, submitting four supporting affidavits; therefore, it had no liability to pay benefits. The parties waived their right to trial and asked the trial court to rule based upon their briefs in support of summary disposition and their proposed findings of fact and conclusions of law. The trial court ruled in favor of State Farm, finding that "on September 20, 2007, Bradley Curtiss was not residing in David Curtiss's home and therefore, was not a resident relative under the meaning of State Farm's policy." Based on this finding, the court concluded that State Farm was not Bradley's

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[1] (5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

* * *

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident. [There is no dispute that Titan falls under subsection (5)(c).]

insurer for purposes of entitlement and priority under MCL 500.3114(5), leaving Titan solely responsible for paying PIP benefits to Hughes.

On appeal, Titan argues that State Farm is estopped from denying coverage under the innocent-third party rule, asserting that State Farm could have easily ascertained that David Curtiss was not the owner of the pickup truck. Titan also contends that the trial court erred in finding that Bradley Curtiss did not reside with his father at the time of the accident. Titan additionally argues, for the first time, that State Farm was the insurer of the operator of the truck, Courtney Van Eck, for purposes of priority under MCL 500.3114(5)(b). Although this last argument was not preserved below, "this Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented." *Smith v Foerster–Bolser Constr, Inc,* 269 Mich App 424, 427; 711 NW2d 421 (2006). We find that consideration of the issue is necessary for a proper determination of the case, that the issue involves a question of law and the facts necessary for its resolution were presented, and that manifest injustice would result absent consideration of the issue. Indeed, it is unnecessary to address the other arguments posed by Titan, given our holding, explained below, that State Farm was Courtney's "insurer" under MCL 500.3114(5)(b), making it higher in priority than Titan.

Questions involving the proper interpretation of a contract or the legal effect of a contractual clause are reviewed de novo on appeal. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005), citing *Archambo v Lawyers Title Ins Corp,* 466 Mich 402, 408; 646 NW2d 170 (2002); *Bandit Industries, Inc v Hobbs Int'l, Inc (After Remand),* 463 Mich 504, 511; 620 NW2d 531 (2001). Issues of statutory construction are also reviewed de novo. *People v Flick,* 487 Mich 1, 8-9; 790 NW2d 295 (2010).

MCL 500.3114 provides:

> (5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
>
> (b) The insurer of the operator of the motor vehicle involved in the accident.
>
> (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.
>
> (d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

Under MCL 500.3114(5)(c), Titan was the motor vehicle insurer of Hughes, who was the operator of the motorcycle involved in the accident. We find, however, that State Farm was

higher in priority, where, for purposes of MCL 500.3114(5)(b), State Farm was the insurer of the operator of the motor vehicle involved in the accident, i.e., Courtney Van Eck. The caselaw surrounding this issue provides that the specific language of the relevant auto-insurance policy determines who is or is not insured under the policy. In *Dobbelaere II v Auto Owners*, 275 Mich App 527; 740 NW2d 503 (2007), the plaintiff's decedent was ejected from an uninsured vehicle that was owned by David Jones and operated by Jones's son, David Jones, Jr. The plaintiff's decedent himself did not have PIP coverage under any policy. Randie Jones, the wife of the vehicle's owner and the mother of the vehicle's operator, had her own no-fault policy through Auto-Owners. Randie was the only named insured under the Auto-Owners policy. David, Randie, and David, Jr., all resided in the same household, and David and David Jr. had PIP coverage under the Auto-Owners policy by operation of law pursuant to MCL 500.3114(1), given their statuses as "spouse" and "resident relative" in relationship to the named insured.[2] The question that arose was whether Auto-Owners was the "insurer" of the vehicle's owner and operator, David and David Jr., respectively, such that Auto-Owners owed PIP benefits to the plaintiff's decedent pursuant to MCL 500.3114(4). Under MCL 500.3114(4)(a) and (b), PIP coverage for a person injured as an occupant of a vehicle, unless otherwise indicated, is to be provided first by the "insurer of the owner or registrant of the vehicle occupied" and then second in priority is the "insurer of the operator of the vehicle occupied." The case did not actually involve a priority dispute, but the plaintiff did attempt to use the priority provision to establish that Auto-Owners was liable for PIP benefits and that plaintiff was entitled to those benefits, contending that Auto-Owners was the "insurer" of both the operator and the owner.[3] This Court rejected the argument that Auto-Owners was the father and son's "insurer" simply because they would be entitled to PIP benefits themselves pursuant to Randie's policy by operation of law under MCL 500.3114(1). However, the panel stated:

> This Court has held that whether the issuer of a no-fault insurance policy is the "insurer" of a household member or family member for purposes of MCL 500.3114(4) "depends on the language of the relevant insurance policy." [*Dobbelaere*, 275 Mich App at 532-533.]

The panel then found that the "policy at issue here does not define who is an insured for purposes of the no-fault endorsement." *Id.* at 534. The Court therefore concluded "that the trial court erred by denying [Auto-Owners'] motion for summary disposition because it was not the 'insurer' of either David Jones or David Jones II within the meaning of MCL 500.3114(4)(a) and (b)." *Id.* Accordingly, given that MCL 500.3114(5) uses comparable language to MCL

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[2] MCL 500.3114(1) "has long been interpreted by the courts of this state as derivatively providing PIP benefits to the spouse and household relatives of the named insured." *Dobbelaere*, 275 Mich App at 532.

[3] MCL 500.3114 constitutes both a priority and an entitlement provision, and it is considered an entitlement provision in the sense that "persons are given the right to claim personal protection insurance benefits from a specific insurer." *Belcher v Aetna Cas & Surety Co*, 409 Mich 231, 251-252; 293 NW2d 594 (1980).

500.3114(4), *Dobbelaere* supports the proposition that if Courtney Van Eck fits the definition of an "insured" under the State Farm policy, State Farm would be Courtney's "insurer" for purposes of MCL 500.3114(5)(b).

Consistent with *Dobbelaere* is this Court's ruling in *Amerisure Ins Co v Coleman*, 274 Mich App 432; 733 NW2d 93 (2007). In *Amerisure Ins Co*, a husband and his wife, along with the husband's nephew, were involved in an accident. The husband and wife resided together, but the nephew did not live with them. The husband was driving the vehicle, which car was actually owned and registered in the name of his wife's mother, who never procured insurance for the vehicle, nor did the mother-in-law have any other no-fault insurance policy. The wife had a no-fault policy with Titan on a separate vehicle that she owned. The nephew was injured and sought no-fault benefits from Titan, which denied the claim. The nephew, who had no available insurance of his own, then submitted a claim to the Michigan Assigned Claims Facility who assigned the claim to Amerisure, and Amerisure sued Titan, asserting that Titan had priority as the insurer under MCL 500.3114(4). Summary disposition was granted in favor of Amerisure, and Titan appealed. The case boiled down to whether, under MCL 500.3114(4)(b), Titan was the "insurer" of the operator of the vehicle – the husband. This Court, using a dictionary definition, found that an "insurer" was one who agreed by contract to assume the risk of another's loss and to compensate that loss. *Id.* at 435. The panel then reviewed the Titan policy, which solely listed the wife as the named insured. However, the policy defined an "insured" as "you or any family member" and "you" was further defined as including a resident spouse. Therefore, the husband (vehicle operator) qualified as an "insured" under his wife's Titan policy, either as her spouse or as a family member. Accordingly, Titan was the "insurer" of the operator of the motor vehicle for purposes of MCL 500.3114(4)(b). *Id.* at 436-437. The Court specifically rejected the argument that an owner, registrant, or operator must be a named insured on a policy before he or she can be deemed an "insured" under the policy for purposes of MCL 500.3114. We now turn to the State Farm policy at issue here to determine whether Courtney Van Eck fell within the definition of "insured" relative to her operation of the pickup truck. The State Farm Policy provided in relevant part:

> ***Insured*** for Personal Injury Protection Coverage means:
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> 1. *you* or any *resident relative*; and
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> 2. any other *person* while *occupying* or injured as a *pedestrian* by:
>
> a. *your car*;
>
> b. a *newly acquired car*; or
>
> c. any other *motor vehicle* that is being operated by *you* or a *resident relative* and for which that operator is provided Liability Coverage by this policy.

Titan now argues that Courtney qualified as "any other *person* while *occupying . . . your car*." She certainly qualifies as "any other person," and, as the driver, she was an occupant of the 1994 Dodge pickup truck.[4] The question becomes whether the Dodge pickup truck qualifies as "your car" under the language of the policy, where David Curtiss did not own the truck. The Michigan Supreme Court has held that insurance policies are subject to the same contract construction principles that apply to any other type of contract, and unless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. *Rory,* 473 Mich at 461.

In its Definitions section, the State Farm policy provides that "[w]e define certain words and phrases below for use throughout the policy." The term "Your Car" is defined as "the vehicle or vehicles shown under YOUR CAR on the Declarations Page[,] [and] . . . does not include a vehicle that you no longer own or lease." This language is plain and unambiguous. Even though David Curtiss never owned the 1994 Dodge pickup truck, the vehicle identified on the declarations page of the policy is the 1994 Dodge pickup truck involved in the accident. With respect to the second sentence of the "Your Car" definition – "Your Car does not include a vehicle that you no longer own or lease" – the term "no longer" is defined in the Cambridge Advanced Learner's Dictionary as "in the past but not now." Use of the term "no longer" presumes that the vehicle was once owned by the named insured, here David Curtiss. The term "no longer" would apply to a change in vehicle ownership from the named insured to some other person. By including the term "no longer," State Farm impliedly recognized that the vehicle was owned by the named insured, and the plain meaning of the language used in the policy indicates its intention was to recognize the named insured as the owner of the vehicle on the declarations page of the policy until a change in ownership occurred. There was no change in ownership from the time the policy was issued by State Farm until the occurrence of the accident; again, David Curtiss *never owned* the pickup truck. It would be inaccurate to state that he "no longer" owned the truck. Thus, the 1994 Dodge pickup truck would qualify as "Your Car" as it relates to David Curtiss under the terms of the State Farm policy.[5]

Because Courtney Van Eck was "any other person occupying *your car*," State Farm was her insurer, and thus State Farm has priority for the payment of PIP benefits to Hughes under MCL 500.3114(5)(b) (insurer of the operator of the vehicle involved in the accident).

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[4] "Occupying" is defined in the policy as meaning "in, on, entering, or alighting from."

[5] The dissent's interpretation of the "no longer own" language in the "Your Car" definition is entirely inconsistent with the plain and unambiguous meaning of said provision. The dissent is necessarily adding language to the policy that simply does not exist, effectively rewriting the provision so as to additionally encompass vehicles that the named insured "never owned" relative to vehicles excluded from the "Your Car" definition. It is impossible to "no longer own" a vehicle that one never owned. It would have been easy for State Farm to broaden the language to include vehicles that were never owned, which would have been a prudent course to take as evidently State Farm does not check into verifying title of prospective policyholders.

State Farm argues that even if someone other than the named insured is covered as an "insured" under the PIP section of the automobile insurance policy, the coverage extends only to their own personal injuries (Courtney if injured), and not to injuries incurred by third parties (Hughes). In support of the argument, State Farm cites *Dobbelaere II*, 275 Mich App at 532, wherein the Court stated that "the fact that an individual might derivatively claim PIP benefits through a named insured under MCL 500.3114(1) does not render the policy issuer the 'insurer' of that individual for purposes of MCL 500.3114(4)." State Farm's reliance on *Dobbelaere* is misplaced. As reflected above in the discussion of *Dobbelaere*, the Court found that an insurer was not a vehicle owner or operator's insurer for purposes of priority under MCL 500.3114(4) simply because the owner or operator would be entitled to PIP benefits under a policy as a spouse or a domiciled relative pursuant to the mandates of MCL 500.3114(1).[6] The *Dobbelaere* panel did find, however, consistent with the *Amerisure* decision, that if an insurance policy defined an "insured" so as to encompass a vehicle's owner or operator, the insurer issuing the policy would be the "insurer" of the owner or operator for purposes of MCL 500.3114. Importantly, the plaintiff's decedent in *Dobbelaere* and the injured nephew in *Amerisure* were third-party PIP claimants; they were not the persons who were being examined to determine whether they qualified as an "insured" under the policies. The PIP claims were being made on behalf of persons who were injured occupants in vehicles owned and/or operated by others. If State Farm's argument here were sound, the panels in *Dobbelaere* and *Amerisure* would have simply dismissed the cases outright, absent the analysis, on the basis that the third parties could never be entitled to PIP benefits, as the owners or operators were the only persons that could fit the definition of "insured" and thus be entitled to PIP benefits. As indicated above, MCL 500.3114 is a priority and an entitlement provision; therefore, an injured vehicle occupant can receive PIP benefits under MCL 500.3114(4) even though it is an owner or operator, and not the occupant, who is declared an "insured" under a policy's definitions.

As addressed above, the specific language of the State Farm policy defining an insured as "any other person while occupying . . . *your car*," supports our holding that State Farm insured Courtney Van Eck as "the operator of the motor vehicle involved in the accident." Accordingly, pursuant to MCL 500.3114(5)(b), State Farm is higher in priority than Titan for the payment of PIP benefits to Hughes.

Reversed and remanded for entry of judgment in favor of Titan. We do not retain jurisdiction. Having prevailed in full, Titan is awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Joel P. Hoekstra

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[6] MCL 500.3114(1) provides, in part, that a PIP policy "applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household[.]"