STATE OF MICHIGAN

COURT OF APPEALS

TITAN INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED November 12, 2013
v	No. 312747 Gratiot Circuit Court
JONATHAN JEFFREY THOMAS, Defendant-Appellant.	LC No. 12-011722-NF

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the judgment in favor of plaintiff in the amount of $49,519.39 on plaintiff's subrogation claim arising under MCL 500.3177(1) of Michigan's no-fault act, MCL 500.3101 *et seq*. Because defendant's admissions and plaintiff's uncontradicted affidavit established all the necessary requisites for recovery under § 3177(1), we affirm.

This case arises out of a motor vehicle accident that occurred on September 4, 2010. Defendant drove his 1991 Dodge Dakota into a parked vehicle, resulting in the death of his passenger, Reesha Jackson. Defendant admitted that he owned the Dakota, that it was uninsured, and that he was legally intoxicated at the time of the accident. Thereafter, an application for bodily injury benefits was filed on Jackson's behalf with the Michigan Assigned Claims Facility. The claim was assigned to plaintiff, which paid $45,385.62 in medical bills, while incurring $1,527.90 in loss adjustment costs, total expected attorney fees of $2,464.45, and $141.52 in interest. Plaintiff filed this subrogation action against defendant to recover those amounts. The trial court granted plaintiff's motion for summary disposition and entered a judgment in plaintiff's favor for the above amounts plus $150 in costs, for a total of $49,519.39.

Defendant argues that the trial court erroneously granted summary disposition for plaintiff without first determining his liability for Jackson's death. We review de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). When deciding a motion under MCR 2.116(C)(10), "a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party." *Ernsting v Ave Maria College*, 274 Mich App 506, 509; 736 NW2d 574 (2007). Summary disposition is proper "if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*.

"[A]n uninsured motorist . . . may be sued under the no-fault act for recovery of personal protection insurance benefits that an insurer is obligated to pay." *Citizens Ins Co of America v Buck,* 216 Mich App 217, 222; 548 NW2d 680 (1996). MCL 500.3177(1) provides, in relevant part:

> An insurer obligated to pay personal protection insurance benefits for accidental bodily injury to a person arising out of the ownership, maintenance, or use of an uninsured motor vehicle as a motor vehicle may recover such benefits paid and appropriate loss adjustment costs incurred from the owner or registrant of the uninsured motor vehicle or from his or her estate.

Plaintiff's uncontradicted affidavit established that plaintiff was obligated to pay personal protection benefits on Jackson's behalf for accidental bodily injury. Moreover, defendant admitted that Jackson's injuries and death arose from his ownership and use of his uninsured 1991 Dodge Dakota as a motor vehicle. Plaintiff was therefore entitled to recover the amount of benefits paid and appropriate loss adjustment costs from defendant.

Defendant's argument that his intoxication was not the proximate cause of Jackson's death is misplaced. MCL 500.3177(1) requires no proof of fault or a determination of negligence. Thus, whether defendant was guilty of operating a motor vehicle while intoxicated causing death, MCL 257.625(4), is immaterial.[1] Defendant's argument that Jackson was comparatively negligent is misplaced for the same reasons. Plaintiff's claim under § 3177(1) is one of subrogation. See *Citizens Ins Co*, 216 Mich App at 223-224. Thus, the only pertinent issues were whether plaintiff paid insurance benefits on behalf of Jackson and whether Jackson's injuries arose from defendant's ownership and operation of an uninsured vehicle. Plaintiff's affidavit and defendant's admissions established those facts. Accordingly, Jackson's state of intoxication and her failure to wear a seat belt were immaterial to plaintiff's claim under § 3177(1).

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra

[1] Defendant pleaded nolo contendere to a criminal charge relating to Jackson's death and is currently serving a prison term.