

FILED: October 12, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

BRANDON SHEPTOW,
Plaintiff-Respondent,

v.

GEICO GENERAL INSURANCE COMPANY,
a foreign corporation,
Defendant-Appellant.

Deschutes County Circuit Court
09CV0041MA

A144862

A. Michael Adler, Judge.

Argued and submitted on June 09, 2011.

Ronald L. Roome argued the cause for appellant. With him on the briefs was Karnopp Petersen LLP.

Bruce J. Brothers argued the cause for respondent. With him on the brief were Lawrence M. Gorman and Bruce J. Brothers & Associates.

Before Ortega, Presiding Judge, and Brewer, Chief Judge, and Sercombe, Judge.*

BREWER, C. J.

Affirmed.

*Brewer, C. J., *vice* Rosenblum, S. J.

1 BREWER, C. J.

2 The issue in this case is whether a motor vehicle liability insurance policy
3 issued for delivery in Oregon must, subject to exceptions not applicable here, provide
4 Personal Injury Protection (PIP) coverage to all persons who use an insured motor
5 vehicle with the consent of the named insured. Defendant insurer appeals from a general
6 judgment that was based on the trial court's grant of partial summary judgment in favor of
7 plaintiff, a permissive user under a liability policy that defendant issued to the named
8 insured, in which the court answered that question in the affirmative. On appeal,
9 defendant asserts that the trial court's decision does not comport with ORS 742.520(1),
10 which, according to defendant, does not require the provision of PIP benefits to
11 permissive users. We affirm.

12 We review a grant of summary judgment "to determine whether any
13 genuine issue of material fact exists and whether the moving party is entitled to judgment
14 as a matter of law." *Herman v. Valley Ins. Co.*, 145 Or App 124, 127-28, 928 P2d 985
15 (1996), *rev den*, 325 Or 438 (1997); *see also* ORCP 47 C. Here, the material facts are
16 undisputed and, as explained below, the decisive question is one of statutory
17 construction. Plaintiff was injured in a motor vehicle accident in which he was driving
18 his mother's automobile with her permission. The accident was caused by the negligence
19 of another driver. At the time of the accident, the automobile that plaintiff was driving
20 was covered by a liability insurance policy (the policy) that defendant had issued under
21 which plaintiff's mother was the sole named insured. Plaintiff was not living in his

1 mother's household at the time of the accident.

2 Plaintiff sought PIP benefits under the policy for accident-related medical
3 expenses and wage loss. Defendant denied plaintiff's claim on the ground that he was not
4 entitled to PIP benefits because he was not living in his mother's household at the time of
5 the accident. Plaintiff then filed this action against defendant for breach of contract. The
6 parties' dispute centered on the meaning of two statutes, ORS 742.520(1) and ORS
7 806.080(1)(b), which we consider in detail below. The trial court concluded that,
8 "pursuant to ORS 742.520, as a person insured under [defendant's] liability policy,
9 plaintiff is entitled to PIP coverage under that policy as a matter of law." The court then
10 entered a general judgment in plaintiff's favor for PIP benefits in the amount of \$24,224.
11 Defendant appeals that judgment.

12 ORS 742.520(1) provides:

13 "Every motor vehicle liability policy issued for delivery in this state
14 that covers any private passenger motor vehicle shall provide personal
15 injury protection benefits to the person insured thereunder, members of that
16 person's family residing in the same household, children not related to the
17 insured by blood, marriage or adoption who are residing in the same
18 household as the insured and being reared as the insured's own, passengers
19 occupying the insured motor vehicle and pedestrians struck by the insured
20 motor vehicle."

21 Defendant renews on appeal its contention that, because plaintiff did not reside in the
22 household of his mother--defendant's named insured--at the time of the accident,
23 defendant was not required to provide PIP benefits to plaintiff even though he was
24 operating an insured vehicle with the consent of the named insured.

25 Plaintiff replies that a different statute, ORS 806.080(1)(b), when applied in

1 conjunction with ORS 742.520(1), required defendant to provide him with PIP benefits.

2 ORS 806.080(1)(b) provides:

3 "A motor vehicle liability insurance policy used to comply with
4 financial responsibility requirements under ORS 806.060 must meet all of
5 the following requirements:

6 * * * * *

7 "(b) It must insure the named insured and all other persons insured
8 under the terms of the policy against loss from the liabilities imposed by
9 law for damages arising out of the ownership, operation, use or
10 maintenance of those motor vehicles by persons insured under the policy.
11 *The policy must include in its coverage all persons who, with the consent of*
12 *the named insured, use the motor vehicles insured under the policy, except*
13 *for any person specifically excluded from coverage under ORS 742.450."*

14 (Emphasis added.) According to plaintiff, the policy afforded him liability coverage
15 because he was a permissive user. It follows, plaintiff reasons, that, as an insured under
16 the liability coverage of the policy, he was entitled to PIP benefits pursuant to ORS
17 742.520(1). Relatedly, plaintiff asserts, the fact that he was not a member of his mother's
18 household at the time of the accident is immaterial to his entitlement to PIP benefits.¹

19 In interpreting statutes, our task is to attempt to discern the intent of the
20 legislature. [State v. Gaines](#), 346 Or 160, 171, 206 P3d 1042 (2009) (discerning the intent
21 of the legislature is the court's "paramount goal" in statutory interpretation). We begin by
22 considering the text and context of the statute. *Id.* We then turn to any pertinent
23 legislative history that the parties have offered and, if necessary, applicable canons of

¹ The policy in this case is consistent with the text of the pertinent statutory provisions. Accordingly, we confine our analysis to the parties' statutory construction dispute.

1 construction. *Id.* at 172-73.

2 Defendant's argument is straightforward: (1) ORS 742.520(1) establishes
3 PIP benefit eligibility requirements; (2) plaintiff does not fall within the ambit of covered
4 persons under that statute; and (3) ORS 806.080(1)(b) is of no assistance to plaintiff,
5 because that statute only requires coverage for permissive users for purposes of motor
6 vehicle liability coverage, not PIP benefits. As defendant sees things, the legislature
7 knew how to require coverage for permissive users by expressly mandating it for
8 purposes of liability coverage, ORS 806.080(1)(b), and uninsured and underinsured
9 motorist coverage, ORS 742.504(2)(c)(C). It follows, defendant reasons, that the
10 legislature's failure to impose a similar requirement in ORS 742.520 is fatal to plaintiff's
11 claim. In addition, defendant observes that, before the enactment of ORS 806.080(1)(b),
12 this court had held that an earlier iteration of ORS 742.520(1) did not provide PIP
13 coverage for permissive users who were not passengers in an insured motor vehicle. *See*
14 *Mid-Century Ins. Co. v. Utah Home Fire Ins. Co.*, 58 Or App 210, 212-13, 648 P2d 68,
15 *rev den*, 293 Or 653 (1982) (so holding).²

16 When considered in its proper statutory context, we arrive at a different
17 conclusion as to the meaning of ORS 742.520(1). That statute requires "every motor
18 vehicle liability policy" issued for delivery in Oregon to provide PIP benefits to "the
19 person insured thereunder." The word "thereunder" refers to the antecedent subject,

² That statute, *former* ORS 743.800 (1971), *renumbered as* ORS 742.520 (1989), was, for present purposes, identically worded to ORS 742.520(1)(b).

1 "every motor vehicle liability policy." It follows that, to qualify for PIP benefits under
2 the policy in this case, plaintiff must be "the person insured" under the policy. In
3 defendant's view, the latter phrase must, in light of its prefatory definite article, refer to
4 *the named* insured under the policy. We disagree. Persons insured under a motor vehicle
5 insurance policy are not limited to the named insured(s). ORS 806.080(1)(b) requires all
6 liability insurance policies to "insure the named insured and all other persons insured
7 under the terms of the policy against loss[.]" As pertinent here, included among such
8 insured persons are "all persons who, with the consent of the named insured, use the
9 motor vehicle insured under the policy[.]" ORS 806.080(1)(b). Thus, ORS
10 806.080(1)(b) informs the meaning of ORS 742.520(1), and it leads to the conclusion
11 that, because he is a person insured under the liability provisions of the policy, plaintiff is
12 also an insured for purposes of PIP benefits under the policy.

13 Our decision in *Mid-Century Ins. Co.* is not controlling here, because it
14 predated the amendment of ORS 806.080(1)(b) in 1991 that extended the provision of
15 liability coverage to permissive users unless they are excluded under ORS 742.450.³ *See*

³ ORS 742.450 provides, in pertinent part:

"(6) A motor vehicle liability insurance policy issued for delivery in this state may exclude by name from coverage required by subsection (2)(a) of this section any person other than the named insured, for any of the reasons stated in subsection (7) of this section. When an insurer excludes a person as provided by this subsection, the insurer shall obtain a statement or indorsement, signed by each of the named insureds, that the policy will not provide any coverage required by subsection (2)(a) of this section when the motor vehicle is driven by any named excluded person.

1 Or Laws 1991, ch 768, § 8.⁴ Stated differently, when the universe of persons insured
2 under motor vehicle liability insurance policies was expanded under ORS 806.080(1)(b)
3 to include most permissive users, the universe of persons insured for purposes of PIP
4 coverage under ORS 742.520(1) expanded correspondingly. The fact that ORS
5 742.520(1) lists additional categories of persons entitled to PIP coverage--including
6 household family members of the person insured under a liability policy--does not
7 undercut that conclusion. Subject to ORS 742.450, such persons include all permissive
8 users, regardless of whether they otherwise fall into an additional category of PIP
9 beneficiaries under ORS 742.520(1). The same person logically can be entitled to PIP
10 coverage by virtue of multiple categories of eligibility; for example, a passenger in an
11 insured motor vehicle who also is a family member residing in the household of the
12 insured is entitled to PIP coverage for both reasons. Likewise, a permissive user who is
13 an insured under the liability policy is entitled to PIP benefits whether or not he or she
14 also would be eligible for such benefits under one of the categories enumerated in ORS

"(7) A person may be excluded from coverage under a motor vehicle liability insurance policy as provided in subsection (6) of this section:

"(a) Because of the driving record of the person. The Director of the Department of Consumer and Business Services by rule may establish restrictions on the use of the driving record in addition to other restrictions established by law.

"(b) Because of any reason or set of criteria established by the director by rule."

⁴ The primary--and for present purposes, the only pertinent--substantive change that the 1991 amendment made to the statute was the addition of the second sentence of paragraph (1)(b), which requires coverage for permissive users.

1 742.520(1).⁵

2 We conclude that, because plaintiff was injured while operating an insured
3 motor vehicle with the consent of the named insured, plaintiff was insured under the
4 liability policy in this case, and, therefore, plaintiff also was entitled to PIP benefits in
5 accordance with ORS 742.520(1).⁶ It follows that the trial court did not err in entering
6 judgment for plaintiff.

7 Affirmed.

⁵ Defendant lists a parade of horrors that it asserts would flow from our conclusion, none of which is persuasive. Among such horrors, defendant argues that "[p]laintiff's theory would result in PIP for a totally separate household and a totally separate family, all unrelated to the policyholder." To the extent that that is true, ORS 742.520(1) plainly so provides. For example, all passengers in an insured motor vehicle are entitled to PIP benefits regardless of whether they are related to the insured under the policy. Moreover, permissive users such as plaintiff are covered under ORS 806.080(1)(b)--and derivatively under ORS 742.520(1)--only if they are using an insured vehicle with the consent of the *named* insured. Thus, a permissive user could not trigger a stranger's entitlement to PIP coverage by furnishing a vehicle to that person for use without the named insured's consent.

⁶ We have examined the legislative history of ORS 742.520(1), which is of little assistance because, as discussed, it was enacted before the 1991 amendment to ORS 806.080(1)(b) was enacted. Suffice it to say that nothing contained in that legislative history is inconsistent with our conclusion in this case.