STATE OF MICHIGAN

COURT OF APPEALS

JUSTIN AYLER,

Plaintiff-Appellant,

v

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant,

and

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 23, 2020

No. 347007
Wayne Circuit Court
LC No. 17-013321-NF

Before: M. J. KELLY, P.J., and K. F. KELLY and SERVITTO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendants Auto-Owners Insurance Company (Auto-Owners) and Liberty Mutual Insurance Company (Liberty Mutual),[1] and denying plaintiff's motion for summary disposition in this first-party no-fault action. We reverse and remand for entry of an order granting plaintiff's motion for summary disposition.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of an accident that occurred on September 7, 2016, while plaintiff was driving his 2006 Land Rover in Ohio. At the time of the accident, plaintiff lived in Detroit, Michigan. Plaintiff was in the business of "[s]hipping and handling of freight, delivery." In October 2014, in order to engage in "contract trucking services," plaintiff incorporated Mile Runners, LLC (Mile Runners), a Michigan limited liability company. Plaintiff is the sole owner and resident agent of Mile Runners, and Mile Runners operates out of Sharonville, Ohio. In his

[1]Plaintiff and Liberty Mutual stipulated to its dismissal, and it is not a party to this appeal.

deposition, plaintiff described himself as "self-employed." Mile Runners entered into a contract with, and became a contractor for, XPO, a delivery company based in Marietta, Georgia.

Auto-Owners issued an automobile policy to Mile Runners. The vehicle initially insured under the policy was a box truck leased through Enterprise and used to make deliveries. However, plaintiff subsequently purchased a 1999 International box truck and added it to the existing automobile policy issued by Auto-Owners. Plaintiff kept the box truck parked at the business in Sharonville, Ohio. In May 2014, plaintiff purchased the Land Rover, and the title for the Land Rover listed plaintiff as the owner. Plaintiff added the Land Rover to the existing policy with Auto-Owners. The insurance policy for the Land Rover went into effect on September 5, 2016. The "named insured" on the insurance policy was Mile Runners, not plaintiff.

When the accident occurred, plaintiff was heading to Sharonville, Ohio for work. Plaintiff was traveling southbound on I-75, when a tractor-trailer driving to the left of plaintiff's vehicle, crossed over into plaintiff's lane and struck plaintiff's Land Rover. The impact caused the Land Rover to hit the concrete barrier on the expressway, totaling the Land Rover and causing injuries to plaintiff's neck and shoulder. At the time of the accident, plaintiff lived in his home in Detroit with his grandmother, Thelma Weaver. The two vehicles in the household included plaintiff's Land Rover, insured through Auto-Owners, and Weaver's Dodge Neon, insured through Liberty Mutual. Plaintiff filed a claim for no-fault personal injury protection (PIP) benefits with Auto-Owners under the existing policy issued to Mile Runners, and a claim for no-fault PIP benefits with Liberty Mutual.

Unable to obtain benefits despite the identification of two insurance policies, plaintiff filed a complaint against Auto Owners and Liberty Mutual. Plaintiff asserted that, at the time of his accident, (1) the Land Rover was insured by Auto-Owners, but Auto-Owners failed to pay wage loss and replacement service benefits as required by the no-fault act, MCL 500.3101 *et seq*., and (2) plaintiff lived with Weaver who owned a Dodge Neon that was insured by Liberty Mutual. Liberty Mutual filed for summary disposition arguing that Auto-Owners was the highest priority insurer because, despite the fact that plaintiff was not the "named insured" on the policy issued by Auto-Owners, plaintiff owned the Land Rover and Mile Runners, and therefore, plaintiff should recover benefits from Auto-Owners under MCL 500.3114(1). Auto-Owners filed for summary disposition arguing that, under *Barnes v Farmers Ins Exch*, 308 Mich App 1, 8-9; 862 NW2d 681 (2014), overruled by *Dye v Esurance Prop & Cas Ins Co*, 504 Mich 167; 934 NW2d 674 (2019), plaintiff was barred under MCL 500.3113(b) from recovering no-fault PIP benefits from *any* insurer because, as the sole owner of the Land Rover, he was required to personally procure insurance for the Land Rover but failed to do so since the insurance policy on the Land Rover was issued to Mile Runners. Auto-Owners also argued that, even if plaintiff was not barred from coverage, Auto-Owners could not be the highest priority insurer under MCL 500.3114(1) because plaintiff was not the "named insured" on the policy issued by Auto-Owners. Plaintiff moved for summary disposition arguing that *Barnes* was distinguishable from this case and there was no equity in barring plaintiff from no-fault coverage because he insured the Land Rover.

The trial court granted summary disposition for Auto-Owners and Liberty Mutual, and denied plaintiff's motion for summary disposition. It concluded that plaintiff was barred from coverage under MCL 500.3113(b) because plaintiff was not the named insured on the policy issued by Auto-Owners and Mile Runners was not an owner of the Land Rover. As a result, the trial

court concluded that the policy issued by Auto-Owners was not enforceable; therefore, plaintiff failed to maintain the necessary insurance and was barred from no-fault coverage. The trial court found that Liberty Mutual could not be liable for plaintiff's no-fault PIP benefits under any factual scenario. The trial court determined that, had the policy issued by Auto-Owners been enforceable, Auto-Owners would have been the highest priority insurer. But because the policy issued by Auto-Owners was not enforceable, plaintiff was injured while driving his own vehicle without the required insurance, disqualifying him from no-fault coverage under MCL 500.3113(b).

II. APPLICABLE LAW

Summary disposition is appropriate pursuant to MCR 2.116(C)(10) where there is "no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). When reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosp*, 324 Mich App 51, 68; 919 NW2d 439 (2018).

The interpretation of a statute is also reviewed de novo. *ADR Consultants, LLC v Mich Land Bank Fast Track Auth*, 327 Mich App 66, 74; 932 NW2d 226 (2019). Issues involving statutory interpretation present questions of law that are reviewed do novo. *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 714; 909 NW2d 890 (2017). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 76; 780 NW2d 753 (2010).

"The purpose of the Michigan no-fault act is to broadly provide coverage for those injured in motor vehicle accidents without regard to fault." *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 37; 748 NW2d 574 (2008). "Under the no-fault act, an insurer is liable to pay [PIP] benefits [to any Michigan resident] for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]" *Dye*, 504 Mich at 180 (citation and quotation marks omitted). "Although designated as 'personal protection insurance' under the no-fault act, PIP benefits are in fact statutory benefits, arising regardless of whether an injured person has obtained a no-fault insurance policy." *Id*. at 180-181.

III. THE *DYE* DECISION

Plaintiff argues that the trial court erred when it held that he was not entitled to no-fault benefits because he was driving his own vehicle without the required insurance. In light of our Supreme Court's decision in *Dye*, we agree.

In *Dye*, the plaintiff was a member of the National Guard that had, at times, been deployed overseas. He gave his father power of attorney to conduct business on his behalf with the Secretary of State. Prior to the accident, the plaintiff had asked his father to register and obtain no-fault insurance for his BMW. *Id*. at 174-175. His father registered the vehicle in the plaintiff's name and obtained a no-fault insurance policy through Esurance Property & Casualty Insurance Company (Esurance). *Id*. at 175. The declarations page of the policy listed only the plaintiff's father as the named insured. *Id*. Plaintiff suffered a traumatic brain injury in an automobile

accident. At the time of the accident, the plaintiff was living with his wife, who owned a vehicle insured through GEICO Indemnity Company (GEICO). *Id*.

When both Esurance and GEICO refused to cover the plaintiff's claim for PIP benefits, the plaintiff filed suit, and a priority dispute followed. *Id*. GEICO initially acknowledged that it was the highest priority insurer and entered into settlement negotiations. It subsequently changed course after the *Barnes* decision was published. *Id*. at 175. Consequently, instead of continuing settlement negotiations, GEICO moved for summary disposition arguing that the plaintiff was not entitled to PIP benefits because he owned the BMW but did not insure it, and his father, the named insured, was not an owner of the vehicle. *Id*. at 176. The trial court held that GEICO was required to provide the plaintiff's PIP benefits because the plaintiff's father owned and registered the BMW. *Id*. at 176-177.

On appeal, this Court reversed, concluding that at least one owner or registrant must have the required insurance, and when none of the owners maintains coverage, no owner can recover PIP benefits. *Id*. at 178. This Court held that the plaintiff's father was not a registrant for purposes of MCL 500.3101(1). *Id*. But this Court agreed, however, that there was a genuine issue of material fact as to whether the plaintiff's father was an owner of the BMW. *Id*. This Court remanded to the trial court for further proceedings. *Id*.

The *Dye* Court addressed the sole issue of "whether an owner or registrant of a motor vehicle involved in an accident may be entitled to personal protection insurance benefits for accidental bodily injury where no owner or registrant of the motor vehicle maintains security for payment of benefits under personal protection insurance." *Id*. at 179. It held that "determining whether no-fault benefits are available to an injured person does not depend on 'who' purchased, obtained, or otherwise procured no-fault insurance. The only relevant inquiry is whether the injured person can establish an 'accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]" *Dye*, 504 Mich at 181 (citation and quotation marks omitted). The *Dye* Court concluded:

> While the Court of Appeals in *Iqbal* and *Barnes* focused primarily on the language of MCL 500.3113(b), our analysis primarily concerns the language of MCL 500.3101(1). After examining this provision, we conclude that the Legislature carefully chose its words when it prescribed 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." The first and most relevant definition of "maintain" is: "to keep in an existing state (as of repair, efficiency, or validity): preserve from failure or decline[.]" MCL 500.3101(1) only requires that the owner or registrant "maintain" no-fault insurance, which, as commonly understood, simply means to keep in an existing state. Further, MCL 500.3101(1) does not prescribe any particular manner by which a registrant or owner must keep no-fault insurance in an existing state. Indeed, MCL 500.3101(4) expressly contemplates that the "[s]ecurity required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is

> driven or moved on a highway." If we were to accept GEICO's interpretation that only a registrant or owner may obtain insurance on a vehicle, we would limit the secretary of state's power to allow security "by any other method" and we would also have effectively read a requirement into MCL 500.3101(1) that the Legislature did not manifest through the words of MCL 500.3101(1) itself. [*Id*. at 186-187.]

The *Dye* Court concluded that MCL 500.3113(b) "refers to the required security or insurance under MCL 500.3101 only as it relates to the vehicle." *Id*. at 189. Ultimately, it held that "an owner or a registrant of a motor vehicle involved in an accident is not excluded from receiving no-fault benefits when someone other than that owner or registrant purchased no-fault insurance for that vehicle because the owner or registrant of the motor vehicle has nonetheless 'maintained' no-fault insurance." *Id*. at 192-193. The Supreme Court remanded the case to the circuit court for further proceedings. *Id*. at 193-194.

IV. APPLICATION OF *DYE*

Applying *Dye* to this case, plaintiff is not barred from receiving no-fault benefits. Although *Dye* was decided after the trial court entered its order in this case, generally, our Supreme Court's decisions are given full retroactive effect. *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455, 462; 795 NW2d 797 (2010). Plaintiff owned the Land Rover, and it was insured by Mile Runners. Under *Dye*, plaintiff was not required to personally procure the insurance as long as the Land Rover was insured. Mile Runners insured the Land Rover. Thus, the trial court erred in concluding that plaintiff was not entitled to no-fault benefits on the basis that the accident occurred while plaintiff was driving a vehicle he owned without the necessary insurance coverage. Despite the fact that plaintiff was not the "named insured" on the policy, he maintained the requisite no-fault insurance. Plaintiff is not barred from receiving no-fault benefits under MCL 500.3113(b).

V. MCL 500.3114

Nonetheless, defendant submits that plaintiff was not the named insured in the policy, the separate corporate structure created by plaintiff must be respected, and therefore, Auto-Owners is not responsible for providing PIP benefits. Again, we disagree.

In *Celina Mut Ins Co v Lake States Ins Co*, 452 Mich 84; 549 NW2d 834 (1996), a priority dispute between two insurance companies, Robert Rood was driving a wrecker truck owned by Rood's Wrecker & Mobile Home Service (Rood's Wrecker). He was using his wrecker truck to tow another wrecker when it broke free. As a result of the broken hitch, the wrecker truck driven by Rood rolled over, and he suffered injuries. Rood was the owner of the wrecker, and the vehicle was insured by plaintiff Celina Mutual Insurance Company (Celina). However, Rood was the self-employed owner of Rood's Wrecker, a sole proprietorship, and the vehicle was used within the scope of Rood's responsibilities for his wrecking operation. Rood insured an additional vehicle with Celina. However, Rood insured three other motor vehicles with defendant Lake States Insurance Company (Lake States). *Id*. at 834-835.

Our Supreme Court declined to analogize the employment relationship to worker's compensation law. Instead, it focused on the purpose of the no-fault act and that the goal of the

act was promoted by including self-employed persons within the purview of MCL 500.3114(3).[2] Thus, our Supreme Court concluded that the insurer of the vehicle involved in the accident, plaintiff Celina, was solely responsible for payment of no-fault benefits:

> We believe that it is most consistent with the purposes of the no-fault statute to apply [MCL 500.3114(3)] in the cases of injuries to a self-employed person. The cases interpreting that section have given it a broad reading designed to allocate the cost of injuries resulting from use of business vehicles to the business involved through the premiums it pays for insurance. In addition, in cases like the instant one, requiring both insurers to contribute to the payment of benefits would run contrary to the overall goal of the no-fault insurance system, which is designed to provide victims with assured, adequate, and prompt reparations at the lowest cost to both the individuals and the no-fault system. [*Id*. at 836.]

The *Celina* Court declined to classify self-employment relationships premised on principles of title and ownership, noting that "[s]elf proprietors cannot have a contract to hire with themselves. The no-fault statute has no such restrictive definition of 'employee.' " *Id*. Pursuant to *Celina*, Auto-Owners, as the insurer of the vehicle involved in the accident is solely responsible for no-fault benefits.

Reversed and remanded for entry of an order granting summary disposition in favor of plaintiff and denying Auto-Owners' motion for summary disposition. We do not retain jurisdiction. Plaintiff, the prevailing party, may tax costs.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Deborah A. Servitto

[2] MCL 500.3114(3) provided: "An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle."