STATE OF MICHIGAN

COURT OF APPEALS

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Plaintiff-Appellee,

v

JOHN GARY BEST, JR.,

Defendant,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.

Defendant-Appellant.

UNPUBLISHED
September 17, 2020

No. 350558
Cass Circuit Court
LC No. 18-000100-NF

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

In this subrogation action for the recovery of personal injury protection (PIP) benefits paid on behalf of Allison Hurry, defendant State Farm Mutual Automobile Insurance Company ("State Farm") appeals by right from the trial court order granting plaintiff, Nationwide Mutual Fire Insurance Company ("Nationwide"), summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

In February 2017, Jordan White was driving a 1998 Ford Expedition when he lost control of the vehicle and crashed into some trees. White's girlfriend, Allison Hurry, and their toddler son were passengers in the Expedition. The crash resulted in the death of White and the child, and the serious injury of Hurry. Hurry sought PIP (personal injury protection) benefits through the Michigan Assigned Claims Plan because neither she nor anyone domiciled in her household had automobile insurance, and the claims facility assigned Hurry's claim to Nationwide. Nationwide

began providing PIP benefits, but filed this subrogation action against State Farm in March 2018, alleging that defendant John Gary Best, Jr.,[1] was the owner and registrant of the Expedition that White was driving at the time of the accident, and that because Best was insured by State Farm, State Farm was responsible for Hurry's PIP benefits.

Best testified at his deposition that he gave his 1998 Ford Expedition to White in October 2016, after White's Saturn "blew up." According to Best, on Saturday, October 15, 2016, he left the Expedition in White's driveway, hoping to surprise White when he came home from work. He placed the vehicle's only set of keys on the floor board, signed the certificate of title, and left it and a "bill of sale" in the glove compartment. According to Best, the bill of sale was a piece of notebook paper on which he wrote the date, the fact that he was giving the vehicle to White for "zero dollars," the vehicle's color, and its VIN number. Best testified that his intent was to give White the Expedition as a "forever" gift, that White was aware of this intent, and that from the time he left the vehicle in White's driveway until the time of the accident, White had exclusive possession and use of the vehicle.

Best testified that on Sunday, October 16, 2016, White called to thank him for the Expedition. Sometime that weekend, according to Best, he remembered that he had not taken his license plate off the Expedition. He called White on Monday, October 17, 2016, to tell him as much, and White told him he had already gone to the Secretary of State's office and taken care of the vehicle transfer and had thrown the old plate away. This turned out to be untrue; Best's license plate was still on the car at the time of the fatal accident, and Best was still the registered owner.

As for the certificate of title, the evidence shows that Best wrote his name and address and signed his name in the section to be completed by the seller. But he did not provide any information regarding the name and address of the purchaser, the date of sale, the selling price, or the odometer reading. In the section to be completed by the buyer, White neither signed nor printed his name. White gave the Expedition's certificate of title to his cousin, Austyn Jackson, to keep in Jackson's lock box. Apart from Best's testimony, there is no evidence of a bill of sale or other written intention by Best to give White the Expedition.

In its March 2018 complaint, Nationwide sought reimbursement from State Farm for no-fault benefits it had paid on behalf of Hurry and a declaration that State Farm was in the order of priority to provide any future benefits. State Farm denied Nationwide's allegations and filed a motion for summary disposition, in which it argued that Best had "ceased owning" the Expedition after he transferred title by giving it to White, who had exclusive possession and use of the vehicle thereafter, and that defects in the process of transferring title did not render the transfer void. Nationwide responded by contending that summary disposition was inappropriate because questions of fact existed regarding whether Best remained the owner due to deficiencies in the transfer process and whether Best was still the registered owner of the vehicle. Nationwide asserted that, even if the court found White to be an owner of the Expedition, Best was still the registrant. In reply, State Farm argued that Best was not the registrant of the Expedition because,

[1] Defendant John Gary Best, Jr., was dismissed from the action by stipulation of the parties on May 18, 2018.

after White failed to register the vehicle in his name within 15 days after transfer of the title, the vehicle became unregistered pursuant to MCL 257.234(3).

Subsequent to a hearing at which the parties argued consistently with their briefs, the trial court ruled that the transfer of title was incomplete and, therefore, ineffective as a means of properly transferring title in accordance with the statutory requirements set forth in MCL 257.233.[2] The court also held that, according to the definition of "owner" found in the Motor Vehicle Code ("MVC"), MCL 257.1 *et seq*., and the no-fault insurance act, MCL 500.3101 e*t seq*., White arguably became a co-owner by virtue of his exclusive possession and use of the vehicle for at least 30 days prior to the accident. The court thus concluded that there was a genuine issue of material fact regarding whether Best and White were co-owners of the Expedition at the time of the accident, and that Best "maybe classified as a registrant" and denied State Farm's motion for summary disposition accordingly.

In a motion for reconsideration, State Farm argued that the trial court misapplied the law when it concluded that the absence of strict compliance with the transfer statute, MCL 257.233, negated Best's transfer of the Expedition to White because Michigan decisional law establishes that lesser defects are not fatal to a transfer. While this motion was pending, Nationwide filed a motion for summary disposition by leave of the court. In its motion, Nationwide argued that, although it is well-established in Michigan law that there can be multiple owners of a vehicle, because Best's gift of the vehicle to White had not met the statutory requirements for a valid transfer of title, there is no question that Best was the legal owner and registrant of the Expedition at the time of the accident.

At the August 9, 2019 hearing on the pending motions, Nationwide maintained that Best was the legal owner and registrant of the Expedition at the time of the accident and that issues of registration were actually irrelevant because the title had not been validly transferred to begin with. State Farm argued that Nationwide had presented no evidence contradicting Best's deposition testimony that he gave the Expedition to White as a gift in October 2016, and reiterated that after Best gifted White the Expedition, White was the vehicle's sole owner because he had exclusive use and control of the vehicle, and that the title document was irrelevant to ownership in this case. As further evidence of Best's intent, State Farm noted that Best removed the Expedition from his insurance policy before giving the vehicle to White.

The court ruled that Best was still the title owner of the Expedition at the time of the accident because the title he delivered to White was not properly filled out and endorsed: there was no date, no odometer reading, no assignment (given the absence of any indication of who the

[2] MCL 257.233 is quoted in full elsewhere in this opinion. Briefly, the statute requires the transferor to remove the license plates unless the vehicle is being transferred to an immediate family member, to indorse an assignment of title on the certificate of title, and to deliver the properly indorsed certificate of title and the vehicle to the transferee. The effective date of transfer is the date that the purchaser or transferee signs either the assignment for the certificate of title or an application for title.

purchaser/transferee was), and no signature of the recipient. No transfer occurred because Best did not comply with the requirements of MCL 257.240[3], and failure to comply with the statute is not merely a technical violation. Under MCL 500.3114(4), the insurer of the owner or registrant of the Expedition is first in priority for the payment of PIP benefits. The court ruled accordingly that, as the insurer of Best, State Farm is liable for Hurry's PIP benefits. In a subsequently issued order, the trial court denied State Farm's motion for reconsideration, granted Nationwide's motion for summary disposition, ordered State Farm to reimburse Nationwide more than $1.4 million dollars, and stated that State Farm was responsible for adjusting Hurry's claim going forward. State Farm now appeals from this order.

II. VEHICLE OWNERSHIP

On appeal, State Farm first argues that the trial court erred in granting summary disposition to Nationwide because, at the time of the 2017 accident, Best was neither the owner nor the registrant of the Expedition, as he had gifted it irrevocably to White, and neither White's failure to fill out the "purchaser" information on the certificate of title nor his failure to register the vehicle in his name invalidated that transfer. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Auto Club Group Ins Co v. Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002). The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The moving party has the initial burden to identify "the issues as to which the moving party believes there is no genuine issue as to any material fact[,]" MCR 2.116(G)(4), and must support the motion with "[a]ffidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion[,]" MCR 2.116(G)(3). Summary disposition is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). "A genuine issue of material fact exists if the record leaves open an issue upon which reasonable

[3] The trial court granted summary disposition to Nationwide based on its conclusion that Best did not satisfy the requirements of MCL 257.240, the statute upon which Nationwide relied in its arguments in the trial court. However, the transfer requirements for motor vehicles are set forth in MCL 257.233(8) and (9). In its brief to this Court, Nationwide also relies on MCL 257.233 as well as those in MCL 257.240. If the requirements of MCL 257.233 are met, MCL 257.240 absolves the transferor of a vehicle from civil liability for the negligent operation of the vehicle by another. MCL 257.240 overlaps somewhat with MCL 257.233; specifically, MCL 257.240's relief from civil liability is contingent on a certificate of title properly endorsed to a purchaser or transferee, MCL 257.240(1), MCL 257.233(8). However, MCL 257.240(2) provides a way of completing the transfer that differs somewhat from that provided in MCL 257.233(9) and failure to complete a transfer in accordance with MCL 257.240(2) would not necessarily invalidate a transfer completed in accordance with MCL 257.233(9). It is undisputed that the transfer at issue was not completed in accordance with MCL 257.240(2). As will be discussed below, nor was it completed in accordance with MCL 257.233(9).

minds could differ." *Dutton Partners, LLC v CMS Energy Corp*, 290 Mich App 635, 641; 802 NW2d 717, 721 (2010).

At the time of White's accident, MCL 500.3114(4)[4], set forth the priority of insurers in pertinent part as follows:

> (4) [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:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

MCL 500.3101(2)(k)[5] defined "owner" as either of the following:

> (i) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.
>
> * * *
>
> (iii) A person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days.

State Farm contends that it is not in the list of priority because its insured, Best, was neither the owner nor the registrant of the Expedition at the time of the accident, having gifted the vehicle to White more than four months earlier. However, State Farm's reliance on the law of gift-giving to argue that Best's gift of the Expedition to White effectively transferred title is misplaced.

The validity of the transfer of a motor vehicle as a gift is determined with reference to the relevant provisions in the MVC at the time of the transfer. *Taylor v Burdick*, 320 Mich 25, 30; NW2d 418 (1948); *Vriesman v Ross*, 9 Mich App 102, 106; 155 NW2d 857 (1967) (stating, "the statute involved determines the initial validity of the transfer of ownership to the vehicle, whether by sale or by gift"). Transfers of ownership are set forth in the MVC under MCL 257.233. Thus, whether Best's gift of the Expedition to White effectively transferred ownership depends not on the intent of the parties, as State Farm argues, but on whether the requirements of MCL 257.233 were met. See *Basgall v Kovach*, 156 Mich App 323, 327; 401 NW2d 638 (1986 ("A person who is an owner by virtue of being named on the certificate of title cannot transfer ownership unless all

[4] As amended by 2002 PA 38, Imd. Eff. March 7, 2002.

[5] As amended by 2014 PA 492, Imd. Eff. January 13, 2015.

of the requirements of MCL § 257.233 are met; see also *Messer v Averill*, 28 Mich App 62, 66; 183 NW2d 802 (1970) ("This Court has repeatedly held that transfer of an automobile cannot be affected without compliance with the statute.") (quotation marks and citation omitted).

At the time Best gifted the Expedition to White, the requirements for transferring ownership of a vehicle pertinent to the present case were as follows:

> (1) If the owner of a registered vehicle transfers or assigns the title or interest in the vehicle, the registration plates issued for the vehicle shall be removed and transferred to the owner's spouse, mother, father, sister, brother, or child to whom title or interest in the vehicle is transferred, or retained and preserved by the owner for transfer to another vehicle upon application and payment of the required fees. A person shall not transfer the plates to a vehicle without applying for a proper certificate of registration describing the vehicle to which the plates are being transferred, except as provided in section 217(4).[6] If the owner of a registered vehicle acquires another vehicle without transferring or assigning the title or interest in the vehicle for which the plates were issued, the owner may have the plates transferred to the subsequently acquired vehicle upon application and payment of the required fees.
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> * * *
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> (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. . . .
>
> (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." [MCL 257.233.]

According to the foregoing, proper transfer of a title or an interest in the Expedition required Best to remove the plates, since White was not an immediate family member, indorse an assignment of the title on the seller's portion of the certificate of title, and deliver the certificate of title and the Expedition to Best. In addition, MCL 257.233a required Best to inform White of the odometer mileage, either on the certificate of title, where there was a space for the information, or in a separate written instrument that provided the information required by MCL 257.233a(1). The date of White's signature on the certificate of title as the purchaser/transferee would have

[6] MCL 257. 217(4) is inapplicable here; it refers to the obligations of a dealer who sells, exchanges, or leases vehicles required to be titled.

constituted the effective date of the transfer, had he signed it. MCL 257.233(9). But he didn't. And there is no date of sale on the certificate.

State Farm is correct that satisfaction of the statutory requirements for a valid transfer does not necessarily require strict compliance with the mandates of § 233 and § 233a. Courts have held that failure to remove the license plate from a vehicle will not void an otherwise valid transfer. See *Long v Thunder Bay Mfg Corp*, 86 Mich App 69, 70; 272 NW2d 337 (1978) (holding that, where there was a bona fide sale, including delivery of the vehicle and a certificate of title properly endorsed, the failure to remove the vehicle's license plate did not render the defendant liable for damages caused by the driver's negligence). Likewise, omission of the odometer reading in violation of MCL 257.233a renders an otherwise valid transfer voidable, but does not render it void. See *Whitcraft v Wolfe*, 148 Mich App 40, 53-54; 348 NW2d 400 (1985).

The *sine qua non* of a valid transfer of a motor vehicle is indorsement of an assignment of title on the back of the certificate of title, and delivery of the properly endorsed certificate of title and the vehicle to the transferee/purchaser. MCL 257.233(8); *Whitcraft*, 148 Mich App at 50 ("The MVC title transfer provisions require an owner or dealer to endorse on the back of the certificate of title an assignment of the title and to deliver such certificate to the purchaser at the time of delivery of the vehicle."). "Failure to comply with the statutory requirements relating to endorsement and delivery of the certificate of title renders the transaction void." *Id*.; see also *Basgall*, Mich App at 327; *Messer*, 28 Mich App at 66.

Although caselaw frequently refers to a "properly indorsed" (also written "endorsed") certificate of title as necessary to the transfer of ownership of a vehicle, what constitutes proper indorsement is not always clear. State Farms implies that proper indorsement is accomplished when the transferor merely signs the back of the certificate of title. According to this view, Best properly indorsed the certificate of title when he signed it, without indicating to whom he was assigning the title. This position finds some support in decisions involving previous versions of MCL 257.233. For example, in *Albanys v Mid Century Ins Co*, 91 Mich App 41, 44; 282 NW2d 11, 13 (1979), rev'd not on relevant grounds, 407 Mich 925 (1979), this Court stated that the relevant statute did not require the transferee's name on the certificate of title. At the time, MCL 257.233(d), a prior version of MCL 257.233(8), required the transferor/seller to "indorse on the back of the certificate of title an assignment thereof with warranty of title in the form printed thereon with a statement of all security interests in said vehicle or in any accessory thereon, sworn to before a notary public or some other person authorized by law to take acknowledgments . . . ." *Albanys*, 91 Mich App at 44, quoting MCL 257.233(d). The Court noted that the purpose of the statute was "to discourage and prevent the stealing of automobiles and to protect the public against crime," and that the requirement that the transferor/seller swear to the information on the certificate of title before a notary and deliver the notarized certificate of title to the transferee accomplished that purpose. *Id*. at 44-45 (quotation marks and citation omitted). See also *Shank v Kurka*, 174 Mich App 284, 287; 435 NW2d 453 (1984).

However, the passage of 1980 PA 398 eliminated the notary and oral oath requirement for transferring vehicle titles. Given the current language of MCL 257.233, simply indorsing a certificate of title in blank arguably does not fulfill the purpose of the statute. Nevertheless, as this Court pointed out in *Albanys*, the plain language of MCL 257.233(8) does not require the transferee's name to appear on the certificate of title. This arguably supports State Farm's

insistence that omitting White's name and address and the sale price and date from the "Title Assignment by Seller" section of the certificate of title could be considered a "lesser defect," as Best's indorsement of the certificate of title with his name, address, and signature arguably satisfied the requirements of MCL 257.233(8).

However, even if we assume without deciding that Best properly indorsed the certificate of title, White's failure to either sign the certificate of title or apply for title resulted in there being no effective date of transfer pursuant to MCL 257.233(9). Thus, regardless of the parties' intent with respect to Best's gift of the Expedition to White, transfer of the gift failed as a matter of law because, at the very least, it did not satisfy the requirements of MCL 257.233(9). If White had signed the certificate of title, even if he had not delivered it to the Secretary of State, the transfer would have been complete. See *Perry v Golling Chrysler Plymouth Jeep, Inc*, 477 Mich 62, 64; 729 NW2d 500, 501 (2007) (holding that, pursuant to MCL 257.233(9) title transfers to the purchaser when the purchaser signs the certificate of title or application for title is signed, not when it is delivered to the Secretary of State). He did not; therefore, the transfer failed.

State Farm argues that even if Best had not given the signed certificate of title to White, White's exclusive possession and use of the vehicle would be enough to establish his ownership under *Twichel v MIC Gen Ins Corp*, 469 Mich 524; 676 NW2d 616 (2004). State Farm asserts that that "*Twichel* underscores the fact that it is the parties' intent in a transaction that matters most" and "makes clear that Mr. White had full and exclusive ownership of the Ford Expedition at the time of his death." State Farm is incorrect.

Pursuant to MCL 500.3101(2)(k)[7], as was in effect at the time of the incidents in question, a vehicle may have multiple owners. White may have been an owner by virtue of his use of the Expedition. However, because there was no effective date of transfer of the Expedition to White, Best remained the legal owner at the time of the accident. *Twichel* cannot compel a contrary conclusion because it does not address the issue of legal ownership. Further, as already discussed, when it comes to gifting a motor vehicle, whether the vehicle is properly transferred is determined by reference to the relevant statutes in the MVC, not the intent of the parties. See *Taylor*, 320 Mich at 30. Absent White's signature on the certificate of title or an application by him for title, there was no effective transfer date. MCL 257.233(9).

Even if there existed some question about whether Best remained the legal owner of the Expedition at the time of the accident, there can be no doubt that he was still the vehicle's registrant. It is undisputed that Best was the registrant of the Expedition prior to his gifting it to White and that his registration had not expired by operation of law. See MCL 257.226(1) ("A vehicle registration issued by the secretary of state expires on the owner's birthday."). It is also undisputed that White did not apply for a new registration. Accordingly, Best remained the registrant of the Expedition.

State Farm argues, however, that Best was not the registrant by operation of MCL 257.234(3). MCL 257.234(3) provides that, unless registration is transferred within 15 days of a

[7] As amended by 2014 PA 492, Imd. Eff. January 13, 2015.

transfer of ownership, "the vehicle is considered to be without registration." State Farm asserts that, because White did not re-register the Expedition after the transfer of ownership, either by transferring the registration or applying for a new registration, the Expedition was unregistered at the time of the accident. State Farm supports its position with reference to *Allstate Ins Co v Sentry Ins Co*, 191 Mich App 66; 477 NW2d 422 (1991). *Sentry* applied MCL 257.234(3) to hold that a mother was not still the registrant of a vehicle bearing plates registered to her because, not only had the plates expired pursuant to MCL 257.226(1), but after the mother gave the vehicle to her daughter, the daughter had applied for and received a new title but had failed to apply for a new registration. Thus, 15 days after the valid transfer of ownership, the vehicle was deemed to be without registration.

State Farm implies that transfer of ownership occurred in the present case, and the 15-day clock started to run, when Best gifted the Expedition by delivering it and title to White on October 15, 2016. However, *Sentry* is distinguished from the present case by the fact that *Sentry* clearly involved a completed transfer of legal title. See *Sentry*, 191 Mich App at 67-68 (recounting that the decedent's daughter applied for and received a new title, but failed to apply for a new registration). In the case at bar, there was no effective date of transfer because White did not sign the certificate of title or an application for title, which would have completed the transfer. MCL 257.233(9); see also *Perry*, 477 Mich at 64. Because the transfer was not complete, the 15-day clock did not begin to run and the Expedition was not deemed unregistered. Therefore, Best was still the registrant of the Expedition at the time of the accident.

We conclude for the foregoing reasons that there was no valid transfer of the Expedition's title from Best to White because there was no effective transfer date. Because there was no effective transfer date, Best remained the legal owner and registrant of the vehicle at the time of the accident. Accordingly, the trial court did not err by granting Nationwide's motion for summary disposition.

III. CREDIBILITY

State Farm observes that, at the August 9, 2019 hearing, the trial court repeatedly brought up Best's unrelated divorce proceedings as a basis for assessing his credibility and judging his testimony, criticized the parties for not examining the disposition of assets in Best's divorce, deemed his testimony that he gifted the Expedition to White "unbelievable," and stated that there were "serious credibility issues" with his account of events. State Farm contends that, to the extent that the trial court appeared to base its ruling on its assessment of Best's credibility, it erred in granting summary disposition to Nationwide. Because the record shows that the trial court's ruling is fully supported by statutory and decisional law, and not based on its credibility assessments, we disagree.

It is well-established that a trial court may not make findings of fact or weigh credibility in deciding a motion for summary disposition. *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). However, the transcript of the August 9, 2019 hearing supports State Farm's allegations that the trial court made several comments about Best's credibility. Nevertheless, as already discussed, the court based its ruling on the statutory requirements for proper transfer of a motor vehicle and on Best's failure to meet these requirements. Because the court's grant of summary disposition to Nationwide was grounded in the legal requirements set forth by MCL

257.233 and MCL 257.240, and the undisputed fact that the purported transfer of ownership did not meet those requirements, we affirm the court's order granting summary disposition to Nationwide.

Affirmed.

/s/ James Robert Redford
/s/ Jane M. Beckering
/s/ Michael J. Kelly