STATE OF MICHIGAN

COURT OF APPEALS

IBRAHIM KAMEL ODEH,

Plaintiff-Appellant,

v

SENTRY INSURANCE,

Defendant/Third-Party Plaintiff-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Third-Party Defendant.

UNPUBLISHED
March 20, 2018

No. 337648
Washtenaw Circuit Court
LC No. 14-000316-NF

Before: SAWYER, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

The trial court granted summary disposition in favor of defendant Sentry Insurance on plaintiff's claim for no-fault PIP benefits. Plaintiff appeals[1] and we affirm.

Plaintiff was employed as a driver for R-1 Express, a Michigan company, and had been operating a semi-truck owned by R-1. Plaintiff was operating the truck in Georgia when he observed smoke coming from the area of the second rear axle of the truck. He pulled the truck

[1] Initially, defendant argues that plaintiff is not an aggrieved party under MCR 7.203(A) and, therefore, may not bring this appeal. We disagree. Plaintiff's claim against defendant was dismissed by the trial court; therefore, plaintiff is an aggrieved party. The fact that plaintiff reached a settlement with State Farm does not change this fact. It is possible that if plaintiff were successful in his suit against defendant he might receive an additional recovery. That is, while plaintiff's settlement with State Farm might serve as on offset against judgment plaintiff might obtain against Sentry, perhaps even a complete offset, it does not change the fact that plaintiff is aggrieved by the dismissal of this action.

over, got out to inspect a fire near the axle when there was an explosion. Plaintiff was seriously injured in the explosion.

Defendant Sentry insured the truck under a commercial policy. Third-party defendant State Farm insured plaintiff's father under a policy for a private vehicle. Plaintiff claimed PIP benefits from Sentry, which in turn filed a third-party complaint against State Farm alleging that, because plaintiff was a resident relative of his father (State Farm's insured), plaintiff was covered under the State Farm policy and State Farm was in the highest order of priority. The dispute between Sentry and State Farm has been resolved.

The question presented in the case is fairly straight-forward: Is plaintiff entitled to PIP benefits under the policy issued by Sentry? This involves questions of both statutory and contract interpretation, both of which we review de novo. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002).

Because the accident occurred outside the state, we must look to MCL 500.3111 to determine coverage:

> Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.

Thus, plaintiff would be covered under the Sentry policy if he is either a "named insured" or was an occupant of the insured vehicle involved in the accident.

Turning first to the question whether plaintiff was an occupant of the truck at the time of the explosion, in his own deposition plaintiff admitted that he was not:

> Q. Did you just—were you able to just lean over and look under the trailer?
>
> A. Yeah.
>
> Q. Okay. So you were on your two feet?
>
> A. Yes.
>
> Q. When the explosion happened, did you have—were you resting on the trailer at all with your hands or anything like that?
>
> A. No.

> Q. Was any part of your body in physical contact with the trailer when the explosion happened?
>
> A. No.

This is controlled by the Supreme Court's opinion in *Rednour v Hastings Mut Ins Co*, 468 Mich 241, 249; ___ NW2d ___ (2003), where the Court clearly stated:

> No-fault PIP benefits are not available to plaintiff under § 3111. A person must be *physically inside* a vehicle to be an occupant of it under the no-fault act. Plaintiff was not physically inside the vehicle during the accident and thus was not an "occupant" of it. [Emphasis in original; citation omitted.]

Although the Court left open the possibility of the policy providing broader coverage, it concluded that, under language similar to the Sentry policy in this case, the plaintiff still was not occupying the vehicle because he "was outside the vehicle, approximately six inches away from it." *Id.* at 249. Similarly, in this case plaintiff was not in contact with the vehicle.

Plaintiff creates a convoluted argument as to why he was an occupant of the vehicle. He argues that there is "a space above the tractor's rear axles and below the trailer's floor that is an inviolable space, and that is clearly within the boundaries of the tractor/trailer object." Plaintiff goes on to argue that this creates "a 'space' or 'cavity' that nobody else can occupy."[2] Plaintiff then argues that he was in this "cavity" and, therefore, was within or upon the truck and, thus, an occupant. We do not equate this with being physically inside the motor vehicle as required by *Rednour*.

Turning to the second question, whether plaintiff was a named insured under the Sentry policy, the policy declaration page clearly identifies only R-1 Express as a named insured. Plaintiff argues that this case is similar to *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242; ___ NW2d ___ (2012). It is not. Plaintiff argues that *Corwin* stands for the proposition that a corporation cannot be a named insured under a motor vehicle policy because it cannot suffer an accidental bodily injury. That is not the holding in *Corwin*. Rather, *Corwin* involved a leased vehicle and the lessor was the named insured. This Court concluded that MCL 500.3101(2) prohibits the lessor from being a named insured because it is not the owner or registrant. *Corwin*, 296 Mich App at 258-260. Accordingly, the Court reformed the contract to provide that the lessees, who did have an insurable interest and were required to have insurance coverage, were the named insureds under the policy. *Id.* at 264. This simply is not the case here.

Finally, plaintiff argues that the trial court erred by not determining that plaintiff was eligible for benefits from Sentry under MCL 500.3114(4) as an employee of R-1 Express. But that is a priority statute, not a coverage statute. That is, § 3114(4) might establish Sentry as a priority payer of PIP benefits if plaintiff was entitled to PIP benefits from multiple insurers,

[2] It is unclear why nobody else can occupy it.

including Sentry. But, because as discussed above, Sentry owes no PIP benefits to plaintiff, Sentry cannot be a priority payer and § 3114(4) simply does not apply to this case.

For these reasons, we conclude that the trial court correctly interpreted the no-fault act and the insurance policy at issue in this case as excluding PIP benefits payable to plaintiff by defendant Sentry.

Affirmed. Defendant may tax costs.

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Deborah A. Servitto