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STATE OF MICHIGAN

COURT OF APPEALS

MARYLYNN TITUS,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY and RONALD WILLIAM BENFIELD II,

Defendants,

and,

HOME-OWNERS INSURANCE COMPANY, MAMOON ALENOOZ, and MIKES CARS, LLC,

Defendants-Appellees.

UNPUBLISHED
November 23, 2021

No. 353581
Genesee Circuit Court
LC No. 18-110909-NF

Before: RICK, P.J., and RONAYNE KRAUSE and LETICA, JJ.

PER CURIAM.

In this action arising from a motor vehicle accident, plaintiff MaryLynn Titus appeals by leave granted[1] the trial court's opinion and order granting summary disposition in favor of defendants, Mikes Cars, LLC ("Mikes Cars"), and its owner, Mamoon Alenooz, under MCR 2.116(C)(10), with respect to plaintiff's claims for liability under the owner's liability statute, MCL 257.401, negligent entrustment, and negligence against Alenooz. We affirm.[2]

[1] *Titus v Auto-Owners Ins Co*, unpublished order of the Court of Appeals, entered August 20, 2020 (Docket No. 353581).

[2] Plaintiff also sought recovery of first-party no-fault benefits against Home-Owners Insurance Company ("Home-Owners"). Those claims are not at issue in this appeal. The trial court entered a default judgment against defendant Ronald Benfield II for failure to appear and defend. Another

I. BACKGROUND

This case arises from a motor vehicle accident on January 8, 2018, in Flint. A 2004 Jeep Grand Cherokee driven by Ronald Benfield II rear-ended a vehicle driven by plaintiff. It is undisputed that Benfield's driver's license was suspended at the time of the accident.

At his deposition, Benfield testified that he had just purchased the Grand Cherokee from Mikes Cars and had driven only a few miles from the dealership when the accident occurred. There was conflicting evidence whether the sales transaction took place on January 6, 2018, or January 8, 2018. However, Benfield did not take possession of the vehicle until January 8. There was also conflicting evidence whether Benfield drove the vehicle from Mikes Cars's lot, or whether it was towed from the lot before Benfield took possession.

The salesperson who oversaw the transaction, Louis Kanan, testified that the sales transaction took place on Saturday, January 6, 2018, but that Benfield did not take possession of the Grand Cherokee at that time because Benfield did not have proof of insurance. However, because Benfield had fully paid for the vehicle, Kanan gave Benfield the keys to the vehicle and parked it in a neighboring store parking lot for Benfield to either pick up after he had secured insurance or to have towed to another location. According to Kanan, when he arrived at work on Monday, January 8, the vehicle was not where he had left it. Kanan did not know if Benfield had driven it away or had it towed.

Conversely, Benfield claimed that the sales transaction took place on January 8, 2018, and that he took possession of the vehicle on that date and drove it from Mikes Cars's lot. Benfield claimed that the salesperson told him that he was unable to complete the registration process that day, but then agreed to allow Benfield to take the Grand Cherokee and "[c]ome back tomorrow and I'll be able to print you off the bill of sale and registration and insurance, all that." Benfield also claimed that he was told that he would be able to purchase seven-day no-fault insurance through LA Insurance. However, Benfield agreed that he had signed the RD-108 Application for Title form before taking possession of the Grand Cherokee vehicle. According to Benfield, he had driven just a few miles from the dealership lot when the brakes of the vehicle allegedly failed and he rear-ended plaintiff's vehicle.

Plaintiff filed this action and, as relevant to this appeal, alleged claims against Mikes Cars and Alenooz for liability under the owner's liability statute, negligent entrustment of a vehicle, and negligence. Alenooz and Mikes Cars moved for summary disposition, arguing that there was no genuine issue of material fact that the title to the Grand Cherokee had transferred to Benfield before the accident, thereby precluding liability for plaintiff's claims. Plaintiff argued that summary disposition was inappropriate because there were genuine issues of material fact regarding the circumstances of the sales transactions, including discrepancies between the copy of the RD-108 form submitted to the Secretary of State's office and the form retained by Mike's

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defendant, Auto-Owner's Insurance Company, was dismissed with prejudice pursuant to a stipulated order.

Sales. Following a hearing, the trial court granted Mikes Cars and Alenooz's motion. This Court granted plaintiff's application for leave to appeal.

II. ANALYSIS

Plaintiff argues that the trial court erred by granting summary disposition in favor of Alenooz and Mikes Cars. Plaintiff claims argues there are issues of fact regarding the circumstances surrounding the sales transaction for the Grand Cherokee. Plaintiff claims that the court relied on the wrong statutory authority and inapplicable caselaw in resolving that issue. Plaintiff also argues that the court improperly decided matters of credibility when deciding the motion. Finally, Plaintiff maintains the court erred by failing to address whether the Grand Cherokee could be owned by more than one party. Having duly considered each argument, we conclude that each is unavailing.

A. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court also reviews questions of statutory interpretation de novo. *Barnes v 21st Century Premier Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 347120); slip op at 4. Alenooz and Mikes Cars moved for summary disposition under MCR 2.116(C)(8) and (C)(10).

Although the trial court did not identify the subrule under which it granted the motion, because the court considered evidence beyond the pleadings, review is appropriate under MCR 2.116(C)(10). *Decker v Flood*, 248 Mich App 75, 80; 638 NW2d 163 (2001). In *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019), our Supreme Court explained:

> A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [(Cleaned up.)]

B. PLAINTIFF'S CLAIMS OF ERROR

Plaintiff argues that there are genuine issues of material fact whether Alenooz and Mikes Cars maintained ownership of the Grand Cherokee at the time of the motor vehicle accident. If correct, they would be liable under the owner's liability statute, MCL 257.401. We disagree.

The owner's liability statute, MCL 257.401, provides, in pertinent part:

> (1) This section shall not be construed to limit the right of a person to bring a civil action for damages for injuries to either person or property resulting from a violation of this act by the owner or operator of a motor vehicle or his or her agent or servant. The owner of a motor vehicle is liable for an injury caused by the

> negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge.

The purpose of the owner's liability statute is to allocate the risk of damage or harm on the party who has "ultimate control" of the vehicle, as well as "immediate control." *Estate of Cooke v Ford Motor Co*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 346091); slip op at 5 (cleaned up).

Relevant to this case, MCL 257.233 provides, in pertinent part:

> (6) A person whose operator's or chauffeur's license is suspended, revoked, or denied for, or who has never been licensed by this state and was convicted for, a third or subsequent violation of [MCL 257.625 or MCL 257.625m] of a local ordinance substantially corresponding to [MCL 257.625 or MCL 257.625m], or of a law of another state substantially corresponding to [MCL 257.625 or MCL 257.625m], or for a fourth or subsequent suspension or revocation under [MCL 257.904] shall not purchase, lease, or otherwise acquire a motor vehicle during the suspension, revocation, or denial period. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.
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> (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.* [Emphasis added.]

In *Perry v Golling Chrysler Plymouth Jeep, Inc*, 477 Mich 62; 729 NW2d 500 (2007), our Supreme Court considered a prior version of this statute before it was amended by 2006 PA 599, effective January 3, 2007. The relevant portion of the statute provided:

> 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 shall be the date of execution of either the application for title or the assignment of the certificate of title*. [*Perry*, 477 Mich at 65, quoting former MCL 257.233(9).]

In *Perry*, the Court considered whether an application for title to a motor vehicle was "executed," and thus effective to transfer title to the vehicle, when the application was signed or when the documentation was sent to the Secretary of State. *Id*. at 63-64. The Court ultimately held that " 'execution' is complete at signing and thus at that moment title transfers to the new owner, without regard to mailing or delivery to the Secretary of State." *Id*. at 64.

In considering this issue, the Court acknowledged that Michigan caselaw had consistently required a signing for a document to be executed, with delivery being a separate matter from execution, and that other statutes in the Motor Vehicle Code also specify that a document be "executed." *Id*. at 67. The Court also quoted the definition of "execute" from *Black's Law Dictionary* (6th ed), which defined "execute" as meaning "[t]o complete; to make; to sign; to perform; to do; to follow out; to carry out according to its terms; to fulfill the command or purpose of," and held that this was "the correct understanding of 'executed' in MCL 257.233(9)[.]" *Perry*, 477 Mich at 67. The Court ultimately held that the application for title in that case was executed within the meaning of former MCL 257.233(9) because it was signed by the parties, and the defendant car dealership was not required to send it to the Secretary of State for the execution to be complete. *Perry*, 477 Mich at 67.

The pertinent inquiry in the instant case is whether there is any genuine issue of material fact regarding whether title to the Grand Cherokee was transferred from Mikes Cars to Benfield before the motor vehicle accident. Although the statute at issue when *Perry* was decided used the phrase "*date of execution* of either the application for title or the assignment of the certificate of title" as the operative date for when title transfers, the current MCL 257.233(9) differs only in that it now expressly provides, consistent with *Perry*, that the operative date for when title transfers 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(9).

Even though there was conflicting evidence concerning some of the circumstances surrounding Benfield's purchase of the Grand Cherokee, there was no genuine issue of material fact regarding both that the Grand Cherokee was delivered to Benfield and that he signed the application for title before the motor vehicle accident. Benfield testified that he purchased the Grand Cherokee 10 minutes before the motor vehicle accident, and had only driven a few miles before colliding with plaintiff's vehicle. Benfield confirmed that he drove the Grand Cherokee off the lot, that it was not towed off, and that he signed the application for title on January 8, 2018. Conversely, Kanan testified that the sales transaction took place on Saturday, January 6, 2018, and that he gave the keys for the Grand Cherokee to Benfield because he had fully paid for the vehicle. However, Kanan testified that the Grand Cherokee was left in an Auto Zone parking lot for Benfield to pick up after he secured no-fault insurance. Therefore, the evidence demonstrated that factual disputes existed with regard to the date of the transfer of title and the manner in which the Grand Cherokee left the dealership lot before the motor vehicle accident occurred. There were also discrepancies between the copy of the RD-108 form submitted to the Secretary of State's office and the form retained by Mikes Cars. However, none of these factual disputes were material to the determinative issue of whether Benfield signed the application for title before the accident. Benfield admitted that he signed the application for title on the day that he purchased the vehicle and drove it off the lot. He admitted that the accident occurred after he left the lot at Mikes Cars. And, he stated that, after the accident, he did not return to Mikes Cars until several weeks later, to pick up the title, which the Secretary of State's office had mailed to Mikes Cars. Put simply, regardless of whether the purchase took place on January 6, 2018, or January 8, 2018, or whether the vehicle was driven off the lot or towed from the lot, there was no genuine issue of material fact that Benfield signed the application for title before the motor vehicle accident. There is no evidence supporting an inference that the application for title was not signed until after the accident. Therefore, under MCL 257.233(9), title to the Grand Cherokee had passed from Mikes Cars to Benfield before Benfield rear-ended plaintiff's vehicle.

Plaintiff argues that there are genuine issues of material fact regarding whether the RD-108 Application for Title document may have been altered in several respects after Benfield signed it, particularly regarding the manner in which the vehicle left the dealership lot and whether it was exempt from an odometer reading. However, these factual disputes are not material to the key questions of whether or not the vehicle was delivered to Benfield and that he signed the RD-108 Application for Title before the accident. The trial court properly granted summary disposition under MCR 2.116(C)(10). There was no genuine issue of material fact that Benfield took delivery of the Grand Cherokee and signed the application for title before the accident, and the transfer of title was effective "at the moment of signing," *Perry*, 477 Mich at 66. Therefore, Benfield, and not Mikes Cars, was the owner of the Grand Cherokee at the time of the accident.

Plaintiff also argues that the trial court erred by rejecting her argument regarding the applicability of MCL 257.233(6). This Court will interpret a statute in a manner that "discern[s] and gives effect to the intent of the Legislature," and undertakes this task by examining the statute's plain language. *Sandstone Creek Solar, LLC, v Twp of Benton*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 352910); slip op at 6, lv pending. "When the language of a statute is clear and unambiguous, we apply the statute as written, and judicial construction is neither required nor permitted." *Id*. at ___; slip op at 7.

MCL 257.233(6) provides that it is a misdemeanor for an individual to purchase a motor vehicle during the period of suspension for a third or subsequent violation of MCL 257.625 or MCL 257.625m, or of a local ordinance or law of another state "substantially corresponding" to these statutory subsections, or during a fourth or subsequent suspension under MCL 257.904. MCL 257.625(1) prohibits an individual from operating a motor vehicle while intoxicated. MCL 257.625m(1) prohibits an individual from operating a commercial motor vehicle while under the influence of alcohol. Likewise, MCL 257.904 prohibits (1) an individual whose license is suspended from operating a motor vehicle, and (2) an individual from "knowingly permit[ting] a motor vehicle owned by the person to be operated . . . by a person whose license or registration certificate is suspended or revoked[.]"[3] Benfield's driving record reflects that his license was

[3] At the time of the motor vehicle accident, MCL 257.904 provided, in pertinent part:

> (1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state.
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> (2) A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act.

suspended in January 2018, and that his driving status was "ineligible" at the time he purchased the Grand Cherokee because of activity that took place in October 2017. As of that date, Benfield's driver responsibility reinstatement fee was not paid. In 2016, Benfield was convicted of driving while his license was suspended, and the suspension was to continue until he paid the reinstatement fee.

Initially, there is no indication in the record that the suspension of Benfield's license was related to a subsequent violation of MCL 257.625 or MCL 257.625m. Further, even assuming that Benfield's driver's license was suspended under MCL 257.904, MCL 257.233(6) only prohibits a person from purchasing a motor vehicle during the period of "a fourth or subsequent suspension or revocation." There is no evidence, and plaintiff does not contend, that Benfield's suspension involved a fourth or subsequent suspension. Furthermore, although MCL 257.233(6) prohibits a person from *purchasing* a vehicle under the prescribed circumstances, it does not impose liability on the *seller* of a vehicle. Plaintiff has not cited any caselaw or other authority that would impose any responsibility or liability on the dealership and Alenooz for doing so. The plain language of the statute is unambiguous and applies only to the purchaser of a vehicle, not a seller. See *Sandstone Creek Solar, LLC*, ___ Mich App at___; slip op at 7. Accordingly, plaintiff's reliance on MCL 257.233(6) is misplaced.

Furthermore, the record does not support plaintiff's argument that the trial court improperly resolved issues of witness credibility when deciding Mikes Cars and Alenooz's motion for summary disposition. As plaintiff correctly recognizes, when deciding a motion for summary disposition, a court is not permitted to decide factual disputes, weigh the evidence, or make credibility determinations. *Barnes v 21st Century Premier Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 347120); slip op at 4. During his deposition, Steven McConnell, an investigator with the Michigan Department of State, testified that an individual whose license is suspended, revoked, or denied for some reason is unable to purchase a motor vehicle under Department of State guidelines. During his testimony, he reviewed § 7-7.2 of the Michigan Department of State Dealer Manual regarding repeat offenders and quoted the text of MCL 257.233(6). McConnell stated that the statute "specifically states that a person that has had their license suspended, revoked or denied under [MCL 257.233(6)], it's generally illegal for them to purchase a vehicle and to own a vehicle and/or obtain registration to a vehicle, any vehicle." However, as the trial court correctly recognized, MCL 257.233(6) does not impose liability on a dealership for *selling* a motor vehicle to a driver whose license is suspended. To the extent that McConnell's testimony suggested otherwise, the trial court was not resolving an issue of witness credibility, but rather disagreeing with his interpretation of the law. Put simply, the trial court was clarifying a point of law relevant to its conclusion that there were no genuine issues of material fact for trial.

Plaintiff further argues that the trial court erred by not addressing the question whether the Grand Cherokee could have more than one owner. See, e.g., *Botsford Gen Hosp v Citizens Ins Co*, 195 Mich App 127, 133; 489 NW2d 137 (1992) (holding that "[l]egal title and ownership of a vehicle are not coextensive terms under the [Motor] Vehicle Code," and that more than one person

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MCL 257.904 has been subsequently amended by 2020 PA 383, effective March 24, 2021, but the amendment is not pertinent to the issue on appeal.

may be considered an owner). However, the disputed issue in this case is not legal ownership, but whether legal title to the Grand Cherokee had passed from Mikes Cars to Benfield before he was involved in the motor vehicle accident. Therefore, the material question is not whether there can be more than one owner of a vehicle, but whether there was any genuine issue of material fact that Mikes Cars was an owner of the Grand Cherokee at the time of the accident. The trial court directly decided this issue by holding that "the transaction was valid and ownership of the vehicle at issue in the instant case transferred before the accident involving Plaintiff." Plaintiff does not advance any theory under which Mikes Cars could be considered an owner of the Grand Cherokee apart from the contested issue of when title to the Grand Cherokee transferred from Mikes Cars to Benfield. As explained earlier, that transfer occurred when Benfield signed the application for title, which occurred before the accident. Accordingly, the trial court properly determined that there was no genuine issue of material fact whether Mikes Cars was an owner of the Grand Cherokee at the time of the accident.

For these reasons, the trial court properly determined that there was no genuine issue of material fact regarding whether Mikes Cars and Alenooz could be liable under the owner's liability statute. Accordingly, we affirm the trial court's dismissal of that claim.

Although plaintiff alleged additional claims of negligence against Alenooz and negligent entrustment against Alenooz and Mikes Cars, plaintiff does not separately address either of these claims in her brief on appeal. Accordingly, plaintiff has abandoned these additional claims. *Vanderwerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008) ("[A]ppellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority").

Affirmed.

/s/ Michelle M. Rick
/s/ Amy Ronayne Krause
/s/ Anica Letica