STATE OF MICHIGAN

COURT OF APPEALS

LYNNE JUDGE, Personal Representative of the Estate of JOHN PHILIP HOUSE, deceased,

Plaintiff-Appellant,

v

MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 2, 1999

No. 195577
Grand Traverse Circuit Court
LC No. 94-012929-NF

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant under MCR 2.116(C)(10) and denying plaintiff's motion for summary disposition. We affirm.

Plaintiff is the personal representative of the estate of John Philip House, who was severely injured in, and eventually died from, an August 17, 1994, accident in which his 1988 Jeep Comanche pickup truck was struck by a train. House had purchased the pickup truck on July 13, 1994. House was the sole titled owner of the truck, however, he never purchased no-fault insurance for it.

When House purchased the truck, he was living with his girlfriend, Yvonne Demlow, and her children. At her deposition, Demlow stated that she contacted defendant through her local insurance agent and asked the agent to add the pickup truck to her then-existing no-fault insurance policy covering her own automobile, a 1992 Chevrolet Lumina. The insurance agent never asked whether Demlow was the title owner of the Jeep Comanche, and Demlow did not offer the information. Defendant added the pickup truck to Demlow's no-fault policy with an effective date of July 13, 1994. The only named insured on the policy is "Yvonne A. Demlow."

After the accident, defendant obtained a copy of the title and discovered the Demlow did not own the pickup truck. Defendant subsequently rescinded coverage for the pickup truck, claiming that Demlow had no insurable interest in it and that Demlow fraudulently procured the policy by concealing House's status as the pickup truck's owner and primary operator.

period and they had possession of the pickup truck. Thus, under a plain reading of the statute, Demlow can be considered to be an owner of the pickup truck.

The trial court also ruled, however, that even if Demlow was considered to be a statutory owner of the pickup truck, House could not be considered to be a permissive user of the truck to which he was the sole titled owner such that he could be eligible for PIP benefits. We affirm the trial court on this ground only.

In *Clevenger v Allstate Ins Co*, 443 Mich 646, 652; 505 NW2d 553 (1993), our Supreme Court noted the following:

> The Insurance Code requires that a motor vehicle insurer provide its insured with minimum liability coverage for bodily injury, death, and property damage. This coverage must extend to all permissive drivers unless the person is expressly excluded on the face of the policy or the declaration page or certification of insurance. See MCL 500.3009; MSA 24.13009.

In this case, House was the sole titled owner of the pickup truck and had primary use of it. We agree with the trial court's ruling on this issue:

> While the Michigan No-Fault Act has been and should be liberally interpreted to afford coverage to innocent third parties and persons procuring insurance who reasonably rely upon the coverage bound to them, it defies logic to postulate that the [L]egislature requires every owner and registrant of a motor vehicle to maintain no-fault insurance on pain of losing entitlement to personal protection benefits if his uninsured motor vehicle is involved in an accident, MCL 500.3113(b); MSA 24.13113(b), and then construe an uninsured operator and owner as a permissive user of his own car so that he may obtain coverage under someone else's policy.
>
> Again, this is not a case where Mr. House was a permissive user of a vehicle registered in Ms. Demlow's name. No case has been cited to this Court which stands for the proposition that an owner or registrant may be deemed a permissive user of his own vehicle. It strains common sense and logic as well as the plain meaning of the words "permissive user" to suggest that one who owns a thing ever needs permission to use it.

Finally, our Supreme Court's decision in *Clevenger, supra,* does not compel a different result in this regard because the uninsured titled owner was a permissive driver, was involved in an accident shortly after acquiring ownership, and the insurance policy of the insured registrant (who sold the vehicle to the uninsured title holder) was still in effect at the time of the accident. In the present case, House clearly had sufficient time to purchase no-fault insurance and cannot be considered to be a permissive driver of a vehicle to which he was the sole titled owner, especially where House did not purchase (recently or otherwise) the vehicle from Demlow.

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FOR PUBLICATION
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Before: Neff, P.J., and Jansen and Markey, JJ.

MARKEY, J. (concurring in part and dissenting in part).

Although I concur in the majority's ultimate resolution of this matter, I believe that its "leap frogging" to the permissive user issue constitutes an abdication of our responsibility to address applicable issues completely and through an orderly legal analysis. That is, disposing of this case solely on the issue of permissive operation of the vehicle where there is no attempt to review the policy language as to coverage constitutes the proverbial, "putting the cart before the horse."

In addition to the facts set forth by the majority, I would add that the record reveals that House had had three prior drunk driving convictions and was driving with, and in violation of, a restricted license when the accident occurred.

I.

I agree with the trial court's factual and legal determinations that because of House's status as sole record title holder and registrant of the truck, and under the terms of Demlow's policy, Demlow could not insure House's vehicle under her existing no-fault policy. The majority's terse analysis concluding - apparently as dictum - that Demlow had an insurable interest in House's vehicle is in my opinion a dangerous and dramatic departure from the existing law on this concept, one that cannot be ignored.

Moreover, if one knows that a vehicle is not insured, and she is concerned about the legal penalties for knowingly driving an uninsured vehicle, surely she has the option of simply not driving it. For our Court to create a legally binding insurable interest for such a reason is simply wrong as a matter of public policy and totally contrary to decades of legal precedent. Consequently, any benefits Demlow derived do not rise to the level necessary to deem the benefit an insurable interest as that term has been historically, legally defined. Under the tenets of property law, insurable interest has always been analyzed in an economic context. Here, it is critical to note that if House's truck were destroyed or sold, Demlow would suffer no *economic* loss or gain because she had no ownership interest in the property. Neither could she face any legal liability that might result from ownership of the vehicle. Thus, applying the proper legal definitions, Demlow had no insurable interest in House's truck. Moreover, even though Demlow stated in her deposition that she added the truck to her no-fault policy so she could "legally" drive it, I find this explanation disingenuous in light of House's driving record, his resulting inability to obtain no-fault insurance through ordinary means; moreover, she had no legal obligation to insure someone else's vehicle, and she, herself, had no-fault coverage.

The majority cites *Madar, supra*, as authority for determining that Demlow had an insurable interest in Houses' vehicle. The majority misunderstands, misapplies, and contradicts itself by its citation to *Madar*.

In *Madar*, this Court held that the plaintiff, who was struck by an automobile while he was a pedestrian, had an insurable interest and was entitled to coverage under his own policy even though he no longer owned the vehicle that was originally insured under the policy. A "person obviously has an insurable interest in his own health and well-being. This is the insurable interest which entitles persons to personal protection benefits regardless of whether a covered vehicle is involved."[1] *Id.* at 736, 739-743. Hence, under the no-fault insurance act, and by the terms of her own policy, Demlow was protected if she were a person suffering injury arising out of the ownership, use, or maintenance of *any* motor vehicle. The no-fault policy she purchased as required for her own vehicle, the 1992 Lumina, provided that protection. The same policy could also insure someone Demlow might injure as a result of her ownership, operation or maintenance of a motor vehicle, *including House's truck*. Accordingly, Demlow did not need to add House's truck to her no-fault policy in order to be afforded coverage for herself under the no-fault act.

Also, unlike the plaintiff in *Madar*, House never purchased no-fault insurance that would have provided him first-party benefits. House simply ignored the requirement of § 3101 and, instead, attempted to circumvent this statutory requirement by having his girlfriend insure the vehicle. *Madar* had a no-fault policy in place. House did not. House therefore had no insurer to look to for first-party PIP benefits. No insurer agreed to insure him; no insurer agreed to assume the "particular risk" he posed. Indeed, given House's driving convictions, it is fair to assume that with his "particular risk," he would have paid a stiff premium for even the most basic no-fault insurance. Obviously, defendant, Demlow's insurer, had no knowledge of this risk. It had agreed to insure Demlow. Thus, no meeting of the minds, a black letter of the law requirement for the formation of a valid contract, occurred. *Madar* is inapposite to the instant case.

I believe that House's conscious decision to forgo purchasing no-fault insurance as required by § 3103 places him in a position distinct from other prevailing litigants found in current

3. To which the **property damage** liability coverage of this policy applies. [Underlining emphasis added; other emphasis in original.]

Defendant's endorsement PP 05-90-04-89, entitled "Personal Injury Protection Coverage—Michigan," defines the terms "covered person" and "covered auto" a little differently:

> "**Auto accident**" means a loss involving the ownership, operation, maintenance, or use of an auto as an auto regardless of whether the accident also involves the ownership, operation, maintenance, of use of a motorcycle as a motorcycle.
>
> **"Covered person"** means:
>
> 1. You or any **family member** injured in an **auto accident;**
>
> 2. Anyone else injured in an **auto accident:**
>
> a. while occupying your **covered auto**; or
>
> b. if the accident involves any other **auto:**
>
> (1) which is operated by you or a **family member**; and
>
> (2) to which Part A of this policy applies.
>
> c. while not occupying any **auto** if the accident involves your **covered auto.**
>
> Your **covered auto** means an **auto:**
>
> 1. For which you are required to maintain security under Chapter 31 of the Michigan Insurance Code; and;
>
> 2. To which the bodily injury liability coverage of this policy applies.

We must give the policy language its plain meaning and apply the definitions of terms set forth in the policy. *Henderson*, *supra* at 709. We look also to the rule of reasonable expectation, which requires that a court examine whether a policyholder was led to a reasonable expectation of coverage upon reading the contract. *Id.*

Defendants' no-fault policy is written in plain English and is easily read and understood. After reading it, I would find that Demlow could not have reasonably expected defendant to provide no-fault coverage for House or his truck. Defendant agreed to insure for property protection only those motor vehicles that Demlow owned and for which she was required to obtain no-fault insurance. By virtue of the policy's definitions, House's truck cannot be a "covered auto."

Similarly, the PIP coverage afforded under defendant's policy would protect Demlow and any family member under various scenarios. But, again, under the policy's definitions, House is not a "covered person," and none of these scenarios for coverage apply to these facts, i.e., the

This determination is critical because an owner of a motor vehicle who fails to procure no-fault insurance faces serious consequences, pursuant to MCL 500.3113; MSA 24.13113:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

In order to avoid being denied PIP benefits through the application of § 3113, plaintiff argues that Demlow became the statutory owner of the truck after she added it to her policy because she had use of it for thirty-six days before the accident occurred. Thus, as a statutory owner of the truck, Demlow was required to and did obtain the requisite security for the truck pursuant to § 3101. This argument requires one to chase one's own tail. I will not do so.

Initially, to properly address this issue, one must review basic statutory interpretation principles. When examining statutes, the primary goal is to ascertain and give effect to the Legislature's intent, and the Legislature is presumed to have intended the meaning it plainly expressed. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993); *VanGessel v Lakewood Public Schools*, 220 Mich App 37, 40-41; 558 NW2d 248 (1996). The rules of statutory construction merely guide us in determining intent with a greater degree of certainty. *Nolan v Michigan Dep't of Licensing and Regulation*, 151 Mich App 641, 648; 391 NW2d 424 (1986). Where reasonable minds can differ concerning a statute's meaning, only then is judicial construction appropriate; otherwise, judicial construction is neither necessary nor permitted when the statute's plain and ordinary meaning is clear. *VanGessel, supra*; *Heinz v Chicago Road Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). We must look to the object of the statute, the harm that it was designed to remedy, and apply a reasonable construction, aided by common sense, in order to accomplish the statute's purpose. *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 644; 513 NW2d 799 (1994); *VanGessel, supra.* Critically, we must read the particular provisions of the statute in the context of the entire statute to produce an harmonious whole, *VanGessel, supra* at 41, and give the statutory language a valid and reasonable construction that reconciles inconsistencies, *Wright v Vos Steel Co*, 205 Mich App 679, 684; 517 NW2d 880 (1994).

Here, the trial court found that Demlow was not a statutory owner because her use of House's truck did not constitute "30 days of consecutive, primary use" either at the time she added the truck to her policy or within the next 36 days. The words "consecutive" and "primary," however, are not found in § 3101(2)(g)(i). Nonetheless, I cannot conclude that this omission mandates agreement that Demlow became a statutory owner of the truck. At most, Demlow was a permissive user of House's vehicle.

§ 3101(2)(g)(i) requires more than merely "any degree of usage for more than thirty days;" rather "*proprietary* or *possessory* usage" is required to establish a statutory "owner." [Emphasis in original.] In *Ardt*, *supra* at 3, we found that a genuine issue of material fact existed regarding whether a son's usage of his mother's uninsured truck constituted either incidental usage or proprietary/possessory usage for purposes of § 3101(2)(g)(i):

> The statutory provisions of concern here operate to prevent users of motor vehicles from obtaining the benefits of personal protection insurance without carrying their own insurance through the expedient of keeping title to their vehicles in the names of family members. Because we infer from these provisions that they were enacted in furtherance of the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage, we hold that "having the use of" a motor vehicle for purposes of defining "owner," MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i), means using the vehicle in ways that comport with concepts of ownership. The provision does not equate ownership with any and all uses for thirty days, but rather equates ownership with "having the use of" a vehicle for that period. Further, we observe that "having the use of" appears in tandem with references to renting or leasing. These indications imply that ownership follows from *proprietary* or *possessory* usage, as opposed to merely incidental usage under the direction or with the permission of another. Under this reading of the statutory definition, the spotty and exceptional pattern of [the son's] usage to which [his mother] attested may not be sufficient to render Robert an owner of the truck. However the regular pattern of unsupervised usage to which the defense witness attested may well support a finding that [the son] was an owner for purposes of the statute. [Underlining emphasis added.]

Here, too, I find that Demlow's usage of House's truck was spotty and exceptional rather than proprietary or possessory, as *Ardt* requires. Thus, her incidental usage of the truck did not transform her into a statutory "owner" for purposes of § 3101(2)(g)(i).

It also occurs to me that plaintiff's argument with respect to Demlow's statutory ownership requires one to simply accept the necessary implication that on the 31st day, Demlow transformed into a statutory owner from her presumably lesser status as a permissive user before expiration of the 30th day of using the truck. In its own opinion the trial court alluded to a most pertinent fact: Demlow was no type of owner when she contacted defendant to place the truck under her policy. Legally, it appears that at that very relevant time, Demlow lacked the capacity to enter into a contract with defendant regarding the truck, and it is undisputed that she did not attempt to do so thirty days later when she ostensibly "became" a statutory owner. By the explicit terms of her insurance contract, she could only insure autos she owned and for which she was required to maintain security under the no-fault act.

It bears emphasizing at this juncture that had Demlow been injured in this or any other auto accident, she would have received no-fault PIP benefits pursuant to the insurance she acquired because of her own vehicle. I believe, however, that we must focus on the fact that House did not insure the truck or himself in accordance with the no-fault act as he failed to secure

CONCLUSION

Specifically, I find that Demlow had no insurable interest in House's truck in order to make it a "covered auto" under defendant's policy, that Demlow was not a statutory owner of House's truck, and that House could not be a permissive driver of his own vehicle. Moreover, House was not a "covered person" and fits within no provision of defendant's policy so as to entitle him, or now his estate, to recover PIP no-fault benefits from defendant. Accordingly, I too would affirm the trial court's grant of summary disposition in favor of defendant, albeit for somewhat different reasons than stated by the trial court and the majority.

/s/ Jane E. Markey

[1] The plaintiff in *Madar* purchased a no-fault policy to protect his interest in his own health and well-being. That insurance provided PIP benefits in the event he was injured from any use of an auto under the statute.

[2] The trial court went on to say that:

> [I]f we're going to as a matter of law, within the context of a relationship, allow individual drivers with poor operating records to secure insurance through others, whether they are part of a romantic relationship or not, and simply, by the operation of thirty days, allow the record title owner of the vehicle, who would in ordinary circumstances either be uninsurable or pay an extraordinary premium, to then not only gain benefits, but gain benefits as a permissive user and still be the record titleholder of the car and do so in the absence of any arguable sale or lease, then I think we have issues under the No-Fault Act that this Court is currently not prepared to rule upon . . . .

[3] The trial court further articulated very compelling arguments against recognizing House as a permissive driver of his own vehicle:

> While the Michigan No-Fault Act has been and should be liberally interpreted to afford coverage to innocent third parties and persons procuring insurance who reasonably rely upon the coverage bound to them, it defies logic to postulate that the [L]egislature requires every owner and registrant of a motor vehicle to maintain no-fault insurance on pain of losing entitlement to personal protection benefits if his uninsured motor vehicle is involved in an accident, MCL 500.3113(b); MSA 24.13113(b), and then construe an uninsured operator and owner as a permissive user of his own car so that he may obtain coverage under someone else's policy.
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> Again, this is not a case where Mr. House was a permissive user of a vehicle registered in Ms. Demlow's name. No case has been cited to this Court which stands for the proposition that an owner or registrant may be deemed a permissive user of his own vehicle. It strains common sense and logic as well as