STATE OF MICHIGAN

COURT OF APPEALS

TRAVELERS INSURANCE, as Subrogee, of PINE KNOB WINE SHOP, Plaintiff-Appellee,	FOR PUBLICATION April 16, 1999 9:05 a.m.
v	No. 194316 Oakland Circuit Court LC No. 95-497440 NZ
U-HAUL OF MICHIGAN, INC., a Michigan Corporation, and U-HAUL INTERNATIONAL, INC., a Nevada Corporation, Defendants-Appellants,	
and	
BEN P. NOURI, Defendant.	

Before: Saad, P.J., and Kelly and Bandstra, JJ.

SAAD, P.J.

Defendants appeal as of right the trial court's order denying their motion for summary disposition under MCR 2.116(C)(8). Defendants also seek an award of costs under MCR 2.625 and MCL 600.2591; MSA 27A.2591. We reverse the denial of defendants' summary disposition motion, but affirm the denial of sanctions.

I

NATURE OF CASE

In this appeal, we are asked to reconcile the seemingly contradictory mandates of two statutory schemes: the owners liability act, MCL 257.401; MSA 9.2101, and the tort liability provision of the no-fault insurance act, MCL 500.3135; MSA 24.13135. The former, enacted in 1949 and amended several times, provides a cause of action against owners of motor vehicles arising from the negligent operation of those vehicles by authorized users. The no-fault act,

At the motion hearing, the trial court agreed with plaintiff that under MCL 257.401(1); MSA 9.2101, negligent entrustment continues to be a viable cause of action and denied defendants' motion. Defendants noted that the court's ruling did not differentiate between negligence in general and negligent entrustment. In response, the court stated that defendants' motion sounded only in negligent entrustment and failed to specifically address the owners liability act or the ordinary negligence counts. The Court denied defendants' motion for summary disposition.

On March 23, 1996, the court entered an order based on the parties' stipulation to dismiss with prejudice, defendant Ben P. Nouri. That same day, the court entered a consent judgment against defendants, jointly and severally, in the amount of $10,112. The consent judgment provided that the parties accepted as true the factual allegations in plaintiff's complaint, and reserved defendants' right to appeal the denial of the summary disposition motion.[4] We now consider that appeal.

III

ANALYSIS

A

Defendants' Appeal of the Order Denying Their Motion for Summary Disposition

Defendants moved for summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of a claim on the basis of the pleadings alone. *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 204-205; 530 NW2d 505 (1995). If the claim is so clearly unenforceable as a matter of law that no factual development could justify recovery, the motion should be granted. *Holland v Liedel*, 197 Mich App 60, 63-64; 494 NW2d 772 (1992).

1

The No-Fault and Owners Liability Acts

The interpretation and application of court rules and statutes presents a question of law that is reviewed de novo. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998); *Szymanski v Brown*, 221 Mich App 423, 433; 562 NW2d 212 (1997). It is well established that the primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. *Messer Trust v Remainder Beneficiaries*, 457 Mich 371, 379-380; 579 NW2d 371 (1998). When statutory language is clear and unambiguous we must honor the legislative intent as clearly expressed in that statute. *Western Michigan University Board of Control v State*, 455 Mich 531, 538; 565 NW2d 828 (1997). Because further construction is not required, none is permitted. *Id.* When construing a statute, the court should presume that every word has some meaning and should avoid any construction that would render the statute, or any part of it, surplusage or nugatory. *Western Michigan University*, 541-542. Statutes should be construed so

> (2) Notwithstanding any other provision of law, tort liability arising from the *ownership*, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101(3) and (4) was in effect is abolished except as to:
>
> (a) Intentionally caused harm to persons or property. . . .
>
> (b) Damages for noneconomic loss as provided and limited in subsection (1). [Emphasis added.][6]

Under this statute, a no-fault insured, like defendant Nouri, who causes economic damages is not personally liable to the injured party.[7] *Matti Awdish, Inc v Williams*, 117 Mich App 270, 277; 323 NW2d 666 (1982). The appropriate remedy for economic damages, including property damage, is a direct action against the tortfeasor's *insurer*. *Id.*, 275; MCL 500.3121(1); MSA 24.13121(1). Here, plaintiff failed to sue defendants' insurer within the obligatory one-year statute of limitations MCL 500.3145(2); MSA 24.13145, and thus sued defendants directly

The in pari materia rule discussed above does not apply here because these statutes do not share a common purpose. The purpose of the owners liability act is "to place the risk of damage or injury on the *owner*, the person who has ultimate control of the vehicle, as well as on the person who is in immediate control." *Haberl v Rose*, 225 Mich App 254, 259-260; 570 NW2d 664 (1997). In contrast, the basic goal of Michigan's no-fault automobile insurance system is to ensure *persons injured* in motor vehicle accidents of "assured, adequate and prompt reparation" for certain economic losses. *Nelson v Transamerica Ins Services*, 441 Mich 508, 514; 495 NW2d 370 (1992); *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978); *Kitchen v State Farm Ins Co*, 202 Mich App 55, 58; 507 NW2d 781 (1993). The no-fault scheme meets this goal by requiring vehicle owners to obtain insurance and by obligating insurers to compensate injured parties for losses arising from motor vehicle accidents without regard to fault or negligence, MCL 500.3105(2); MSA 24.13105(2); MCL 500.3114(1); MSA 24.13114(1) *Belcher v Aetna Casualty & Surety Co*, 409 Mich 231, 240; 293 NW2d 594 (1980); *Shavers, supra*, 402 Mich 578-579.

As we have already observed, there is no published case addressing owners liability act claims for property damage since the enactment of the no-fault act. However, in *Smith v Sutherland*, 93 Mich App 24; 285 NW2d 784 (1979), we held that owners liability act claims for personal injury must satisfy the threshold requirements of § 3135. The plaintiff in *Smith* sued both the operator and *owner* of a motor vehicle for personal injuries. She argued, inter alia, that she was not required to prove a "serious impairment of bodily function" in order to recover from the *owner* because the owners liability act was not affected by the no-fault act. *Id.*, 28. This Court disagreed:

> From the language of the [no-fault] statute we can only conclude that the standard of liability is the same for drivers and owners. The civil liability act still provides a basis for imposing liability, where none would exist in the absence of the statute, *Wieczorek v Merskin*, 308 Mich 145, 148; 13 NW2d 239 (1944), *but the standard under which liability is imposed is furnished by § 3135 of the no-*

holding that the owners liability act has been implicitly amended by the no-fault act is fully warranted for the reasons already set forth in this opinion.

In closing, we note that Justice Williams apparently anticipated this controversy—and our result—in his concurring opinion in *Advisory Opinion re Constitutionality of 1972 PA 294*, 389 Mich 441; 208 NW2d 469 (1973). Justice Williams observed that § 3135 would have the effect of amending or modifying the owners liability act, along with other laws governing tort actions and motor vehicles. *Id.*, 508-509. He wrote:

> It is quite clear that the no-fault act does not purport to "supersede" or "repeal" all acts related to it. In fact, § 3135 attempts to preserve *certain parts of prior acts or actions*. For example, § 3135 (1) and § 3135(2)(a) refer necessarily to the wrongful death and *civil liability acts in case of "[d]amages for noneconomic loss" where the "injured person has suffered death."* [*Id.*, 512 (emphasis added.)]

Clearly, Justice Williams recognized that while the no-fault act did not completely abrogate the owners liability act, it preserved it only to the extent of the residual tort liability not abolished by the no-fault act.

Nonetheless, plaintiff contends, incorrectly, that this Court and the Supreme Court have approved liability under § 401 even after the no-fault legislation became effective. Plaintiff cites *Goins v Greenfield Jeep Eagle*, 449 Mich 1; 534 NW2d 467 (1995); *Hill v GMAC*, 207 Mich App 504; 525 NW2d 905 (1994); *Enterprise Leasing Co v Sako*, 207 Mich App 422; 526 NW2d 21 (1994), aff'd in part, rev'd in part 452 Mich 25; 549 NW2d 345 (1996), after remand __ Mich App __; __ NW2d __ (Docket No 204019, rel'd 12/29/1998); and *Worth v Dortman*, 94 Mich App 103; 288 NW2d 603 (1979). However, none of these cases stand for the proposition that the owner's liability for property damage under § 401 survives the no-fault act, nor is there any indication that this issue arose in any of these cases. *Goins* and *Hill* both involved the issue of what constituted ownership under the statute; *Worth* held that the operator's default did not equate an admission of negligence for purposes of the owner's liability, and *Enterprise Leasing* raised the issue of who was the owner's primary insurer. Moreover, these cases all involved personal injury, and none stated anything inconsistent with *Smith v Sutherland, supra*. Our research of the issue has not uncovered any case in which a plaintiff was permitted to proceed with an owners liability action for an accident occurring after October, 1973, where the damages were evidently not actionable in tort under § 3125.[9]

In sum, the no-fault act prevails over the owners liability act to the extent that the latter would allow causes of action barred by the former. We therefore conclude that the no-fault act barred plaintiff's tort claims for property damage under the owners liability act.

2

Negligent Entrustment

justification, that plaintiff, itself a no-fault insurance carrier, should have known that its legal position was devoid of arguable legal merit.

Although we have determined that plaintiff's position is erroneous, we cannot conclude that it was "devoid of arguable legal merit." The no-fault act and owners liability act have co-existed for more than twenty-five years, yet there is no published authority stating that the no-fault act has precluded actions for property damage under the owners act. Though a close question, given the unsettled state of the law, plaintiff's attempt to proceed under the owners act was not entirely unreasonable. We therefore deny defendants their costs.

CONCLUSION

Because plaintiff's negligence actions against defendants were barred by the no-fault act, the trial court erroneously denied defendants' motion for summary disposition. We reverse and remand for entry of judgment for defendants, but deny costs under MCR 2.625(A)(2). We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Michael J. Kelly
/s/ Richard A. Bandstra

[1] All facts alleged in plaintiff's complaint are to be taken as true pursuant to the consent judgment entered by the court.

[2] As the insured wine shop's subrogee, plaintiff stands in the insured's shoes and assumes all legal rights of the insured. *Allstate Ins Co v Snarski*, 174 Mich App 148, 155; 435 NW2d 408 (1988) (quoting *Federal Kemper Ins Co v Western Ins Cos*, 97 Mich App 204, 208; 293 NW2d 765 (1980). Consequently, it makes no difference to our analysis that this action is brought by the insurer/subrogee instead of the insured.

[3] On appeal, defendants seek an award of costs only.

[4] This appeal is before us on remand by the Michigan Supreme Court. Initially, defendants' claim of appeal was dismissed for lack of jurisdiction on the finding that the consent judgment was not appealable as of right. The Supreme Court, acting on defendants' application for leave to appeal, remanded the case to this Court with instruction to allow defendants to file a claim of appeal. The Supreme Court noted that this Court "has previously recognized that an appeal of right is available from a consent judgment in which a party has reserved the right to appeal a trial court ruling" in *Vanderveen's Importing Co v Keramische Industries M deWit*, 199 Mich App 359; 500 NW2d 779 (1993).

[5] Michigan statutory law has imposed liability on motor vehicle owners for the negligent operation of their vehicles since 1929. 1 Comp Laws 1929, § 4648 (Stat Ann § 9.1446). Section 401 of the civil liability act has been in existence since 1949. *Mull, supra*, 521. The statute has been amended several times since its enactment, most recently in 1995 after initiation of this law suit. The amendments primarily concern liability for lessors and lessees of motor vehicles, and do not touch on the issue presented in this appeal.