STATE OF MICHIGAN

COURT OF APPEALS

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JACK W. TORRIE,

Plaintiff-Appellee,

and

CITIZENS INSURANCE COMPANY OF AMERICA,

Intervening Plaintiff-Appellee,

v

No. 99423

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellant,

and

FORUM INSURANCE COMPANY and TRAVELERS INSURANCE COMPANY,

Defendants-Appellees.

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JACK W. TORRIE,

Plaintiff-Appellee,

and

CITIZENS INSURANCE COMPANY,

Intervening Plaintiff-Appellee,

v

No. 101488

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Defendant-Appellant,

and

FORUM INSURANCE COMPANY and TRAVELERS INSURANCE COMPANY,

Defendants.

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Before: MacKenzie, P.J., and Shepherd and M.E. Dodge*, JJ.

PER CURIAM.

In November 1985, plaintiff, a Michigan resident, was injured in a single-vehicle accident in Michigan while driving a

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*Circuit judge, sitting on the Court of Appeals by assignment.

truck which he owned. The truck was registered in Indiana and insured in Indiana by defendant Forum Insurance, which is presently handled by defendant Travelers Insurance Company. The named insured on the policy was Trailer Transit, Inc., to whom plaintiff leased the truck and for whom plaintiff worked as a contractor. Additionally, plaintiff was the named insured on a policy of Michigan no-fault personal injury protection insurance covering his automobile and issued by defendant Auto Club Insurance Association.

Plaintiff's demands to both Forum/Travelers and Auto Club for payment of personal injury protection benefits for his injuries were refused. Plaintiff filed a complaint naming the insurers as defendants and seeking payment of benefits from whichever insurer was liable. Plaintiff subsequently filed a claim for benefits pursuant to MCL 500.3171 et seq.; MSA 27.13171 et seq., to recover benefit from the Michigan No-Fault Assigned Claims Facility. The claim was assigned to Citizens Insurance Company of America, which paid benefits to plaintiff and which was allowed to intervene in plaintiff's action.

By way of several orders, the trial court dismissed plaintiff's claims against Travelers and Forum, but granted summary disposition in favor of Citizens and against Auto Club for reimbursement of benefits paid to plaintiff. The court also entered a judgment in favor of plaintiff and against Auto Club for attorney fees and costs. Auto Club appeals as of right the judgments in favor of Citizens and plaintiff. We affirm.

On appeal, Auto Club contends that it should not be liable for payment of no-fault benefits for injuries plaintiff received while driving a vehicle which he owned, but which was not registered or insured in Michigan. According to Auto Club, plaintiff's truck was required to be registered and insured in Michigan, and because it was not, plaintiff was not entitled to benefits under MCL 500.3113(b); MSA 24.13113(b).

MCL 500.3101; MSA 24.13101 mandates that the owner or registrant of a motor vehicle required to be registered in this state maintain insurance for payment of benefits for personal injury, property damage, and residual liability. The trial court ruled that, as a matter of law, plaintiff was not required to register and insure the truck in Michigan because Michigan's Highway Reciprocity Board has entered into a reciprocal compact with Indiana. We agree. Under this compact, "vehicles used in any type of interstate vehicle operation" based and licensed in one jurisdiction are granted an "exemption from registration and payment of all fees and taxes in [the] other jurisdiction." Pursuant to this compact, plaintiff was not required to register his truck in Michigan, since it was based and licensed in Indiana. Further, since the truck was not required to be registered in Michigan, plaintiff was not required under MCL 500.3101(1); MSA 24.13101(1) to be insured in Michigan.

Auto Club contends that notwithstanding the compact, a fact question remains as to whether plaintiff was required to insure the truck in Michigan pursuant to MCL 500.3102(1); MSA 24.13102(1). That section provides:

> "A nonresident owner or registrant of a motor vehicle not registered in this state shall not operate or permit the vehicle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits."

According to Auto Club, it did not have the opportunity to discover facts which would controvert plaintiff's deposition testimony that the truck was in Michigan no more than 30 days during the 1985 calendar year, so that summary disposition was prematurely granted. See, e.g., Kortas v Thunderbowl & Lounge, 120 Mich App 84; 327 NW2d 401 (1982). The record does not support this argument. Initially, we note that discovery cut off had passed long before the trial court granted summary disposition. Despite the fact that MCL 500.3102(1) was at issue in this case from the outset, Auto Club appears to have failed to

attempt to obtain through discovery something which would raise a fact issue on this point. Auto Club states in its brief on appeal that after the trial court's decision in this case, plaintiff's counsel furnished plaintiff's truck logs, and that they suggest that the truck had been in Michigan "for many days in excess of thirty (30) days." Even assuming plaintiff had requested the logs within the discovery period, examination of the logs does not support this position, however. Instead, it appears that the truck was in Michigan nineteen days. In short, summary disposition was neither premature nor improperly granted on this point. There was no genuine issue of fact as to the thirty-day rule of MCL 500.3102(1). Plaintiff's truck did not fall within that statute.

In Parks v DAIIE, 426 Mich 191; 393 NW2d 833 (1986), the Supreme Court stated that under the priority provisions of the no-fault act, MCL 500.3114; MSA 24.13114, the general rule is that a person accidentally injured in a motor vehicle accident looks to his or her own insurer for personal injury protection benefits unless one of three statutory exceptions applies. See generally Parks, supra, pp 202-203, 206. Thus, unless plaintiff falls within one of those exceptions, judgment was properly entered against Auto Club. Auto Club contends that a material question of fact exists as to whether plaintiff was an employee of Trailer Transit, pertinent to the statutory exception codified at MCL 500.3114(3); MSA 24.13114(3), so that summary disposition was improperly granted. The argument is without merit.

MCL 500.3114(3); MSA 24.13114(3) provides the following exception to the rule that one looks to one's own insurer for no-fault benefits:

> "An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owner or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle." (Emphasis added.)

The statute clearly applies only when "an occupant of a motor vehicle owned or registered by the employer" is injured. Here it is undisputed that plaintiff was injured in a vehicle which he owned and registered. Thus, plaintiff's status as an employee or independent contractor is irrelevant; in either event the statutory exception does not apply on these facts.

In summary, on the uncontroverted facts before the trial court plaintiff was not required under either MCL 500.3101 or MCL 500.3102 to insure his truck in Michigan. Accordingly, the trial court correctly determined that Auto Club could not rely on MCL 500.3113(b) to refuse benefits. Under the priority statute, MCL 500.3114, and Parks, supra, plaintiff was entitled to payment of benefits by Auto Club, the insurer of his automobile, unless the case fell within a statutory exception. On the undisputed facts before the court, no such exception applied. The trial court's disposition is accordingly affirmed.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ John H. Shepherd
/s/ Michael E. Dodge