STATE OF MICHIGAN

COURT OF APPEALS

MOHAMED BERRI,

Plaintiff-Appellant,

v No. 104237

AUTO CLUB OF MICHIGAN,

Defendant-Appellee.

Before: Sullivan, P.J., Wahls and Cavanagh, JJ.

PER CURIAM

Plaintiff, Mohamed Berri, appeals as of right from an October 6, 1987, order of the Wayne Circuit Court granting the motion for summary disposition of defendant, the Auto Club of Michigan. The trial court found that §3113(b) of the no-fault act, MCL 500.3101 et seq. MSA 24.13103 et seq., precluded plaintiff's claim against defendant for personal injury protection (PIP) benefits. We affirm.

The record reveals that plaintiff moved from Dearborn, Michigan, to Westminister, California, in September, 1984, and thereafter returned to Michigan only infrequently and briefly in order to visit his daughter and wife. In California, plaintiff obtained financing through a local bank to purchase a new car. A few days after buying the car, which was titled, registered, and insured in California, plaintiff was involved in an automobile accident in California. His California insurer, the Automobile Club of Southern California, rejected his claim for benefits, apparently for reasons related to alleged misrepresentations made on the application for insurance. At the time of the accident in California, plaintiff owned a car in Michigan which was insured by defendant. That car, it seems, was used by plaintiff's wife. After unsuccessfully seeking benefits from the California insurer, plaintiff filed a claim with defendant for PIP benefits. That claim was denied, and the present lawsuit was

commenced on March 17, 1986. The parties filed cross-motions for summary disposition, regarding which a hearing was conducted on August 7, 1987. On September 25, 1987, the court rendered its decision from the bench, and on October 6, 1987, an order was entered denying the motion of plaintiff and granting that of defendant.

On appeal, the question presented is whether plaintiff, a California resident, can recover first-party no-fault PIP insurance benefits under a Michigan no-fault insurance policy issued by defendant for an accident which occurred in California while plaintiff was driving a car owned by him and titled, registered, and insured in California by a California insurer, merely because plaintiff owned another vehicle which remained in Michigan and was insured by defendant at the time of the accident? We conclude, as did the circuit court, that he cannot.

The trial court found that §3113(b) of the no-fault act precluded plaintiff's claim against defendant for PIP benefits. At the time of plaintiff's accident, that section,[1] in pertinent part, provided:

> "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 of registrant of a motor vehicle involved in the accident with respect to which the security required by subsections (3) and (4) of section 3101 was not in effect." MCL 500.3113; MSA 24.13113.

At the time of plaintiff's accident subsections 1, 3 and 4 of §3101,[2] in pertinent part, provided:

> "(1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance....
>
> * * *
>
> "(3) Security may be provided under a policy issued by an insurer duly authorized to transact business in this state which affords insurance for the payment of benefits described in subsection (1)....
>
> "(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the registration period...." MCL 500.3101; MSA 24.13101.

In granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), the trial court stated:

> "In the case at bar it is undisputed that at the time of the accident the vehicle involved in the accident, which was owned or registered by Plaintiff, did not have the security specified under either subsection three or four of MCL 500.3101. Specifically the Court notes that while Plaintiff's vehicle was insured by AASC [the Automobile Association of Southern California], AASC is not authorized to transact business in this State and thus subsection Three's requirement was not met.
>
> "Moreover, Plaintiff has not shown that security for the vehicle was provided in some other method approved by the Michigan Secretary of State, and that therefore the requirement of subsection four was not met. In short, under the unambiguous terms of MCL 500.3113(b), Plaintiff is not entitled to recover PIP benefits and is thus barred from collecting the same from Defendant."

On appeal, plaintiff contends that §3113(b) is inapplicable in his case and, thus, he is not excluded from entitlement to PIP benefits, because "the motor vehicle in question... which he was operating [at the time of the accident] was not required to be registered under [§3101(1) of] the Michigan No-Fault Act." In essence, then, plaintiff argues that §3113(b) applies only to those vehicles which are required to be registered in this state and which, as a consequence, must maintain security for payment of PIP benefits as provided in subsections 3 and 4 of §3101.

The plain language of §3113(b) does not allow the interpretation placed upon it by plaintiff. That section simply states that the owner or registrant of a car, which car, at the time of an accident, has no security as required by subsections 3 and 4 of §3101, is not entitled to receive PIP benefits for bodily injury resulting from the accident. When statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded since the Legislature is deemed to have intended the meaning it plainly expressed. Smith v Ruberg, 167 Mich App 13, 16; 421 NW2d 557 (1988). Moreover, even if we were to characterize the language of §3113(b) as ambiguous in light of the phrase, "a motor vehicle required to be registered in this state," in §3101(1), we could not put upon it the interpretation suggested by plaintiff because to do so would bring about an absurd result. In

ascertaining the intent of the Legislature in statutes, courts must "avoid absurd results." Berrien Co Road Comm v Jones, 119 Mich App 315, 317; 326 NW2d 495 (1982). As defendant aptly points out in its appellate brief, under plaintiff's interpretation of the statutory language at issue, a person who registered and obtained no-fault insurance for one car in Michigan and who then purchased several other cars in another state would be entitled to receive PIP benefits for an accident in which the person was involved while driving one the out-of-state vehicles, even though he had chosen not to insure that vehicle.

We also note, as did the trial court, that plaintiff's reliance on Parks v Detroit Automobile Inter-Ins Exchange, 426 Mich 191; 393 NW2d 833 (1986), is misplaced because that case did not involve the applicability of §3113 or a situation in which a claimant for PIP benefits was the owner or registrant of a motor vehicle involved in an accident with respect to which the security required by subsections 3 and 4 of §3101 was not in effect.

The trial court granted defendant's motion for summary disposition in this case entirely on the applicability and effect of §3113(b), specifically declining to address and resolve other arguments raised below, stating:

> "Because the Court holds application of 500.3113(b) poses an absolute bar to Plaintiff's recovery, the Court need not resolve whether Plaintiff would otherwise be eligible for benefits under MCL 500.3111 or whether the fact that he was a non resident [sic] of Michigan would have necessarily precluded recovery. See MCL 500.3113(c)."

We must also decline to rule on these matters since an issue is not preserved for appeal if it was not addressed and decided by the trial court. Joe Dwyer, Inc v Jaguar Cars, Inc, 167 Mich App 672, 685; 423 NW2d 311 (1988).

Affirmed.

[1] In 1986 PA 93, the language of this section was amended to read as follows:

"A person is not entitled to be paid personal protection 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."

[2] In 1987 PA 168, the language of this section was amended to read as follows:

"(1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection, property protection insurance, and residual liability insurance....

* * *

"(3) Security may be provided under a policy issued by an insurer duly authorized to transact business in this state which affords insurance for the payment of benefits described in subsection (1)....

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved upon a highway...."

It should be noted that §3103 addresses the security requirements for motorcycles and, thus, is not applicable in the present case.

/s/ Joseph B. Sullivan
/s/ Myron H. Wahls
/s/ Mark J. Cavanagh