STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE,

Plaintiff-Appellant,

v

AETNA CASUALTY & SURETY COMPANY,

Defendant-Appellee.

No. 104687

Before: Beasley, P.J., and Gillis and Brennan, JJ.

PER CURIAM.

Plaintiff, Auto Club Insurance, appeals as of right from an order of the Wayne Circuit Court granting defendant's, Aetna Casualty & Surety Company, motion for summary disposition. We affirm.

On June 8, 1984, Linda Palarchio fell from an automobile and suffered a closed head injury. At the time of the accident, Linda lived with her parents. Linda's mother owned a car which was insured by plaintiff. Linda's father owned a car which was insured by defendant Aetna through a policy held by his employer, R. M. Electronics, Inc. Linda sought and received benefits from plaintiff. On January 5, 1987, plaintiff filed a complaint for declaratory judgment, seeking contribution from defendant. On July 22, 1987, defendant moved for summary disposition under MCR 2.116(C)(10), claiming that under the terms of its policy with R. M. Electronics Linda was not entitled to benefits. The trial court granted the motion, relying on Allstate Ins. v Citizens Ins., 118 Mich App 594; 325 NW2d 505 (1982), and plaintiff appeals.

In Allstate, a no-fault policy had been issued to a corporation covering several cars owned by the corporation. The son of the corporation's sole shareholder was injured while a passenger in a friend's car, which was insured by Citizens Insurance. The trial court ruled that the corporation's insurer

was not liable for personal protection benefits. This court affirmed as follows:

> "We must first examine whether the trial court erred in ruling that the corporate insurer was not liable for personal protection benefits. Such benefits are available under MCL 500.3114; MSA 24.13114, which provides in pertinent part:
>
> "'(1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy * * * applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.'
>
> "Subsections (2) and (5) are inapplicable to this case. Subsection (3) provides:
>
> "'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 owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.'
>
> "The parties agree that had [the injured passenger] been occupying a corporation car at the time of the injury, plaintiff, as the insurer of the furnished vehicle, would bear responsibility for providing personal protection benefits to [him]. Here, however, [he] occupied another automobile, so this section is inapplicable. As none of the exceptions listed in § 3114 apply, plaintiff must provide personal protection benefits only if § 3114(1) can be read as requiring coverage by a corporate insurer under the facts of this case.
>
> "To do so requires us to rewrite the insurance policy issued to [the corporation] replacing a named insured, the corporation, with an individual insured * * *. The trial court declined to do so, however, and we agree. * * *
>
> "We believe that our conclusion is supported by public policy. In writing a no-fault insurance policy for [the corporation], Allstate undertook a limited risk. As a part of a blanket corporate insurance policy, Allstate agreed to provide no-fault benefits if any of the corporation's employees, their spouses, or the relatives of either domiciled in the same house, should be injured while occupying a corporate car. If we were to rewrite the policy in this case so that it provides blanket no-fault coverage to those individuals while in any car, we would be greatly expanding the zone of risk. This expanded coverage in this case would place the burden of investigating a corporation's structure and perquisites on the insurer whenever it issued a no-fault policy to a corporation. We do not believe that the Legislature, in providing the limited coverage for corporate vehicles under § 3114(3), intended to place such a burden on the insurance industry. Instead, we believe the Legislature wisely chose to limit coverage to certain clearly defined situations. We believe the trial court properly declined to interfere with this well-chosen policy and affirm the court's determination of liability." (Emphasis added.) Allstate, supra, at 598-599 and 602-603.

Plaintiff argues that Allstate should be distinguished from the instant case on public policy grounds. Here, as in

Allstate, no benefits would be payable on the policy under MCL 500.3114(1), since the named insured was a corporate entity. However, plaintiff argues that, unlike Allstate, here the concerned vehicle was owned by Mr. Palarchio, rather than by the named insured corporate entity and that, therefore, no vehicular accident scenario involving the vehicle can be envisioned in which defendant would have to provide benefits under the policy as written. We disagree.

The PIP endorsement to the policy provides:

> "D. WE WILL PAY
> "We will pay personal injury protection benefits to or for an insured who sustains bodily injury caused by an accident and resulting from the ownership, maintenance or use of an auto as an auto. These benefits are subject to the provisions of Chapter 31 of the Michigan Insurance Code." (Emphasis added.)

The endorsement also states that the class of insureds includes any person who sustains bodily injury while occupying a "covered auto". Covered autos under the policy are only those autos owned by the named insured which are subject to no-fault requirements. Mr. Palarchio's vehicle was listed on the schedule of insured vehicles. Apparently, as far as defendant knew, this vehicle was owned by the named insured, R. M. Electronics, Inc. As such, it was covered under the terms of the policy. Were a party injured while an occupant of that vehicle, benefits would be payable under the policy.

The fact that Mr. Palarchio in fact owned the vehicle would not necessarily preclude such coverage. Defendant could not have avoided liability under its policy on grounds of misrepresentation (innocent or otherwise) arising out of the mischaracterization of ownership unless the injured party himself or herself played a part in that mischaracterization. See e.g., Darnell v Auto-Owners Ins. Co., 142 Mich App 1, 9-11; 369 NW2d 243 (1985); United Security Ins. Co. v Commissioner of Insurance, 133 Mich App 38, 43; 348 NW2d 34 (1984).

Accordingly, as a scenario of liability can be envisioned, we find no public policy basis for distinguishing the within case from Allstate. The trial court's order granting

summary disposition to defendant under MCR 2.116(C)(10) is, thereby, affirmed.

As we believe summary disposition was appropriate by reason of the foregoing, we need not address defendant's alternate ground for the motion arising out of a policy exclusion for family-member other insurance.

Affirmed.

/s/ William R. Beasley
/s/ John H. Gillis
/s/ Thomas J. Brennan