STATE OF MICHIGAN

COURT OF APPEALS

RICHARD JACK HOSKING

Plaintiff-Appellant,

v No. 108177

NEW YORK UNDERWRITERS INSURANCE COMPANY, a/k/a THE HARTFORD, a New York corporation,

Defendant-Appellee.

Before: Sullivan, P.J., and Sawyer and Marilyn Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing his claim for work-loss benefits against the defendant insurance company pursuant to Michigan's no-fault automobile insurance act. MCL 500.3101 et seq.; MSA 24.13101 et seq. We affirm.

The sole issue in this case is whether someone who works for a company but receives no salary or wage can recover work-loss benefits under MCL 500.3107(b); MSA 24.13107(b).

Betty Hosking, plaintiff's wife, is the owner and sole proprietor of Hosking Oil Company. Plaintiff worked approximately forty hours per week delivering oil for the company. He was never paid a wage or salary. The profits of the business went entirely to his wife.

On January 15, 1986, plaintiff was injured in an automobile accident. He was unable to work for the company for 5 1/2 months. Betty Hosking was obliged to hire a replacement and to pay that individual with company funds for the work formerly done by plaintiff.

On March 11, 1987, plaintiff and his wife filed a complaint against defendant requesting no-fault automobile insurance benefits pursuant to an insurance policy issued them by

defendant. They claimed damages for lost wages, medical expenses and emotional distress.

Defendant moved for partial summary disposition under MCR 2.116(C)(8) and (10). Plaintiff stipulated to dismissal of the emotional distress claim and to dismissal of Betty Hosking as a party.

The court dismissed the wage loss claim. It concluded that § 3107(b) provides for reimbursement of wages or salary income to which a person is actually entitled and which that person has received in the past. The indirect benefit that plaintiff surely received as a result of his wife's ownership of the company was not contemplated by the Legislature when it adopted the reimbursement statute.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. The party opposing the motion has the burden of showing that a genuine issue of disputed fact exists. Dumas v Automobile Club Ins Ass'n, 168 Mich App 619, 626; 425 NW2d 480 (1988). Before judgment may be granted, the court must be satisfied that it is impossible for the claim asserted to be supported by evidence at trial. Peterfish v Frantz, 168 Mich App 43, 48-49; 424 NW2d 25 (1988).

Plaintiff argues that, although the record indicates profits inured solely to Betty Hosking, in actuality they were shared by husband and wife. Thus he received wages under this profit-sharing plan and is entitled to wage-loss benefits.

Section 3107 of the no-fault act provides in part:

> Personal protection insurance benefits are payable for the following:
>
> * * *
>
> (b) work loss consisting of loss of income from work an injured person would have performed during the first three years after the date of the accident if he had not been injured . . . .

This section confers benefits only for actual loss of income. Ouelette v Kenealy, 424 Mich 83, 86-87; 378 NW2d 470 (1985),

Grier v DAIIE, 160 Mich App 687, 690; 408 NW2d 429 (1987), lv den 429 Mich 901 (1988). The purpose of the statute is to compensate injured persons for income they would have received but for an accident. Adams v Auto Club Ins Ass'n, 154 Mich 186, 191; 397 NW2d 262 (1986), lv den 428 Mich 870 (1987). Benefits are limited to loss of salary or wage income and do not encompass losses in investment income or fringe benefits. Freeman v Colonial Penn Life Ins Co, 138 Mich App 444, 488; 361 NW2d 356 (1984), lv den 422 Mich 979 (1985), Krawczyk v DAIIE, 418 Mich 231, 236; 341 NW2d 110 (1983).

Profit-sharing plans are not generally considered "wages" subject to reimbursement under § 3107(b). Krawczyk, 236. However, when the evidence indicates that a plan is part of regular wages and not a fringe benefit, the loss may be recovered as a work loss. Krawczyk, 236.

In this case, we are unable to find any evidence which supports even the existence of a profit-sharing plan. The only mention of a plan is in arguments of plaintiff's counsel. He contends a "plan" exists by virtue of the fact the parties are husband and wife and have the ability to file joint income tax returns. However strictly speaking, as plaintiff admits, the profits go directly to his wife, the sole owner, and the joint tax returns support this. Even giving plaintiff the benefit of a reasonable doubt, he could not establish the existence of the type of profit sharing plan which would allow him to recover work-loss benefits.

Plaintiff also argues that he is entitled to benefits, because he is self-employed and the company incurred replacement costs which resulted in a loss of profits.

Work-loss benefits are available when there are lost profits attributable to personal effort in self-employment or the cost of hiring a substitute to perform self-employment services. Freeman, 449. A person is self-employed when he earns income directly from his own business rather than a specified salary or

wage from an employer. Webster's New Collegiate Dictionary (1973).

The record establishes that the company was solely owned by Betty Hosking. Thus plaintiff was not self-employed. As plaintiff's claim for work-loss benefits could not be supported by evidence at trial, the trial court did not err in dismissing it.

Affirmed.

/s/ Joseph B. Sullivan
/s/ David H. Sawyer
/s/ Marilyn Kelly