

STATE OF MICHIGAN
COURT OF APPEALS

DEANNA SMITH,

Plaintiff-Appellant,

v

No. 114700

DAIRYLAND INSURANCE COMPANY
and MILWAUKEE GUARDIAN
INSURANCE COMPANY,

Defendants-Appellees,

and

HEMMY & ASSOCIATES, INCORPORATED,

Defendant.

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

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition in favor of defendants-appellees. We affirm as to defendant-appellant Dairyland Insurance Company (Dairyland), but affirm in part as to defendant-appellant Milwaukee Guardian Insurance Company (Milwaukee) and remand for further proceedings consistent with this opinion.

Plaintiff's parents moved from Wisconsin to Michigan. Plaintiff commuted daily, finishing her senior year of high school in Wisconsin. Plaintiff then took a job in Wisconsin and commuted there from her parents' home. Plaintiff drove a Grand Torino which was insured by Milwaukee while she lived in Wisconsin. Apparently, that vehicle was titled in her father's name and she was insured on a policy purchased by her parents, but paid for by her. After the move, plaintiff's mother contacted their local agent, who was employed by Hemmy & Associates, Incorporated and informed that agent of the move. That agent subsequently insured plaintiff and her family for another term.

Plaintiff's boyfriend, who is now her husband, lived in Wisconsin. He drove an Aries K automobile. Dairyland insured that automobile. One night, when plaintiff was leaving her boyfriend's parents' home, her Grand Torino would not start and plaintiff's boyfriend loaned her his automobile. As plaintiff was driving, she saw a vehicle heading toward her boyfriend's vehicle and she swerved to avoid it. The accident occurred in Wisconsin and plaintiff sustained bodily injury.

Plaintiff sued both Dairyland and Milwaukee, claiming that they owed her personal protection benefits. Dairyland moved for summary disposition. Plaintiff then filed a motion for summary disposition. In response to plaintiff's motion, Milwaukee moved for summary disposition. After hearing argument, the circuit court granted defendants-appellees' motions.

Plaintiff claims that Dairyland's out-of-state insurance provision when read in conjunction with MCL 500.3102(1); MSA 24.13102(1) and MCL 500.3111; MSA 24.13111 provides her with no-fault coverage. Dairyland's out-of-state insurance provision provides:

If this policy provides liability insurance and if you are traveling in a state which has compulsory motor vehicle insurance for non-residents, we'll automatically provide the required insurance. However, this amendment will provide only excess insurance. (Emphasis in original.)

MCL 500.3102(1); MSA 24.13102(1) 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.

MCL 500.3111; MSA 24.1311 provides:

Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or

registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.

Plaintiff's boyfriend submitted an affidavit alleging that he had operated his vehicle in Michigan for an aggregate of more than thirty days. Hence, plaintiff argues that her boyfriend was required to obtain insurance pursuant to MCL 500.3102(1); MSA 24.13102(1), that Dairyland's out-of-state insurance provision provided him with the required no-fault insurance and that, therefore, plaintiff was entitled to no-fault benefits pursuant to MCL 500.3111; MSA 24.3111. We believe that Dairyland's out-of-state insurance provision only applies where the accident occurs in a state other than Wisconsin. Here, plaintiff's accident occurred in Wisconsin and she is not entitled to no-fault benefits from Dairyland.

Plaintiff also claims that Dairyland is liable to pay no-fault benefits because it filed a certificate pursuant to MCL 500.3163; MSA 24.13163. Again, we agree with Dairyland that that statute only serves to create no-fault liability when a non-resident driver is involved in a motor vehicle accident in Michigan. Here, plaintiff was involved in an accident in Wisconsin. In sum, plaintiff's boyfriend was not insured under a personal protection insurance policy and, therefore, she was not entitled to no-fault benefits pursuant to MCL 500.3111; MSA 24.13111 from Dairyland.

Plaintiff also claims that Milwaukee is liable to pay no-fault benefits when its out-of-state insurance provision is read with the above-quoted MCL 500.3102(1); MSA 24.13102(1) and MCL 500.3111; MSA 24.13111. Milwaukee's out-of-state insurance provision provides:

If an insured person becomes subject to the financial responsibility law or the compulsory insurance law of or similar laws of another state because of the ownership, maintenance or use of your insured car in that state, we will interpret this policy to provide any broader coverage required by those laws. Any broader coverage so afforded shall be

reduced to the extent that other auto liability insurance applies. No person may, in any event, collect more than once for the same elements of loss.

Plaintiff claims that her parents were required to obtain no-fault insurance pursuant to MCL 500.3102(1); MSA 24.13102(1), that Milwaukee's out-of-state insurance provision provided them with the required no-fault coverage, and that, therefore, plaintiff was entitled to coverage pursuant to MCL 500.3111; MSA 24.13111. Again, we believe that Milwaukee's out-of-state insurance provision was intended to apply when the accident occurred in a state other than Wisconsin. Because plaintiff's accident occurred in Wisconsin, we do not believe that she was entitled to no-fault benefits from Milwaukee pursuant to its out-of-state insurance provision.

Finally, plaintiff claims that Milwaukee is liable to pay no-fault benefits based upon the principles of waiver or estoppel because her mother informed Milwaukee of the move and it continued to insure her parents. While Milwaukee's motion for summary disposition did not address the issues of waiver or estoppel, the issues were raised during the motion for summary disposition and the circuit court was aware of them. Nonetheless, the circuit court's opinion does not address these issues and state why summary disposition was appropriate. Hence, we remand to the circuit court to decide those issues.

Affirmed as to Dairyland. Affirmed in part as to Milwaukee and remanded for further proceedings. We retain no further jurisdiction.

/s/ John H. Gillis
/s/ Joseph B. Sullivan
/s/ Mark J. Cavanagh