S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

FARMERS INSURANCE COMPANY, INC., a foreign corporation, as subrogee of PAULINE and ARNIE MICHAEL,

Plaintiff-Appellant,

v No. 112566

U-HAUL COMPANY OF DETROIT, a Michigan corporation,

Defendant-Appellee.

Before: Doctoroff, P.J., and Shepherd and McDonald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff is the insurer and subrogee of Pauline and Arnie Michael. Pauline Michael leased a trailer from defendant which malfunctioned causing $15,605.59 worth of damages to the Michaels' motor vehicle. Plaintiff compensated the Michaels for their loss and now sues defendant, as a subrogee, for defendant's negligence. Plaintiff's complaint alleges that loose lug nuts on the leased trailer caused the Michaels' van to swerve out of control and crash. The accident occurred in the state of Tennessee.

Plaintiff argues that the trial court erred in finding that the instant action was barred by Michigan's No Fault Act.

A motion for summary disposition made pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the pleadings. The motion should be granted where the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify the right to recover. Scamehorn v Bucks, 167 Mich App 302, 306; 421 NW2d 918 (1988), lv den 430 Mich 886 (1988).

Michigan's No Fault Act provides that:

> (2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3103(3) and (4) was in effect is abolished except as to: * * *. [MCL 500.3135(2); MSA 24.13135(2) (footnote omitted.)]

It is not disputed that the exceptions contained in subsection 2 a-d, are not applicable to this case. Plaintiff argues that the abolition of tort liability does not apply to accidents which occur outside of the state of Michigan. We disagree. The statute clearly states that it applies to the maintenance of a motor vehicle within the state of Michigan. Plaintiff's complaint specifically alleges that defendant negligently maintained the trailer and it is not disputed that such maintenance would have occurred in the state of Michigan.

Plaintiff also asserts that the trailer was not a motor vehicle at the time the allegedly negligent maintenance of it occurred. We reject this assertion and find that the trailer was a motor vehicle covered by the no fault act. MCL 500.3101(2)(e); MSA 24.13101 provides that the term "motor vehicle" includes trailers which are operated upon or designed to operate upon a public highway. The no fault act does not require that the trailer be moving at the time of the negligent act, in this case the maintenance of the trailer, to be considered a "motor vehicle." We note that this action involves only damages for property loss and does not involve bodily injuries and thus the parked vehicle exceptions contained in MCL 500.3106; MSA 24.13106 are inapplicable.

Plaintiff next argues that § 3135 is inapplicable in this case because defendant is a vehicle repair facility. The Supreme Court in Citizens Insurance Co v Tuttle, 411 Mich 536, 550; 309 NW2d 174 (1981) stated that § 3135 was not intended to abolish the right to recover for noneconomic losses caused by a mechanic's failure to properly repair a motor vehicle. Motor vehicle repair facilities are not required to maintain no fault

insurance and thus remain subject to tort liability. Hengartner v Swanson Sales, 132 Mich App 751, 758; 348 NW2d 15 (1984). We conclude that defendant is not a motor vehicle repair facility. There is absolutely no indication in the record that defendant is anything but a vehicle rental company. Furthermore, the motor vehicle service and repair act expressly excludes those who repair vehicles of a single commercial establishment which is not engaged in the business of vehicle repair work, from its definition of a motor vehicle repair facility. MCL 257.1302a; MSA 9.1720(2a). Thus this action is governed by the no fault act and plaintiff's claim was properly dismissed by the trial court.

Plaintiff's final claim is that its claim against defendant is one for breach of contract and warranty. Plaintiff failed to plead this cause of action or to argue it to the trial court. We find that plaintiff failed to preserve this issue for appeal. State-William Partnership v Gale, 169 Mich App 170, 181; 425 NW2d 756 (1988). Plaintiff filed a supplemental brief after oral argument relating to the contract claim. We are satisfied that plaintiff's issue lacks merit. This was essentially an automobile accident arising out of negligence. In adopting a comprehensive no fault act, the Legislature did not intend to permit it to be circumvented by the use of alternative theories applicable to the same facts.

Affirmed.

/s/ Martin M. Doctoroff
/s/ John H. Shepherd
/s/ Gary R. McDonald