

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

JAMES MELTON, JR.,

Plaintiff-Appellee,

v

AETNA INSURANCE COMPANY,

Defendant,

and

ALICE MELTON,

Defendant-Appellant.

APR 06 1990

No. 110479

Before: Griffin, P.J., and Wahls, and Brennan, JJ.

PER CURIAM.

Defendant Alice Melton (defendant) appeals as of right from a lower court order ruling that plaintiff James Melton, Jr., (plaintiff) is entitled one-fourth of survivors' loss benefits under Michigan's No-Fault Act, MCL 500.3108; MSA 24.13108 and MCL 500.3110; MSA 24.13110. Defendant Aetna Insurance Company (Aetna) is not interested in this appeal. We reverse.

James Melton, Sr., died as a result of an automobile accident in December 1986. Aetna started paying survivors' loss benefits, under MCL 500.3108; MSA 24.13108, to his widow, defendant. Plaintiff, the twenty-five-year-old son of James Melton, Sr., thereafter filed the instant action, claiming that he was entitled to a portion of the survivors' benefits as a dependent of the deceased. The trial court then entered the order appealed from, ruling that plaintiff was a dependent under the statute and therefore entitled to one-fourth of the survivors' benefits.

On appeal, defendant argues that the trial court erred by ruling that plaintiff should be considered a dependent under MCL 500.3110; MSA 24.13110. We agree.

The trial court's decision was a declaratory judgment order, which we review de novo on the record. Odette v Liquor Control Commission, 171 Mich App 137, 140-141; 429 NW2d 814 (1988).

MCL 500.3112; MSA 24.13112 provides in pertinent part:

Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his death, to or for the benefit of his dependents. . . . If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate.

MCL 500.3110; MSA 24.13110 provides for the determination of dependents entitled to survivors' loss benefits. The relevant portions of this section are:

(1) The following persons are conclusively presumed to be dependents of a deceased person:

(a) A wife is dependent on a husband with whom she lives at the time of his death.

(b) A husband is dependent on a wife with whom he lives at the time of her death.

(c) A child while under the age of 18 years, or over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom he lives or from whom he receives support regularly at the time of the death of the parent.

(2) In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts as they exist at the time of death.

(3) The dependency of a surviving spouse terminates upon death or remarriage. The dependency of any other person terminates upon the death of the person and continues only so long as the person is under the age of 18 years, physically or mentally incapacitated from earning, or engaged full time in a formal program of academic or vocational education or training.

Having reviewed the record below, we conclude that the lower court erred by declaring plaintiff a dependent under the statute. Plaintiff was over the age of eighteen on the date of his father's death. Moreover, in response to defendant's request

for admissions, plaintiff admitted that on the date of his father's death he was not attending classes at any educational institution. Plaintiff also admitted that he is not physically or mentally incapacitated from earning. Accordingly, we see no justification for the designation of plaintiff as a dependent, and conclude that he is not entitled to any survivors' benefits under the statute.

Reversed.

/s/ Richard Allen Griffin
/s/ Myron H. Wahls
/s/ Thomas J. Brennan