STATE OF MICHIGAN

COURT OF APPEALS

RENEE PRIESMAN,

Plaintiff-Appellant,

v No. 109752

MEREDIAN MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

Before: Weaver, P.J., and Brennan and Neff, JJ.

PER CURIAM.

This is a first-party, no-fault automobile insurance case. The circuit judge granted summary disposition to the defendant under MCR 2.116(C)(10). We reverse.

I

The relevant facts are not in dispute and the case was submitted to the circuit judge on a stipulation of facts.

Plaintiff owned a motor vehicle which was insured by defendant. While plaintiff was asleep, her fourteen-year-old son took her car without her permission. He picked up two of his friends and an accident followed. Plaintiff's son and one of his friends were seriously hurt. The other friend was killed.

Initially, defendant paid first-party, no-fault benefits arising out of the serious injuries sustained by plaintiff's son. In a related third-party case, the insurer settled a claim arising out of the death of the passenger.

About six or seven months after the accident, defendant informed plaintiff that it would no longer pay first-party benefits for expenses arising out of her son's injuries. This lawsuit followed.

II

Defendant relied on MCL 500.3113(a); MSA 24.13113(a) to terminate benefits under the no-fault policy of automobile insurance. The statute provides, in pertinent part, as follows:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances exist: (a) the person was using a motor vehicle which he had taken unlawfully, unless he reasonably believed that he was entitled to take and use the vehicle.

Defendant argues that the stipulated statement of facts entered into by both parties establishes that plaintiff's son was driving the car "unlawfully," in violation of MCL 750.414; MSA 28.646, which provides, in pertinent part, as follows:

> Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who shall be a party to such unauthorized taking or using, shall upon conviction thereof be guilty of a misdemeanor . . . .

Defendant acknowledges that plaintiff's son was not charged with any criminal offense and that, therefore, there is no "conviction." The argument is that as long as there is a taking without permission, no criminal conviction is required to deny coverage under the no-fault act, citing Dupie v Michigan Mutual Ins Co, Docket No. 100037, decided June 1, 1988. Aside from the fact that this unpublished opinion has no precedential value, MCR 7.215(C), we find it to be distinguishable. In Dupie, there were affidavits establishing unlawful taking and the plaintiff was charged under the criminal statute and entered a no contest plea. In addition, there is nothing in the Dupie opinion to indicate that the plaintiff was a member of the owner's household or that he was related to the owner.

III

The question for decision in this case is whether the mere fact of taking without permission by an underage driver who is the son of the owner and who lives in the owner's household is "unlawful" under the no-fault act. The term "unlawful" is not defined in the no-fault act.

Under MCL 500.3114; MSA 24.13114, plaintiff's son is a person entitled to personal protection insurance benefits for injuries arising out of a motor vehicle accident because he is a relative of plaintiff domiciled in the same household. In our view, he does not lose that entitlement by virtue of using his mother's car without her permission.

We hold that the use of plaintiff's car by her son without her permission was not unlawful under the no-fault act. We cannot say that the Legislature intended that §3114 of the act would apply under the circumstances of this case.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth A. Weaver
/s/ Thomas J. Brennan
/s/ Janet T. Neff