

STATE OF MICHIGAN  
COURT OF APPEALS

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MARK WEBER, Conservator of the Estate of  
SEAN WEBER,

February 28, 1991

Plaintiff-Appellant,

v

No. 125382

SECURA INSURANCE COMPANY,

Defendant-Appellee.

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Before: Brennan, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff Mark Weber and his wife Caralee have a no-fault insurance policy with defendant, Secura Insurance Company. The Webers' two children, Sean and Tenille, are covered under the policy.

On March 1, 1988, Mrs. Weber drove a pickup truck with an attached grain cart to a neighbor's house for the purpose of getting oats. After filling the cart with oats, Mrs. Weber drove the truck and the grain cart to a grain elevator to be weighed. The grain cart, which was primarily used to store oats in the Webers' barn, had no license plates and was not registered with the Department of Motor Vehicles.

Upon arrival at the Weber home, the truck and grain cart were driven into the barn. Mark Weber then unhooked the pin which held the tongue on the grain cart to the hitch on the pickup truck. At this time, the Webers, their two children, and a family friend, Terry Hollingshead, were present in the barn.

After unhooking the grain cart from the truck, the Webers and Hollingshead began manually pushing the grain cart into a corner of the barn. Sean Weber was hit by the cart and sustained severe head injuries resulting in permanent brain damage.

Defendant brought a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's grain cart was an implement of husbandry and therefore not covered as a motor vehicle under the no-fault act. Plaintiff argued that the grain cart was a trailer and therefore fell within the definition of motor vehicle. In granting defendant's motion for summary disposition, the trial court found that the grain cart was an implement of husbandry and not covered under the no-fault act.

Plaintiff contends on appeal that the trial court erred in granting defendant's motion for summary disposition under MCR 2.116(C)(10) since plaintiff's affidavit raised a genuine issue of material fact whether the grain cart was a trailer. We disagree.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to it. Dumas v Auto Club Ins Ass'n, 168 Mich App 619, 626; 425 NW2d 480 (1988).

The moving party must identify by supporting affidavits those facts which it believes cannot be genuinely disputed. Slaughter v Smith, 167 Mich App 400, 403; 421 NW2d 702 (1988). The party opposing the motion has the burden of showing that a genuine issue of disputed fact exists. Dumas, supra. The

opposing party may not rest upon mere allegations or denial in the pleadings, but must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4); Metropolitan Life Ins Co v Reist, 167 Mich App 112, 118; 421 NW2d 592, lv den 431 Mich 877 (1988). The test is whether the kind of record which might be developed, giving the benefit of reasonable doubt to the plaintiff, would leave open an issue of fact upon which reasonable minds might differ. Bowerman v Malloy Lithographing, Inc, 171 Mich App 110, 116; 430 NW2d 742 (1988).

MCL 500.3101(2)(e); MSA 24.13101(2)(e) states in pertinent part:

"Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws. Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code . . . .

The above statute, which generally includes trailers in the definition of motor vehicle, was amended in 1984 to specifically exclude farm tractors and implements of husbandry which are not required to be registered under the motor vehicle code from the definition of motor vehicle under the no-fault act. 1984 PA 84. The amendment was promulgated following our Supreme Court's decision in Pioneer State Mutual Ins Co v Allstate Ins Co, 417 Mich 590; 339 NW2d 470 (1983), reh den 418 Mich 1202 (1984), that a farm tractor was a vehicle under § 3101(2)(c) (now § 3101(2)(e)).

Applying the rules of statutory construction, the most important rule is to discover and give effect to the legislative intent. The next rule is to derive the legislative intention from the actual language used in the statute. If the language used is clear and unambiguous, a common sense reading of the provision will suffice, and no interpretation is necessary. Pioneer, supra at 595. We believe that the language of § 3101(2)(e) is clear and unambiguous. The specific exclusion in that section applies to farm tractors and implements of husbandry. Likewise, the motor vehicle code, MCL 257.216; MSA 9.1916, which generally includes trailers, specifically exempts implements of husbandry, as defined in MCL 257.21; MSA 9.1821, from the registration requirements:

"Implement of husbandry" means a vehicle which is either a farm tractor, a vehicle designed to be drawn by a farm tractor or an animal, a vehicle which directly harvests farm products, or a vehicle which directly applies fertilizer, spray, or seeds to a farm field.

Thus, the issue is whether the grain cart was an implement of husbandry.

The documentary evidence submitted by plaintiff reveals that the grain cart was designed for farm use in harvesting grain and was intended to be pulled by a tractor. Thus, the cart clearly falls within the definition of implement of husbandry. We note that such implements of husbandry may realistically be pulled by a vehicle other than a tractor even though not designed to be so pulled. Such a situation, wherein the implement of husbandry is being used as a trailer, does not change our ruling as implements of husbandry are specifically excluded from coverage without regard to their use. We conclude that the grain cart is an implement of husbandry and is specifically excluded from the definition of motor vehicle under the no-fault act. Therefore, summary disposition in defendant's favor was appropriate.

Affirmed.

/s/ Thomas J. Brennan  
/s/ Roman S. Gribbs  
/s/ E. Thomas Fitzgerald