STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH WAYNE DONNER,

Plaintiff-Appellant,

v

TRANSAMERICA INSURANCE COMPANY,

Defendant-Appellee.

April 3, 1991

No. 120298

Before: Murphy, P.J., and Sullivan and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court order granting defendant's motion for summary disposition under MCR 2.116(C)(10). The only issue on appeal is whether the trial court erred by ruling that plaintiff was the owner of the motor vehicle involved in the accident in which he was injured. We reverse and remand for further proceedings.

Plaintiff Joseph Wayne Donner was injured in a car accident on November 7, 1987, while driving a 1977 Ford LTD. About one week before the accident, plaintiff agreed to buy the LTD from Edward Bowles. Plaintiff and Bowles agreed on a price of $600. Although both testified in their depositions that plaintiff was to make weekly payments on the car, they disagreed on the amount of the weekly payments. Bowles testified that the amount of the weekly payment was to be either $25 or $50, but plaintiff testified that it was to be $40. Shortly before selling the car to plaintiff, Bowles and his wife were divorced. The divorce judgment provided that they sell the car and divide the money. Without having made a down payment or weekly payment, plaintiff took possession of the car around October 30, 1987.

Bowles left his license plate on the car and kept the insurance in effect so that plaintiff could drive the car home. Bowles cancelled the insurance on October 31, 1987. He then went to plaintiff's home and removed his license plate from the LTD. Before going to plaintiff's, Bowles signed the certificate of title to the car. He thought that he then placed the title in the console of the LTD while he was at plaintiff's, but he did not tell plaintiff that the title was in the console. Bowles signed the title because "[plaintiff had] bought the car."

Plaintiff, on the other hand, testified in his deposition that Bowles did not sign over the certificate of title to him. Plaintiff never found the title in the console of the car. At his deposition, he vacillated regarding when he was supposed to receive title to the car. At one point, he testified that he was not supposed to receive title until Bowles' ex-wife received her half of the $600. However, upon further questioning, plaintiff testified that he expected to receive the title a few weeks after he took possession of it, prior to making more than just a couple of payments on the car.[1] Moreover, although plaintiff drove the LTD after taking possession of it and knew that Bowles had cancelled the insurance, he did not insure it. Nor did he have a proper license plate on the car.

On November 7, 1987, plaintiff was involved in an accident while he was driving the uninsured LTD. However, plaintiff's mother, with whom he lived, owned a car insured by defendant Transamerica Insurance Company. Plaintiff, therefore, submitted a claim to defendant for no-fault insurance benefits under the relative-resident provision of his mother's no-fault automobile policy. Defendant rejected the claim, asserting that plaintiff was the owner of the uninsured LTD and thus was precluded from personal protection insurance coverage under the no-fault act, MCL 500.3113(b); MSA 24.13113(b). The instant action followed.

MCL 500.3113(b); MSA 24.13113(b) provides that a person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident the person was the owner of an uninsured motor vehicle involved in the accident. The trial court ruled as a matter of law that plaintiff was the owner of the uninsured LTD, relying on the definition of "owner" contained in the Michigan Vehicle Code, MCL 257.1 et seq.; MSA 9.1801 et seq., prior to its 1988 amendment. At the time of the accident, the no-fault act, MCL 500.100 et seq.; MSA 24.1100, did not define owner. However, the Michigan Vehicle Code provided that to be the owner of a motor vehicle it was necessary to have one of the following relationships with the vehicle: (1) exclusive control over the vehicle for thirty days, (2) hold legal title of the vehicle, or (3) be a conditional vendee, lessee, or mortgagor with immediate right to possession. MCL 257.37; MSA 9.1837; Peters v Dep't of State Highways, 66 Mich App 560, 564-565; 239 NW2d 662 (1976). More specifically, an owner was defined in part as:

> A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner. [MCL 257.37(b); MSA 9.1837(b).]

Panels of this Court have held that the no-fault act and the Michigan Vehicle Code should be construed in pari materia and, thus, have applied the Vehicle Code's definition of owner to cases arising under the no-fault act. See Laskowski v State Farm Mutual Automobile Ins Co, 171 Mich App 317; 429 NW2d 887 (1988); State Farm Mutual Automobile Ins Co v Sentry Ins Co, 91 Mich App 109, 113-114; 283 NW2d 661 (1979).

In 1988, the Legislature added a definition of owner to the no-fault act by enacting 1988 PA 126. The new definition provides that an owner means any one of the following:

> (i) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days.
>
> (ii) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (iii) A person who has the immediate right of possession of a motor vehicle under an installment sale contract. [MCL 300.3101(2)(g); MSA 24.13101(2)(g).]

Plaintiff argues that the definition in the no-fault act applies retrospectively and therefore should be applied in this case. He contends that under the no-fault definition, he would not be the owner of the vehicle because he and Bowles did not enter into an installment sale contract. On the other hand, defendant argues that the pertinent amendment to the no-fault act applies only prospectively and thus the definition which controlled at the time of the accident should be applied, i.e., the preamended definition contained in the Michigan Vehicle Code. We agree with defendant.

As a general rule of statutory construction, statutes are presumed to operate only prospectively, unless the contrary intent is clearly manifested. Selk v Detroit Plastic Products, 419 Mich 1, 9; 345 NW2d 184 (1984). An exception to this rule exists where a statute is remedial or procedural in nature, Id., p 10, unless it interferes with express contractual rights, abolishes a cause of action. Joe Dwyer, Inc v Jaguar Cars, Inc, 167 Mich App 672, 681; 423 NW2d 311 (1988); Forsythe v Valley Consolidated Ind, 139 Mich App 211, 217; 361 NW2d 768 (1984), or invalidates a defense which was good when the statute was passed. Id., quoting Hansen-Snyder Co v General Motors Corp, 371 Mich 480, 484; 124 NW2d 286 (1963).

At the time the Legislature amended the no-fault act to add a definition of owner, 1988 PA 126, it also made corresponding changes in the definition of owner contained in the Michigan Vehicle Code. 1988

PA 125. The two bills were tie-barred. They were intended to remedy the burden on leasing agencies which leased vehicles long term, but which retained legal title to the vehicles. Under the preamended definition of owner, liability for damages resulting from the operation of the leased vehicles and the ultimate no-fault insurance responsibility reportedly was on the leasing agencies when they had neither custody nor control over the leased vehicles. House Legislative Analysis, HB 4685 & 4721, March 15, 1988. Therefore, under the amended definition of owner, the ultimate no-fault insurance burden is on the lessee of a vehicle leased for more than thirty days, as is the potential for liability for damages resulting from the operation of the leased vehicle.

The amendments are thus probably considered to be remedial. However, the new definition abolishes a plaintiff's common law claim against a leasing agency for damages resulting from the operation of a vehicle leased for more than thirty days. Although the action against the lessee remains, this Court has held that changes in the apportionment of liability concern substantive, existing rights, and should be applied prospectively. Forsythe, supra, p 217. Because the bills were tie-barred, we do not believe that the Legislature intended one to operate prospectively and the other to operate retrospectively. Therefore, the amendments at issue are presumed to operate prospectively, and accordingly the trial court applied the correct definition of owner.

Nevertheless, we reverse the order granting summary disposition to defendant and remand this matter to the trial court for further proceedings because we conclude that, contrary to defendant's assertion, a question of fact exists regarding whether plaintiff was a conditional vendee.

A conditional sale is defined as an agreement for the sale of a chattel in which possession of the chattel is immediately given to the vendee, but transfer of title is made to depend on the performance of a condition, usually the payment of the price. Alger v Davis, 345 Mich 635, 641; 76 NW2d 847 (1956); Albanys v Mid-Century Ins Co, 91 Mich App 41, 45-46; 282 NW2d 11 (1979), rev'd on other grounds 407 Mich 925 (1979). In fact, the Michigan Vehicle Code's preamended definition of owner provides that a conditional vendee is the owner of the vehicle if the vehicle is the "subject of an agreement for the conditional sale . . . with the right of purchase upon performance of the conditions . . . . " (Emphasis added.)

Here, a question of fact exists regarding whether plaintiff was a conditional vendee. Bowles testified that he signed the certificate of title and put it in the LTD. On the other hand, at one point in his deposition, plaintiff testified, in essence, that he would not get the title until the purchase price had been paid. However, plaintiff later contradicted himself. Although the deposition testimony seems to show that the parties to the agreement did not intend that Bowles retain title until the purchase price was paid, and thus that this was not a conditional sale, a proper determination depends on the intent and credibility of the parties to the agreement. Therefore, summary disposition was inappropriate. Michigan Nat'l Bank-Oakland v Wheeling, 165 Mich App 738, 744-745; 419 NW2d 746 (1988).

This Court's decision in Michigan Mutual Auto Ins Co v Reddig, 129 Mich App 631; 341 NW2d 847 (1983), does not necessarily compel a contrary result. In that case, the issue was whether one of the defendants, Gregory Szymanski, owned an automobile involved in the accident for the purpose of determining coverage under a "non-owned automobile" provision contained in an insurance policy. At the time of the accident, defendant Dennis Elwart was the registered owner and title holder of the car. However, previously Elwart and Szymanski had agreed that Szymanski would purchase the car from Elwart for $100. Szymanski had paid $60 on the purchase price and the car had been delivered to Szymanski, but Elwart had not transferred the certificate of title to Szymanski because he could not find it.

On a motion for summary disposition, the trial court ruled that Szymanski was a conditional vendee and thus was the owner of the car under the preamended definition of owner contained in the Michigan Vehicle Code. A panel of this Court, however, ruled that the sale of the car was void because it did not include a transfer of the certificate of title as required by statute. Id., pp 634-636. We note, though, that the evidence in that case, contrary to the trial court's ruling, showed that the sale was not a conditional sale because the only reason title was not transferred was because the seller could not find it. In other words, the parties to the sale apparently did not intend that the seller retain title until the purchase price was fully paid. Nor did the Court even discuss the nature of a conditional sale.

In conclusion, we reverse the order granting summary disposition to defendant and remand this matter for further proceedings because a question of facts exists regarding whether plaintiff was the owner of the car.

/s/ Joseph B. Sullivan
/s/ David H. Sawyer

I concur in result only.

/s/ William B. Murphy

[1] Q: Why did you expect to get the title if she [Bowles' ex-wife] needed $300.00 and you only would have paid $40.00 or $80.00 by the time he got back?

A: Because we were really good friends and she would have gave Eddy [Bowles] the title to give to me.

Q: So, this thing about the divorce, and she getting half the money, really, was no obstacle to you getting the title as soon as possible?

A: No. I would have got the title as soon as he got back. She would have gave it to me.