STATE OF MICHIGAN

COURT OF APPEALS

TRAVELERS INSURANCE COMPANY,
subrogee of Roy D. Cooley, M.D.,

Plaintiff-Appellee,

v

PATRICIA ANN PAYSON,

Defendant,

and

AUTOMOBILE CLUB INSURANCE ASSOCIATION,
a/k/a AAA-MICHIGAN,

Defendant-Appellant.

September 5, 1991

No. 119084

Before: Doctoroff, P.J., and Gillis and Reilly, JJ.

PER CURIAM.

Defendant Automobile Club Insurance Association (AAA) appeals by leave granted the decision of the Oakland County Circuit Court which affirmed an order of the 48th District Court denying defendant's motion for summary disposition filed pursuant to MCR 2.116(C)(7) and (8) and granting summary disposition in favor of plaintiff Travelers Insurance Company (Travelers) pursuant to MCR 2.116(I)(2). On appeal, defendant argues that the courts below erred in determining defendant liable for providing property protection insurance benefits to plaintiff. We agree and reverse and remand for an order granting summary disposition to defendant.

The facts are not in dispute. It is the interpretation of the law by the courts below with which defendant disagrees. On April 16, 1987, defendant Patricia Ann Payson was driving a rented automobile owned by National Auto Leasing Company (NALCO) and insured by Reliance Insurance Company. Payson lost control of the rented vehicle and struck a building owned by plaintiff Travelers' subrogor Roy D. Cooley, M.D. Plaintiff brought this action as subrogee to recover the loss from AAA, insurer of the Paysons' family vehicles. AAA's coverage of the Paysons' personal vehicles extends to temporary substitute vehicles, such as the NALCO vehicle.

Although the parties raised several issues below and mention several collateral issues in their appellate briefs, the issue appealed by defendant is the correctness of the lower courts' decision regarding the property priority provision of the Michigan no-fault insurance act, MCL 500.3125; MSA 24.13125. Defendant argues it is in a second priority position, while plaintiff argues that defendant is in a first or equal priority position.

A motion for summary disposition based on MCR 2.116(C)(8) tests the legal sufficiency of the claim by the pleadings alone. Pawlak v Redox Corp, 182 Mich App 758, 763; 453 NW2d 304 (1990). The court must accept the factual allegations as true, along with any inferences which may be drawn from the facts. Id. The motion should be granted only when the claim is so unenforceable as a matter of law that no factual development could possibly justify a recovery. Id.

Plaintiff asserts that defendant AAA is liable as the insurer of Patricia Payson, pursuant to MCL 500.3121; MSA 24.13121, which provides in pertinent part:

> (1) Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125 and 3127.
>
> (2) Property protection insurance benefits are due under the conditions stated in this chapter with regard to fault.
>
> (3) Damage to tangible property consists of physical injury to or destruction of the property and loss of use of the property so injured or destroyed.

MCL 500.3125; MSA 24.13125, provides:

> A person suffering accidental property damage shall claim property protection insurance benefits from insurers in the following order of priority: insurers of owners or registrants of vehicles involved in the accident; and insurers of operators of vehicles involved in the accident.

Defendant argues that it is not the insurer of an owner or registrant of the vehicle involved in the accident and, therefore, is in a second priority position under the above priority statute.

It is this Court's goal in interpreting a statute to give effect to the intent of the Legislature. Joy Management Co v Detroit, 176 Mich App 722, 730; 440 NW2d 654 (1989), lv den 433 Mich 860 (1989). We presume the Legislature intended the meaning as plainly expressed. Frasier v Model Coverall Service, Inc, 182 Mich App 741, 744; 453 NW2d 301 (1990). Judicial construction or interpretation of a statute is precluded in those instances where the plain and ordinary language is clear. People v Miller, 186 Mich App 238, 241; 463 NW2d 250 (1990).

The language of the priority statute is clear and unambiguous. The insurer of the owner or registrant of the vehicle is in first priority. The insurer of the operator is in second place in the order of priorities. The Paysons were not owners of the involved vehicle. Both parties agree that the vehicle was owned by NALCO and insured by Reliance. AAA was the insurer of an operator.

Plaintiff argues that defendant assumed primary priority by the language of their insurance policy covering the Paysons. Plaintiff points to the following policy language to support their contentions:

> Temporary Substitute means a car or trailer not owned by you or any resident of your household used when YOUR CAR is out of use because of its breakdown, repair, servicing, loss or destruction.
>
> * * *
>
> INSURED CAR means:
>
> YOUR CAR, which is the vehicle described on the Declaration Certificate and identified by a specific Vehicle Reference Number, a replacement, a temporary substitute. . . .
>
> * * *
>
> We agree to pay only as set forth in the Code for property damage caused by accident and arising out of the ownership, operation, maintenance or use of an insured motor vehicle as a motor vehicle. . . .

Plaintiff relies on this Court's opinion in Doss v Citizens Insurance Co of America, 146 Mich App 510; 381 NW2d 409 (1985), to support the contention that defendant's policy language contracted to place the

Paysons' insurance in a position of first priority. In Doss, the language of a rental agreement was read to establish an assumption of priority by the rental insurance company. The pertinent language read "coverage hereunder is primary with respect to any other insurance which may be available to customer." Doss, supra, p 513. This Court held the language expressly contracted to put the rental car insurer in a position of primary priority and they could not avoid that express language under the code. However, the language of AAA's insurance policy does not contain the express language of the policy in Doss. In fact, it expressly states, "We agree to pay only as set forth in the code for property damage caused by accident." The policy defines Code to mean Chapter 31 of the Michigan Insurance Code, the Michigan no-fault law.

The language of AAA's insurance policy does not expressly assume priority. Rather, the policy by definition defers to the no-fault act to establish priority. Under §3125 of the no-fault act, defendant, by its coverbage of the Paysons, is not in a position of primary or equal priority with Reliance.

Reversed and remanded to the circuit court for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ John H. Gillis
/s/ Maureen Pulte Reilly