STATE OF MICHIGAN

COURT OF APPEALS

CLIFFORD WAYNE CLEVENGER,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant,

and

JOANN R. WILLIAMS and
DOUGLAS CHESTER PREECE,

Defendants.

February 11, 1992

UNPUBLISHED

No. 120223

Before: Griffin, P.J., and Hood and McDonald, JJ.

PER CURIAM.

Defendant Allstate Insurance Company appeals as of right from the declaratory judgment which ordered it to defend and indemnify, if necessary, its insured, defendant Joann R. Williams, and her nephew, defendant Douglas Preece, in a separate civil action instituted by plaintiff for injuries he received in a head-on collision with the vehicle driven by Preece. We reverse.

Just hours before the early morning accident on August 2, 1987, which severely injured plaintiff, Preece purchased his aunt's 1977 Pontiac for a nominal price. Williams signed the certificate of title and delivered it and the keys to Preece. Because this spur-of-the-moment transaction took place on Saturday, Preece was unable to obtain a new registration in his own name or proper insurance. That night Preece drove away in his new car and later struck plaintiff's pickup truck head-on after crossing the center line.

Allstate had issued an automobile insurance policy to Williams and her husband covering the 1977 Pontiac. The premiums were fully paid and the policy was in effect on the date of the accident. Unaware of the accident, Williams cancelled the policy some time during the following week.

Plaintiff filed suit for his personal injuries in circuit court against Preece and Williams and alleged that because Williams was the owner of the vehicle at the time of the collision plaintiff was entitled to the residual liability benefits under her policy with Allstate. In this separate action, plaintiff filed a complaint for a declaratory judgment that Preece was an insured person under Williams' policy at the time of the accident. As previously indicated, the trial court ruled in favor of plaintiff.

On appeal, defendant Allstate contends that the trial court erred in ruling that Preece was an insured person under its policy issued to Williams and that, therefore, it has no duty to defend or indemnify Preece.[1] We agree.

Plaintiff's claim against Williams and Preece arises under section 3135(1) of the no-fault insurance act, MCL 500.3135(1); MSA 24.13135(19), which addresses tort liability arising out of the ownership, maintenance, or use of a motor vehicle. This provision is an exception to the general abolition of tort liability enacted by the statute and covers only those injuries caused by the ownership, maintenance or use of a motor vehicle. Citizens Ins Co of America v Tuttle, 411 Mich 536, 545-549; 309 NW2d 174 (1981).

By statute, the owner of a motor vehicle is liable for any injury resulting from its negligent operation if the vehicle is being driven with the owner's permission. MCL 257.401(1); MSA 9.2101(1). "Owner" is defined in the Michigan Vehicle Code in part as "a person who holds legal title of a vehicle." MCL 257.37(b); MSA 9.1837(b). However, an owner of a motor vehicle who has made a bona fide sale of the vehicle by transfer of title and who delivered possession of the vehicle along with the certificate of title properly endorsed to the transferee is not liable for any damages resulting from the negligent operation of the vehicle by another after the transfer. MCL 257.240; MSA 9.1940. See also Allstate Ins Co v Demps, 133 Mich App 168, 175-176; 348 NW2d 720 (1984), lv den 421 Mich 852 (1985); Long v Thunder Bay Mfg Corp, 86 Mich App 69, 70; 272 NW2d 337 (1978).

We agree with defendant Allstate that Williams made a bona fide sale in compliance with section 240 of the vehicle code thus relieving her from liability for the negligent operation of the vehicle by Preece. Contrary to plaintiff's argument, nothing in the Michigan Vehicle Code, the no-fault insurance act, or the common law makes a registrant liable in tort for negligent operation of a motor vehicle by another. Because Williams was no longer the owner of the vehicle insured under its policy, Allstate has no duty to indemnify her. The trial court's ruling to the contrary was, therefore, in error and we reverse.

Upon review of the policy at issue we also conclude that the trial court erred in ruling that Preece was an insured person. No longer an owner, Williams could not give the requisite permission to use the vehicle which would entitle Preece to coverage under the terms of the policy. Moreover, given the facts of this case, Preece does not fall into any of the other definitions of "insured persons" listed in the policy. Therefore, we reverse that portion of the declaratory judgment which ordered defendant Allstate to defend and indemnify, if necessary, defendant Preece in the underlying tort action instituted by plaintiff.

Reversed and remanded for entry of judgment not inconsistent with this opinion.

/s/ Harold Hood
/s/ Gary R. McDonald

[1] At oral arguments counsel for defendant Allstate conceded that Allstate has a duty to defend and is defending defendant Williams in the underlying tort action. Accordingly we will not address the propriety of the trial court's ruling in this regard.

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GRIFFIN, P.J. (dissenting).

I respectfully dissent.

On Sunday, August 2, 1987, a 1977 Pontiac automobile, VIN #2Z69UZW119847, was insured under a policy of automobile insurance issued by defendant, Allstate Insurance Company. The premiums on the policy were fully paid by Joann R. Williams, who on the preceding day had been both the titled owner and registrant of the vehicle. On Saturday, August 1, 1987, Mrs. Williams sold the vehicle to her nephew, Douglas Chester Preece. Thereafter, on Sunday, August 2, 1987, Mr. Preece, while operating the 1977 Pontiac, was involved in an automobile accident with the plaintiff, Clifford Wayne Clevenger.

On appeal, defendant, Allstate, contends that its policy of automobile insurance on the 1977 Pontiac was void the moment Mrs. Williams transferred title to her nephew. I disagree on the basis that Michigan law not only authorizes a registrant of an automobile to continue insurance on the registered vehicle, but in fact requires it.

The applicable statutory provision is MCL 500.3101(1); MSA 24.13101(1) which provides:

> The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall be in effect continuously during the period of registration of the motor vehicle. [Emphasis added.]

Further, it is a criminal offense for a registrant of a motor vehicle to not maintain residual liability insurance on the registered vehicle:

> An owner or registrant of a motor vehicle with respect to which security is required who operates the motor vehicle or permits it to be operated upon a public highway in this state without having in full force and effect security complying with this section or section 3101 or 3103 is guilty of a misdemeanor. . .. [MCL 500.3102(2); MSA 24.13102(2). Emphasis added.]

On numerous occasions, our Court has held that the terms "owner" and "registrant" as used in the no-fault act are not synonymous. Although these cases deal with personal protection insurance rather than residual liability insurance, they are nevertheless instructive.

In Madar v League General Ins Co, 152 Mich App 734; 349 NW2d 90 (1986), the defendant auto insurer argued that because its insured had transferred title and ownership to the vehicle prior to the accident, that it was not liable for personal protection insurance benefits under the policy. Our Court disagreed and held that the personal protection insurance coverages afforded by the automobile policy were not terminated by the transfer of title to the vehicle:

> On appeal, plaintiff argues that the prior transfer of his decedent's ownership interest in the motor vehicle named in the no-fault insurance policy automatically terminated the personal protection insurance coverages of the policy and made defendant the priority insurer. We disagree with plaintiff and affirm the trial court.
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> * * *
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> Plaintiff first argues that once the plaintiff's decedent transferred his ownership in the vehicle named in the policy, he no longer had an insurable interest and the personal protection insurance coverage automatically terminated. An insurable interest in property is broadly defined as being present when the person has an interest in property, as to the existence of which the person will gain benefits, or as to the destruction of which the person will suffer loss. Crossman v American Ins Co, 198 Mich 304, 309; 164 NW 428 (1917). Plaintiff would apply this principle in the automobile context by relying upon Payne v Dearborn Nat'l Casualty Co, 328 Mich 173, 177; 43 NW2d 316 (1950), for the proposition that automobile insurance is entirely dependent on ownership by the named insured of the automobile described in the policy, and that there is no insurance separate and distinct from ownership of the automobile. Consequently, plaintiff argues that since plaintiff's decedent did not have an automobile on the date of the accident, he could not have no-fault automobile insurance as a matter of law because he had no insurable interest in an automobile.
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> Plaintiff's argument fails to fully consider the substantial changes wrought in the automobile insurance area by the no-fault act.
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> The overriding purpose of the no-fault act is to provide protection for persons, not automobiles. Lee v DAIIE [412 Mich 505; 315 NW2d 413 (1981)]. [Madar, supra at pp 736-741.]

Later, in Cason v Auto Owners Ins Co, 181 Mich App 600, 606-608; 450 NW2d 6 (1989), we held that the terms "owner" and "registrant" as used in the no-fault act have different meanings:

> Cason sought benefits from Auto Owners on the basis that Leon was the registrant of the motor vehicle. Auto Owners asserted in its response to Cason's motion for summary disposition and in its motion for reconsideration that the terms "owner" and "registrant" for purposes of the no-fault act should have the same meaning. Registrant is not defined in the no-fault act.
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> * * *
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> MCL 500.3115(1)(a); MSA 24.13115(1)(a) refers to "[i]nsurers of owners or registrants." We conclude that by using "or" between owners and registrants, the Legislature intended owners and registrants to constitute two distinct terms, each representing a separate category of individuals. Thus, defendant's argument that they be considered as interchangeable terms lacks merit. The trial court's conclusion regarding this issue was proper.

The trial court further decided that Leon was the registrant of the vehicle. Since registrants is not defined in the no-fault act, it becomes necessary to ascertain its meaning. A term not defined by statute is to be given its ordinary meaning. Statutes must be construed according to the common and approved usage of the language. Resort to dictionary definitions is an appropriate method of achieving this. Majurin v Dept of Social Services, 164 Mich App 701, 705-706; 417 NW2d 578 (1987).

> Black's Law Dictionary (Rev 4th ed), p 1449, defines registrant as
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> One who registers; particularly, one who registers anything (e.g., a trade-mark) for the purpose of securing a right or privilege granted by law on condition of such registration.
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> It is undisputed that, although Leon allegedly transferred ownership of the automobile to his daughter, Roxanne, on August 10, 1985, Roxanne did not attempt to transfer the title or the registration into her name until November, 1985. At the time the accident occurred, on September 13, 1985, the registration was still in Leon's name. Consequently, Leon is deemed the registrant of the vehicle that struck Cason. Auto Owners failed to show a disputed issue of material fact. The trial court properly granted Cason partial summary disposition based upon a finding that, absent an insurer with higher priority, Auto Owners was liable for no-fault benefits.

Likewise, in Allstate Ins Co v Sentry Ins Co, 191 Mich App 66, 69; ___ NW2d ___ (1991), we recognized the difference in the terms "owners" and "registrants" as used in the no-fault act:

> In Cason, this Court determined that "owners" and "registrants" are distinct terms. 181 Mich App 606-607.

It is clear from the above cases that the terms "owner" and "registrant," as used in the no-fault act, are not synonymous. Additionally, were personal protection insurance benefits at issue, there is no doubt that the policy coverage would be in full force and effect. Allstate's attempt to differentiate the coverage termination date of residual liability insurance from personal protection insurance is unpersuasive. There is nothing in the no-fault act that supports such fragmented coverage of statutorily required insurance. On the contrary, sections 3101(1) and 3102(2) require "the owner or registrant" to maintain both personal protection and residual liability insurance on the owned or registered vehicle. Allstate's argument that a registrant is prohibited by law from maintaining residual liability insurance on a vehicle not owned by the registrant is contrary to the plain language and clear dictates of the no-fault statute.

The compulsory insurance goals of the no-fault act are furthered by the continuation of residual liability insurance under these circumstances. Without such coverage, noneconomic damages and economic losses in excess of personal protection insurance benefits would not be compensable.

The pre-no-fault "insurable interest" cases relied upon by Allstate are inapposite. As to the duty to insure, the no-fault statutory provisions at issue have superseded our previous common law. Our no-fault act not only creates new types of insurance, it also establishes new and broader responsibilities to insure. See generally Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978). The duty of a registrant to maintain statutorily required insurance on a registered vehicle is one of the new responsibilities created by the no-fault act.

In my view, the automobile insurance contract between Allstate Insurance Company and Allstate's insured, Joann R. Williams, remained in full force and effect at the time of the accident. Accordingly, the lower court correctly ruled that Allstate owed a duty to its insured, Joann R. Williams, to defend her in the underlying tort litigation.[1] I would hold in abeyance the issue of whether Allstate must indemnify Mrs. Williams for any judgment which may be rendered in the underlying tort action. At this point, I am inclined to agree with the majority that it is difficult to conceive of a viable cause of action against a mere registrant of an automobile. Nevertheless, because the underlying tort action is ongoing, a ruling on the indemnification issue appears to be premature.

As to plaintiff's claims against Douglas Chester Preece, I agree with the lower court that the Allstate automobile insurance policy affords coverage both as to defense and indemnification. First, Allstate is statutorily obligated under the Insurance Code to provide its named insured, Joann R. Williams, with insurance coverage as is statutorily required. Such coverage must necessarily extend to permissive drivers such as Douglas Preece, unless Mr. Preece is a named person specifically excluded by the policy. MCL 500.3009(2); MSA 24.13009(2).

Second, the policy by its express terms provides for coverage. The Allstate policy defines "owned automobile" as "the vehicle described in the declarations," which is the 1977 Pontiac.[2] Further, the policy defines "insured[s]" as including permissive drivers:

> Any other person with respect to the owned automobile, provided the use thereof is with the permission of the named insured and within the scope of such permission.

In the present case, there is no dispute that at the time of the accident, Mr. Preece was operating the 1977 Pontiac automobile with the permission and consent of the registrant and named insured, Mrs. Williams. Accordingly, the lower court was clearly correct in ruling that Allstate owed a duty to Mr. Preece to both defend and indemnify the underlying tort action.

In conclusion, I agree with the following sentiments expressed by plaintiff:

> [D]efendant Allstate's refusal to cover this claim is nothing short of being unconscionable. The insurance company issued a policy covering the 1977 Pontiac registered to Joann Williams. It collected a premium for coverage that remained in effect as of the date of the accident and for five days afterward. The liability of Douglas Preece is the very type of risk that Allstate agreed to insure and unfortunately, that risk became a tragic reality for plaintiff Clifford Clevenger. Defendant Allstate must now meet its obligation to provide the coverage that was bought and paid for.
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> Joann Williams, as registrant of the accident vehicle, maintained insurance on the automobile as she was required to do so by law. Therefore as this court held in the Cason decision, the policy of insurance issued by defendant-appellant Allstate remains in effect to provide coverage for liability to defendant-appellant Clifford Clevenger. [Brief of plaintiff at pp 23-24.]

I would affirm the lower court's ruling that Allstate owes a duty to defend and indemnify Douglas Chester Preece for the claims asserted by the plaintiff.

/s/ Richard Allen Griffin

[1] At oral argument, counsel for Allstate withdrew its appeal of the lower court's ruling requiring it to defend Mrs. Williams.

[2] The general conditions of the policy which attempt to limit the application of liability protection, personal protection, and property protection coverage to the period the "owned vehicle" is "owned" are both ambiguous and contrary to law.