

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH CALHOUN, Individually and as
Conservator for LORRAINE CALHOUN,
a Minor,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,
a/k/a AAA OF MICHIGAN,

Defendant-Appellee.

August 24, 1993

No. 138572

LC No. 90-394132 NI

Before: Neff, P.J., and Marilyn Kelly and White, JJ.

PER CURIAM.

Plaintiff appeals from the trial court's grant of defendant's motion for summary disposition and denial of plaintiff's motion for reconsideration, asserting that the language of defendant's insurance policy required it to provide coverage under the circumstances of this case. We affirm.

On October 7, 1988, while driving a 1984 Plymouth Duster, Marvin Carter struck six-year-old Fred Calhoun, causing him fatal injuries. The 1984 Duster was titled in the names of David Carter and Michelle Carter. At the time of the accident, Michelle owned a 1986 Dodge Daytona which was insured through defendant, AAA. In the initial wrongful death action against the Carters, League General Insurance Company (LGIC) represented all three Carters under a policy of insurance covering the 1984 Duster. AAA declined to represent or indemnify Michelle or David Carter although asked to do so.

The wrongful death action was settled with the entry of a consent judgment for \$125,000.00, an amount in excess of the coverage provided by LGIC. David and Michelle Carter also assigned their rights against AAA to plaintiff, acting as conservator for Lorraine Calhoun, sister of the decedent. Plaintiff then brought this action alleging negligence, bad faith, breach of contract, intentional infliction of emotional distress, and fraud and misrepresentation, all based on the premise that AAA's policy on the 1986 Dodge provided coverage to Michelle and David Carter.

Defendant moved for summary disposition on the ground that the policy on the 1986 Dodge specifically excluded coverage for other vehicles owned by the insured or a relative residing in the same household. In response, plaintiff argued that Michelle Carter was not an owner of the 1984 Duster, and that David Carter, the owner of the vehicle, did not live in the same household as Michelle. Defendant's reply to plaintiff's response challenged plaintiff's assertion that Michelle Carter was not an owner of the 1984 Duster.

At argument on the summary disposition motion, counsel for plaintiff conceded that Michelle Carter's name appeared as a co-owner on the Duster's title and registration. However, counsel argued that since David Carter had the exclusive use and possession of the vehicle, he is properly deemed to be the owner. The trial court agreed with defendant, noting that plaintiff failed to produce any affidavits or other evidence to support her position, and granted the motion. Plaintiff's subsequent motion for reconsideration was denied.

The trial court did not err in granting defendant's motion for summary disposition and denying plaintiff's motion for reconsideration.

¹Section 257.401 a. [which provides that "owner" does not include a person in the business of leasing motor vehicles who has leased the vehicle for more than 30 days.]

Plaintiff argues that notwithstanding subsection (b), which provides that "owner" includes a person holding legal title to the vehicle, Michelle Carter was not really an owner because her father, rather than she, had the exclusive use of the vehicle for more than 30 days. We reject this argument. Plaintiff fails to recognize that the statute says "[o]wner' means any of the following..." and contemplates that there may be more than one owner of a vehicle. Laskowski v State Farm Mutual Ins Co, 171 Mich App 317, 321; 429 NW2d 887 (1988); Security Ins Co v Daniels, 70 Mich App 100, 111; 245 NW2d 418 (1976). Messer v Averill, 28 Mich App 62, 65 n. 2; 183 NW2d 802 (1970). We have reviewed the cases upon which plaintiff relies and while plaintiff correctly states that the cases look beyond "technical concepts of title," none held that an individual holding title to a motor vehicle is not an owner of the vehicle under the Michigan Vehicle Code. In particular, Miller v Massullo, 172 Mich App 752, 756; 432 NW2d 429 (1988), held that the legal titleholder of the accident tractor-trailer was an "owner" because he held title, notwithstanding his having leased the vehicle to another entity for more than 30 days.

Nor does plaintiff's assertion that Michelle Carter sold the Duster to her father create a material question of fact. In Basgall v Kovach, 156 Mich App 323, 327; 401 NW2d 638 (1986), defendant Nelson was recorded as a co-owner of the accident vehicle on the certificate of title. She had failed to transfer title to her former husband after entry of the divorce judgment which awarded the vehicle to him. She argued she should not be considered an owner of the vehicle because her former husband had been awarded sole ownership of the vehicle in the divorce judgment entered over a year before the accident. This Court held that the trial court erred in finding that Nelson was not an owner of the accident vehicle under the Michigan Vehicle Code, even though her former husband had sole use of the vehicle and ownership of it under the divorce judgment. Id. at 327. This Court said:

Our Court has consistently held that the definition of owner as used in the Michigan Vehicle Code must be broadly construed to include persons who (1) have exclusive control over the vehicle for at least thirty days, (2) are named on the legal title of the vehicle, or (3) are conditional vendees, lessees or mortgagors with immediate right to possession. Peters v Dep't of State Highways, 66 Mich App 560 564-565; 239 NW2d 662 (1976). There may be several owners of a motor vehicle, within the meaning of the Michigan Vehicle Code, with no one owner possessing "all the normal incidents of ownership." Messer v Averill, 28 Mich App 62, 65, n. 2; 183 NW2d 802 (1970). A person who is an owner by virtue [sic] of being named on the certificate of title cannot transfer ownership unless all of the requirements of MCL 257.233; MSA 9.1933 are met. Id., p. 66; Gazdecki v Cargill, 28 Mich App 128, 131; 183 NW2d 805 (1970). [Basgall at 327.]

MCL 257.233(4); MSA 9.1933(4) states:

[t]he owner shall indorse on the back of the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle . . . and deliver . . . the certificate . . . to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.

Strict compliance with this statutory provision is required in order to effectuate a valid transfer of title. Basgall at 327; Messer v Averill, 28 Mich App 62, 66 (1970). Plaintiff does not dispute that Michelle Carter failed to comply with the statute. Therefore, under Basgall Michelle Carter remained an owner of the accident vehicle for purposes of both the Michigan Vehicle Code and her insurance policy with defendant. Since Michelle was an owner of the accident vehicle, she was not entitled to coverage under defendant's policy based on the clear and unambiguous language of the policy.