STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN DEPARTMENT OF SOCIAL SERVICES,
as subrogee of DALE SCHNEIDER,

Plaintiff-Appellee,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellant,

and

FARMERS INSURANCE COMPANY,

Defendant.

January 27, 1994

No. 140617
LC No. 88-61126-CZ

Before: Wahls, P.J., and Shepherd and Cavanagh, JJ.

PER CURIAM.

Defendant Auto-Owners Insurance Company appeals of right from a March 26, 1991, order in favor of plaintiff on cross motions for summary disposition brought pursuant to MCR 2.116(C)(10). We reverse.

Michigan Department of Social Services, as subrogee of Dale Schneider, sought reimbursement for medical expenses paid on behalf of Schneider for injuries resulting from an automobile accident. At the time of the accident, Schneider was driving a vehicle titled and registered in his brother's name. Schneider was purchasing the vehicle from his brother, and had paid $50 towards the purchase price of $150. Schneider's brother had given Schneider the unsigned title, with the understanding that he would sign it when the balance was paid. Schneider was given the keys, and treated the automobile as his own for approximately three to four weeks before the accident. Schneider did not have any insurance on himself or on the vehicle.

MCL 500.3113(b); MSA 24.13113(b) provides that an "owner" operating a vehicle without no-fault insurance is precluded from recovering for personal medical expenses. Under certain circumstances, a nonowner can recover under the assigned claims plan for uninsured motorists. Thus, the key inquiry here is whether Schneider was an "owner" of the vehicle. Granting summary disposition for plaintiff, the trial court found that Schneider was not the owner, relying upon Michigan Mutual Auto Ins Co v Reddig, 129 Mich App 631; 341 NW2d 847 (1983).

On appeal from a grant of summary disposition pursuant to MCR 2.116(C)(10), we will review the record de novo to determine whether plaintiff was entitled to judgment as a matter of law. Adkins v Thomas Solvent Co, 440 Mich 293, 302; 487 NW2d 715 (1992).

We disagree with the trial court's decision to follow Michigan Mutual Auto Ins Co v Reddig, 129 Mich App 631; 341 NW2d 847 (1983). While the factual scenario in Michigan Mutual was similar to the instant case, we would undertake a different legal analysis. Contrary to the decision in Michigan Mutual, we find that Schneider was an owner of the vehicle at the time of the accident. Thus, plaintiff is not entitled to reimbursement from defendant.

At the time of the accident in Michigan Mutual, as well as the time of the accident in the instant case, the Michigan Vehicle Code, MCL 257.37(b); MSA 9.1837(b), defined an "owner" as either the person who

held legal title, or, a "conditional vendee" in the case of a conditional sales agreement - as we have here. Although the Insurance Code, MCL 500.3101; MSA 24.13101, did not provide an independent definition of a motor vehicle "owner" until May 23, 1988,[1] at the time that the decision in Michigan Mutual was written another panel of this Court had ruled that the definition of an owner in the Michigan Vehicle Code should be read in pari materia with the no-fault act. State Farm Ins v Sentry Ins, 91 Mich App 109, 113-114; 283 NW2d 661 (1979). Rather than attempt to reconcile the definition of an owner given under MCL 257.37(b); MSA 9.1837(b) with the then-existing insurance laws, the panel in Michigan Mutual followed a 1928 case, Endres v Mara-Rickenbacker Co, 243 Mich 5; 219 NW 719 (1928), emphasizing the importance of delivering title to a vehicle, citing MCL 257.233(d); MSA 9.1933(d), and MCL 257.239; MSA 9.1939. However, at the time of the decision in Endres, there was no such definition of an owner as including a conditional vendee under MCL 257.37(b); MSA 9.1837(b).

We are not convinced that the provision for conditional vendees cannot be reconciled with the provisions requiring delivery of title.[2] It would seem to do more violence to the plain words of the statute to ignore the provision concerning conditional vendees than to attempt to reconcile it with the title delivery requirements. In the case at bar, we would not ignore the clear language of MCL 257.37(b); MSA 9.1837(b) as it existed in April, 1987. The driver in this case was a conditional vendee, and should be considered the owner of the vehicle at the time of the accident.[3]

We reverse the decision of the trial court.

/s/ Myron H. Wahls
/s/ John H. Shepherd
/s/ Mark J. Cavanagh

[1] The Insurance Code, MCL 500.3101(g); MSA 24.13101(g), currently defines the "owner" of a motor vehicle as any 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 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.

This definition is substantially similar to the current definition of an owner under the Michigan Vehicle Code, MCL 257.37; MSA 9.1837, which no longer includes the "conditional vendee" provision. Nevertheless, even under the revised definition of "owner," Dale Schneider had the right of immediate possession under an installment sales contract and should be considered an owner.

[2] MCL 257.239; MSA 9.1939 could be reconciled with the former version of MCL 257.37(b); MSA 9.1837(b) since it would not be a misdemeanor for a conditional vendor to fail to endorse and deliver a certificate of title to a conditional vendee until the satisfaction of the conditions of sale. MCL 257.233; MSA 9.1933 could be reconciled if the conditional sales agreement required the conditional vendor to deliver or cause the certificate to be mailed or delivered upon the satisfaction of the conditions of the sale.

[3] We note that our holding is limited by the facts, and in particular by the timing of the sales agreement and accident in this case. For recent decisions concerning he definition of automobile "ownership" under the no-fault act see Stanke v State Farm Ins, 200 Mich App 307; 503 NW2d 758 (1993) and Auto-Owners Ins v Hoadley, 201 Mich App 555; 506 NW2d 595 (1993).