

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

FRANK J. KELLEY, Attorney
General of the State of Michigan
and the MICHIGAN DEPARTMENT
OF SOCIAL SERVICES, as subrogee
of TRACY VALENTINE,

Plaintiff,

v

File No. 95-79948 NF .

ALLSTATE INSURANCE COMPANY,
a foreign corporation,

HON. LAWRENCE M. GLAZER

Defendant.

Thomas P. Boyd (P44720)
Assistant Attorney General
Attorney for Plaintiff
P.O. Box 30037
Lansing, Michigan 48909
(517) 373-7700

Mitchell L. Karas (P40002)
RUWART & KARAS
Attorney for Defendant
120 E. 1st Street, #1915
Flint, Michigan 48502

ORDER

At a session of said Court held in the City of Lansing, County of
Ingham, State of Michigan on October 30, 1995.

HON. LAWRENCE M. GLAZER

This matter having come before the Court on Wednesday, October 18, 1995,
on the Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(C)(8) &
(10), the Court having reviewed the Motion with Brief in Support and Plaintiff's

Brief in Opposition, hearing arguments from both and being fully advised in the premises;

THIS COURT FINDS that Plaintiff's have correctly interpreted the legislative history behind the definition of the term "owner" in the No Fault Insurance Act, being MCL 500.3101 et seq; MSA 24.13101 et seq., and the Motor Vehicle Code, being MCL 257.1 et seq; MSA 9.1801 et seq., in that an owner must have exclusive use of the motor vehicle for a period greater than 30 days.

FURTHER, THIS COURT FINDS that for Tracy Valentine to be found an owner of the vehicle involved in this case she must have had exclusive use thereof for a period that is greater than 30 days.

IT IS HEREBY ORDERED that Defendant's Motion is DENIED because deposition testimony does not show, and Defendant has failed to demonstrate, that Tracy Valentine had exclusive use of the vehicle for a period greater than 30 days

LAWRENCE M. GLAZER

LAWRENCE M. GLAZER
Circuit Court Judge

Dated: 10-30-95

1 STATE OF MICHIGAN

2 IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

3 FRANK J. KELLEY, Attorney General
4 of the State of Michigan, and the
5 MICHIGAN DEPARTMENT OF SOCIAL SERVICES,
6 as subrogee of TRACY VALENTINE,

7 Plaintiff,

8 versus

Docket No. 95-79948-NF
9 HONORABLE LAWRENCE M. GLAZER

10 ALLSTATE INSURANCE COMPANY,
11 a foreign corporation,

12 Defendant.

13 -----
14 MOTION FOR SUMMARY DISPOSITION

15 Lansing, Michigan - October 18, 1995

16 APPEARANCES:

17 FRANK J. KELLEY, Attorney General
18 BY: THOMAS P. BOYD (P44720)
19 Assistant Attorney General
20 P.O. Box 30037
21 Lansing, Michigan 48909

22 Appearing on behalf of Plaintiff.

23 RUWART & KARAS
24 BY: MITCHELL L. KARAS (P40002)
25 120 E. 1st Street, Suite 1915
Flint, Michigan 48502

Appearing on behalf of Defendant.

Renee L. Cowdrey, CSR-2214

1 to the truck itself, and she didn't need any
2 permission from him to drive it, nor did she ever ask
3 for it.

4 At the time of this accident, in September of
5 '93, she had use of this pickup truck, unrestricted
6 use of the pickup truck, for a period of over three
7 months.

8 Under the Michigan No Fault law, Section
9 500.3101, an owner is defined as a person who has use
10 of a vehicle for a period over 30 days.

11 THE COURT: What about the word "exclusive"?

12 MR. KARAS: Well, Your Honor, I note in the
13 Michigan Statute, 3101, there is no such wording of
14 exclusive. It is in the Motor Vehicle Code where
15 "exclusive" is used, as noted in the plaintiff's
16 brief.

17 My position on that is, Your Honor, that two
18 people who own the vehicle can have exclusive use of
19 that vehicle. If my wife and I both own my car, our
20 car, we both have exclusive use over it.

21 THE COURT: Well, are you saying that neither
22 one of you has the right to forbid the other from
23 using it?

24 MR. KARAS: That is correct.

25 THE COURT: So that neither one of you has the

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statute, the No Fault statute itself, governs this as opposed to the Motor Vehicle Code that has the "exclusive owner" wording. The language in the No Fault Act does not indicate any new language of exclusiveness.

THE COURT: Okay. Thank you. You can have a minute for rebuttal.

MR. KARAS: Thank you.

THE COURT: Mr. Boyd, why do we go to the Motor Vehicle Code for the phrase that you assert is governing?

MR. BOYD: Well, Your Honor, the Court of Appeals has determined on various occasions that the two are to be read *pari materia* -- excuse my use of Latin, it's not exactly very polished -- because the statutes are designed to accomplish the same goal and that is to define what an owner is, and the reason that you have to go there is because by 1988 the No Fault Act didn't have a definition of owner, and we also went to the No Fault, or the Motor Vehicle Code. That's where the Court turned to find the definition of owner. It was added to the No Fault Act in 1988. It has since been occasionally argued to be the standard, as defense has just argued should be the standard, and, therefore, the word exclusive doesn't

1 point -- which not only have the courts ruled both
2 before and since 1988 is pari materia, but also the
3 legislature intended to accomplish the same thing --
4 did not remove the word "exclusive" from the
5 definition of owner in the Motor Vehicle Code and
6 that's because that's not what the amendment was
7 about. That's why we have to turn to the Motor
8 Vehicle Code definition because it really is the
9 definition for this purpose.

10 For the courts have held that, and the
11 legislature did not in any way affect that, when in
12 1988 they added the definition of owner to the No
13 Fault Act.

14 So as the Court is well aware, the purpose of
15 the No Fault Act -- I think to sum up the whole case
16 on defense's assertion that only those who have
17 contributed through the maintenance of the statutorily
18 required security are entitled to take advantage of
19 the benefits under the No Fault Act. That's not
20 exactly correct.

21 People who don't own cars can benefit from the
22 provisions of the statute, of the No Fault Act. The
23 No Fault Act was made so that people would get
24 provisions so that we would have fewer arguments over
25 exactly who is responsible for the body lying on the

1 have a motor replaced. I think that the facts in this
2 case are exactly contrary to the fact that there was
3 exclusive use by Tracy Valentine. The car -- the only
4 facts on the record are her testimony, and that is
5 that her boyfriend owned the car. Yes, she did use
6 it, he kept his keys on the hook in the kitchen, she
7 never asked and he never complained; but I think the
8 point is that we have to have the standard as
9 exclusive use. I think the law supports that, and
10 from the facts on this record, there is no exclusive
11 use. Finally --

12 THE COURT: Thank you.

13 MR. BOYD: -- discovery in this doesn't close
14 until the beginning of December, and I think the
15 deposition of the boyfriend, and the mechanic who had
16 the car for a period of time, would be helpful as we
17 go to trial on this issue.

18 THE COURT: Thank you. Brief response,
19 Mr. Karas.

20 MR. KARAS: Thank you, Your Honor.

21 Just briefly, the issue is not merely exclusive
22 control, but the right to exclusive control, and I
23 cite Ringewold v Bos, 200 Mich App 131, 1993. In that
24 case, as cited in the Plaintiff's own brief, the court
25 stated:

1 than 30 days". She didn't have any right of exclusive
2 control at all. If there was anyone who had a right
3 of exclusive control of this motor vehicle, it would
4 be the owner.

5 To me the statute -- let me start that
6 statement over again. I agree with Mr. Boyd's
7 construction of the history of these statutes. The
8 purpose of these statutes is to carry the privileges
9 and the restrictions on those privileges of the no
10 fault laws over from what used to be a very simple
11 situation of either ownership, or nonownership, into
12 what we might call a situation of a person standing
13 more or less in the position of an owner, but not
14 technically an owner. That's why I agree with
15 Mr. Boyd. That's the purpose of the amendment that
16 was enacted in 1988.

17 I don't see any justification for the
18 proposition that because a person is allowed by the
19 owner to use a vehicle whenever he or she wishes to
20 use the vehicle, that that makes the person someone
21 who was standing in the place of another. Certainly
22 it does not give that person the right to exclusive
23 control. That's why I asked Mr. Karas the question.

24 I don't believe that when one person is legal
25 owner of a vehicle, and simply allows another person

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STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

I, Renee L. Cowdrey, Certified Court Reporter of the Thirtieth Judicial Circuit Court, State of Michigan, do hereby certify that the foregoing pages 1 through 12, inclusive, comprise a true and correct transcript of the proceedings taken in the matter of KELLEY versus ALLSTATE, 95-79948-NF.

That I am a disinterested person to the said action.

IN WITNESS THEREOF, I have hereto subscribed my hand this 1st day of December, 1995.

Renee L. Cowdrey

Renee L. Cowdrey, CSR-2214
Official Court Reporter
Registered Professional Reporter
Certificate of Merit Writer.

2. The 1988 Chevrolet pick-up truck was registered to Gerald Hanson.

3. Prior to the date of the accident, the automobile insurance had expired.

4. Tracy Valentine and Gerald Hanson lived together at 6655 Jackson Road, Lot 506, Ann Arbor, Michigan 48103 from June 1993 to July 1995 as boyfriend and girlfriend.

5. Tracy Valentine had use of the 1988 Chevrolet pick-up truck, as needed and as long as it was available, without first seeking or getting permission from Gerald Hanson from June 1993 to September 18, 1993.

6. By virtue of Tracy Valentine's unrestricted use of the 1988 pick-up truck, for a period greater than 30 days, Tracy Valentine was an owner of the 1988 Chevrolet pick-up truck pursuant to MCL 500.3101.

7. Tracy Valentine was an uninsured owner of said vehicle and therefore is not permitted to receive no-fault benefits through Michigan's Assigned Claims Facility. MCL 500.3173.

8. Defendant Allstate was assigned Tracy Valentine's claim through the Assigned Claims Facility.

9. Defendant Allstate is not responsible for reimbursement of money paid by plaintiff MDSS on behalf of Tracy Valentine as she is not entitled to them herself.

10. Therefore, defendant is entitled to dismissal of the plaintiff's Complaint with prejudice.

WHEREFORE, defendant Allstate respectfully requests that this Honorable Court grant defendant's motion for summary disposition

the truck for a period of over 30 days and therefore she was an "owner" under Michigan's No-Fault Law.

Law & Argument:

According to Michigan's No-Fault Law, MCL 500.3101(2)(g)(i), an owner is defined as:

A person renting a motor vehicle or having use thereof, under a lease or otherwise for a period that is greater than 30 days.

As outlined above, Tracy Valentine had use of the 1988 pick-up truck by consent for a period greater than 30 days. There were no restrictions on her use of the truck.

Furthermore, the court in Ringewold v Bos, 200 Mich App 131; 503 NW2d 716 (1993) the legislature did not intend to restrict the definition of "owner" under this section to those who have actually exercised exclusive control over a vehicle for a thirty-day period.

Ringewold goes on to state:

"We believe that the statute imposes liability on any person who has a "right to exclusive use" for a period exceeding thirty days."

Defendant argues that both Tracy Valentine and Gerald Hanson had the right to exclusive use of the 1988 Chevrolet pick-up truck on September 18, 1993 and therefore both were owners under the No-Fault Statute.

MCL 500.3101(1) states:

"The owner or registrant of a motor vehicle required to be registered in this State shall maintain security for payment of benefits

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P.O. Box 30037
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(517) 373-7700

Mitchell L. Karas (P40002)
RUWART & KARAS
Attorney for Defendant
120 E. 1st Street, #1915
Flint, Michigan 48502

**PLAINTIFFS' AMENDED
BRIEF IN OPPOSITION
TO MOTION FOR SUMMARY DISPOSITION**

On fewer than five occasions per month (which comes to less than 15 instances total), Ms. Valentine took the keys from the hook and borrowed Mr. Hansen's truck. (Valentine Dep. p. 12) Ms. Valentine never asked permission to use the truck and Mr. Hansen never told her she could or couldn't use it. (Valentine Dep. p. 10)

Mr. Hansen's truck was at George's Auto Repair for "a long time" during August and September, 1993. (Valentine Dep. p. 11-12, 17) Insurance on the truck was allowed to lapse while the truck was in the shop for repair. (Valentine Dep. p. 8) Mr. Hansen retrieved his truck, new engine completed, within two days of the accident involved in this case. He was "mad" that Ms. Valentine had taken his truck because the insurance had not been restored. (Valentine Dep. p. 10)

Issue Presented

Plaintiffs agree with Defendant that pursuant to MCL 500.3113(b), an "owner" or "registrant" is not entitled to Personal Protection Insurance ("PIP") benefits. Accordingly, Plaintiffs agree that an "owner" of an uninsured motor vehicle involved in a motor vehicle accident is not entitled to receive PIP benefits from a carrier assigned through the Assigned Claims Plan.

Plaintiffs further agree that, as subrogees, their rights are no greater than those of their subrogor, Tracy Valentine.

Plaintiffs maintain that Tracy Valentine was not an "owner" of the 1988 Chevy pick-up. Therefore, the exclusion contained in MCL 500.3113 does not apply to her injuries incurred while operating the truck. Defendant was properly assigned to provide coverage pursuant to the Assigned Claims Plan and has wrongfully declined to do so. As statutory subrogees of Ms. Valentine, Plaintiffs are entitled to recover Medicaid payments made for treatment of injuries in this accident.

B.

Michigan Law Defines "Owner" As
One Who Has A Right To Exclusive Use.

Owner is defined by two parallel Michigan statutes. Public Act 126 of 1988 added the following definition to the No Fault Insurance Act:

(g) "Owner" means 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 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 to possession of a motor vehicle under an installment sale contract.

MCL 500.3101(2)(g); MSA 24.13101(2)(g)

This definition was added to protect lessors of vehicles in the growing lease market. Simultaneously, Public Act 125 of 1988 amended the Michigan Vehicle Code for the same purpose. (See attached House Legislative Analysis for Public Act 125 of 1988 and Public Act 126 of 1988.) The Motor Vehicle Code defines "owner" as follows:

"Owner" means any of the following:

(a) Any person, firm, association, or corporation renting a motor vehicle or having exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days.

...

MCL 257.37; MSA 9.1837.

The legislature tie-barred these amendments to protect vehicle lessors from liability as "owners" of vehicles while in the possession and control of lessees. The term "exclusive use" predated these amendments in the Motor Vehicle Code.

Defendant does, very importantly, acknowledge the "exclusive use" standard by citing Ringewold. It is the Motor Vehicle Code definition of "owner" which is before the Court of Appeals in Ringewold. Defendant further acknowledges this standard by expressly arguing that "both Tracy Valentine and Gerald Hansen had the right to exclusive use of the 1988 Chevrolet pick-up truck." (Motion for Summary Disposition p. 4)

C.

Tracy Valentine Did Not Have A Right To
Exclusive Use And Was Therefore Not An "Owner"

Blacks Law Dictionary defines "exclusive" as follows:

Exclusive. Appertaining to the subject alone, not including admitting, or pertaining to any others. Sole. Shutting out; debarring from interference or participation; vested in one person alone.

This definition is consistent with the common use of this term. It is counter-intuitive to suggest that an exclusive right is vested in more than one person. This is exactly the position taken by Defendant in making this Motion. "Defendant argues that both Tracy Valentine and Gerald Hansen had the right to exclusive use . . ." Moreover, this Motion asks the Court to state that, as a matter of law, Ms. Valentine had an exclusive right to use Mr. Hansen's truck. The only evidence on this is Ms. Valentine's testimony. She testified, in response to Defense questions:

Q. He owned the motor vehicle, correct?

A. Yes, he did.

(Valentine Dep. p. 7)

and

Q. Okay. That's nice to know. Would you agree with me that you had use of this vehicle for over 30 days?

* * *

It is for the trier of fact to determine whether facts presented in this case establish that Ms. Valentine had a right to exclusive use of Mr. Hansen's truck. There has only been one deposition in this case. Discovery is open until December 1, 1995. This motion is premature at best. This Court should let discovery continue and the facts uncovered go to the trier of fact.

E.

Relief Sought

Plaintiff requests this Court deny Defendant's Motion for Summary Disposition for the reasons stated above.

Respectfully submitted/

Thomas P. Boyd
Assistant Attorney General
Attorney for Plaintiff
P.O. Box 30037
Lansing, MI 48909
(517) 373-7700

Date: October 12, 1995

9501276/pleadings/ASDbrief