

STATE OF MICHIGAN  
COURT OF APPEALS

---

JANE MYRICK, Conservator of CHRISTOPHER  
MYRICK, Individually and as assignee of NILES  
LAUTZENHISER,

Plaintiff-Appellant,

and

JOHN ANDREW FISK, Individually and as assignee  
of NILES LAUTZENHISER,

Plaintiff,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED  
October 17, 1997

No. 191489  
Newaygo Circuit Court  
LC No. 94-014679-CK

---

JOHN ANDREW FISK,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

No. 191646  
Newaygo Circuit Court  
LC No. 94-015238-CZ

---

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

In appeals of right consolidated by this Court, plaintiffs challenge an order granting defendant summary disposition pursuant to MCR 2.116(C)(10) for the reason that defendant was excluded from liability for bodily injury where its insured, Niles Lautzenhiser, was operating a

bar. Plaintiff's argument is based on the assertion that it is incredible to think that Lautzenhiser could have intended to return to the cabin to work given the late hour and his drinking. Plaintiff contends that the trial court's acceptance of Lautzenhiser's statement at face value constituted an assessment of Lautzenhiser's credibility. We disagree. Plaintiff presented no evidence or testimony to refute the professed intent of Lautzenhiser to return to work, so there was no competing testimony or evidence for a trier of fact to improperly weigh. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995); *Skinner v Square D Co*, 445 Mich 153, 160-161; 516 NW2d 475 (1994).

Finally, plaintiff Myrick argues that the business use exclusion language contained in Lautzenhiser's policy of no-fault insurance with defendant is vague and ambiguous and thus unenforceable. We disagree. This Court recently scrutinized similar business use exception language and found it to be clear and unambiguous. *Wilson, supra* at 252-254. In the present case, the policy language clearly conveys that if the insured is driving a non-owned, non-private passenger vehicle in the course of any business of the insured, except the car business, then the exclusion is in force.

We affirm.

/s/ Richard A. Bandstra  
/s/ Richard Allen Griffin  
/s/ E. Thomas Fitzgerald

<sup>1</sup> We find no relevant distinction between the language of the business use exception here and that at issue in *Wilson*.