STATE OF MICHIGAN

COURT OF APPEALS

RUTH HARRINGTON,

Plaintiff-Appellant,

v

MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 13, 2007

No. 270082
Monroe Circuit Court
LC No. 04-017629-AV

Before: Borrello, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Plaintiff appeals as on leave granted[1] the circuit court's order affirming the district court's grant of summary disposition for defendant under MCR 2.116(C)(10). We affirm.

Plaintiff argues that the district court erred in granting defendant's motion for summary disposition. She asserts that the district court erred in concluding that she was an owner of the motor vehicle and therefore required to obtain no-fault insurance for the vehicle. We disagree.

We review de novo the circuit court's affirmance of the district court's ruling on a motion for summary disposition. *First of America Bank v Thompson*, 217 Mich App 581, 583; 552 NW2d 516 (1996).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).]

[1] Our Supreme Court has remanded this case for consideration as on leave granted. *Harrington v Michigan Millers Mut Ins Co*, 474 Mich 1133 (2006).

A genuine issue of material fact exists when the record, viewed in the light most favorable to the nonmoving party, leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Subject to certain exceptions not applicable here, every motor vehicle driven on Michigan roadways must be registered with the state. MCL 257.216; *Parks v DAIIE*, 426 Mich 191, 200 n 2; 393 NW2d 833 (1986). Under the no-fault act, MCL 500.3101 *et seq*., the owner of a motor vehicle that is required to be registered in Michigan must carry personal protection insurance, property protection insurance, and residual liability insurance. MCL 500.3101(1); *Ardt v Titan Ins Co*, 233 Mich App 685, 689; 593 NW2d 215 (1999). If the owner of a motor vehicle fails to obtain such insurance, the owner is not entitled to personal protection insurance benefits for an accident involving that vehicle. MCL 500.3113(b); *Ardt*, *supra* at 689; *Wilson v League Gen Ins Co*, 195 Mich App 705, 707-708; 491 NW2d 642 (1992).

A person is the owner of a vehicle if that person has the use of the vehicle for more than 30 days. MCL 500.3101(2)(g)(*i*); *Ardt*, *supra* at 689. "[U]se" of the vehicle for more than 30 days does not necessarily mean actual use, but rather means that the person has *the right to use* the vehicle for more than 30 days. *Twichel v MIC Gen Ins Corp*, 469 Mich 524, 530-531; 676 NW2d 616 (2004). In addition, the use of the vehicle must be proprietary or possessory rather than merely incidental. *Ardt*, *supra* at 690-691. For purposes of the no-fault act, a motor vehicle may have more than one owner. *Id*. at 692.

According to plaintiff's deposition testimony, she had worked for Paul Lowder for five months at the time of the accident. She testified that most of this time was spent in Michigan. When plaintiff was first subcontracted as a driver for Lowder in May 2001, she went to South Carolina to pick up a van. Plaintiff complained for three or four weeks that there was something wrong with the van, so Lowder traded vans with her. The accident that is the subject of this case happened in October 2001, when plaintiff was driving the second van.

Based on plaintiff's testimony, it is clear that plaintiff had use of the van for more than 30 days. Plaintiff took the van to her home in Beaverton between deliveries. When plaintiff was on the road, she slept in the vehicle. Plaintiff's use of the van was significant, and was not merely incidental usage. *Ardt*, *supra* at 691. Reasonable minds could not disagree that plaintiff had the right to use the van for a period of time beyond 30 days. *Twichel*, *supra* at 530-531. Therefore, she was an "owner" of the vehicle from the inception of her use of the vehicle. *Id*. at 531. As a resident owner, plaintiff was required to register the van with the state and to procure insurance for the van; her failure to do so precludes recovery of personal protection insurance benefits. *Ardt*, *supra* at 689.

Plaintiff argues that the only direct evidence regarding the amount of time the van was in Michigan was provided by way of her affidavit, submitted several months after her deposition. In the affidavit, plaintiff stated that she did not believe the van was used in Michigan for 30 days in any calendar year. The trial court properly disregarded the affidavit. Parties may not create issues of fact merely by asserting the contrary in an affidavit after having given damaging testimony in a deposition. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 480; 633 NW2d 440 (2001).

Finally, we are unconvinced by plaintiff's argument that, pursuant to MCL 500.3102(1), the van did not need to be insured in Michigan. MCL 500.3102(1) requires a nonresident owner of a motor vehicle not registered in Michigan to insure the vehicle if it is operated in Michigan for more than 30 days in a calendar year. *McGhee v Helsel*, 262 Mich App 221, 225; 686 NW2d 6 (2004). Therefore, assuming that the van was not registered in Michigan, Lowder was required to obtain no-fault insurance for the van because he was a nonresident owner who held the legal title to the van, and because the van was operated in the state for more than 30 days in 2001. MCL 500.3101(2)(g)(*ii*); *McGhee*, *supra* at 225.

However, we cannot conclude that this allowed plaintiff to evade the insurance requirement herself. As stated above, a motor vehicle may have more than one owner. *Ardt*, *supra* at 692. When there is more than one owner of a motor vehicle, each owner may be required to maintain security for payment of no-fault benefits. See *Integral Ins Co v Maersk Container Service Co*, 206 Mich App 325, 332; 520 NW2d 656 (1994). MCL 500.3102(1) did not lessen plaintiff's responsibility to obtain no-fault insurance on the van in question.

Both the district court and circuit court correctly resolved this matter in favor of defendant.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Christopher M. Murray