

STATE OF MICHIGAN
COURT OF APPEALS

TITAN INSURANCE COMPANY,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

January 8, 2009

No. 282860

Genesee Circuit Court

LC No. 07-085762-NF

Before: Zahra, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting summary disposition for defendant. We reverse the trial court’s order and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case involves a dispute between plaintiff and defendant to determine which insurer has priority for the payment of no-fault benefits to Kenneth Curler. On June 17, 2006, Curler was injured when the motorcycle he was riding collided with a vehicle. Neither Curler nor the operator of the vehicle was covered by a no-fault policy applicable to Curler’s injuries. The Michigan Assigned Claims Facility selected plaintiff to administer payment of personal injury protection (PIP) benefits to Curler. Plaintiff paid PIP benefits to Curler.

Plaintiff discovered that Edward Shreve, Jr., seemingly was the last titled owner of the motorcycle that Curler was riding when the accident occurred, and that at that time Shreve was insured under an automobile policy issued by defendant. Plaintiff filed a complaint for declaratory relief, seeking a declaration that Curler was entitled to benefits under defendant’s policy issued to Shreve, and that defendant was required to reimburse plaintiff for the benefits paid to Curler.

Plaintiff sought summary disposition pursuant to MCR 2.116(C)(10). Plaintiff attached to its brief in support of its motion a copy of a State of Michigan Certificate of Title showing the signatures of Curler and Shreve and the date of June 18, 2006. Plaintiff acknowledged that in his deposition, Shreve contended that on or about June 14, 2006, he sold the motorcycle to a person named Jay, last name unknown, for cash, and signed and surrendered the title and the motorcycle to Jay at that time. Shreve asserted that he had no documentation of the sale to Jay. Plaintiff

contended that at the time of the accident Shreve was the owner or registrant of the motorcycle; therefore, under MCL 500.3114(5), Curler was entitled to benefits from defendant, Shreve's insurer.

Defendant filed a counter-motion for summary disposition pursuant to MCR 2.116(C)(10) and (I)(2). Defendant asserted that Shreve's deposition testimony established that he had transferred the title to the motorcycle to Jay prior to Curler's accident, and that therefore, Shreve could not be deemed an owner of the motorcycle at the time the accident occurred. MCL 257.233(9). Defendant contended that Jay was responsible for obtaining a new certificate of title, MCL 257.234(1), and that Shreve's liability ended when he signed the titled and transferred possession of the motorcycle to Jay.

The trial court denied summary disposition for plaintiff and granted summary disposition in favor of defendant. The trial court found that Shreve assigned the title to Jay, who then assigned it to Curler. The trial court concluded that because Shreve signed the certificate of title and delivered the motorcycle to Jay before the accident occurred, Shreve's insurer, defendant, had no liability.

We review the trial court's decision on a motion for summary disposition de novo. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582-583; 649 NW2d 754 (2002).

We review an issue of statutory interpretation de novo. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

As a general rule, a person who sustains bodily injury in a motor vehicle accident is entitled to recover PIP benefits from his own insurer or the insurer of a resident relative. MCL 500.3114(1). However, MCL 500.3114(5) applies to injured motorcyclists, and provides:

(5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

At the time of the accident, MCL 257.233(9) provided:

Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the

effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the assignment of the certificate of title.¹

We conclude that the trial court erred in granting summary disposition in favor of defendant, and reverse that decision and remand this case for further proceedings. The trial court seemingly concluded that no dispute of fact existed regarding Shreve's transfer of the motorcycle's title to Jay at some point prior to the accident. Shreve testified that he did so; however, the certificate of title contains Shreve's signature, Curler's signature, and the date of June 18, 2006, which is one day after the accident. At a minimum, a question of fact exists regarding the date on which Shreve transferred the title to the motorcycle, and to whom. Pursuant to MCL 257.233(9) as it read at the time of the accident, "the effective date of transfer of title or interest" in the motorcycle was the date of execution of the assignment of the title. Evidence exists that that date was June 18, 2006, the day after the accident occurred. If the title was not transferred until that date, Shreve was the titled owner of the motorcycle on June 17, 2006. Under those circumstances, defendant would be liable for payment of PIP benefits to Curler.

Significant questions of fact existed that made summary disposition inappropriate in this case.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood

¹ This provision was amended by 2006 PA 599, which became effective on January 3, 2007. That amendment does not apply to this case.