

STATE OF MICHIGAN
COURT OF APPEALS

MILES K. HENNING,

Plaintiff-Appellant,

v

THOMAS D. JENNINGS, JONATHON ORWIG,
and JULIE ORWIG,

Defendants,

and

CITIZENS INSURANCE COMPANY OF AMERICA,

Garnishee Defendant-Appellee.

UNPUBLISHED

June 4, 1996

No. 182377

LC No. 93-001286-NI

Before: Sawyer, P.J., and Griffin and Neff, JJ.

MEMORANDUM.

In this garnishment action, plaintiff appeals by right an order granting summary disposition in favor of garnishee defendant pursuant to MCR 2.116(C)(7) and (10). We affirm.

The dispositive issue presented is whether defendant Jennings was acting in the course of his business when he was involved in an automobile accident. Plaintiff does not dispute Jennings' deposition testimony that at the time of the accident Jennings was driving his girlfriend's automobile for the purpose of getting her some lunch. Nevertheless, plaintiff contends that there exists a material factual dispute as to whether defendant Jennings was using the "non-owned" automobile in the course of his business when the accident occurred. We disagree. Defendant Jennings testified that his drive to the restaurant was neither directly nor indirectly related to his business. Based on this uncontradicted evidence, we find no genuine issue of material fact as to whether defendant was acting within the course of his business when he was involved in the accident. Accordingly, because the insurance policy at issue provides liability coverage for "non-owned" vehicles only when such vehicles are "used in the business of the named insured," we hold that summary disposition was properly granted. Cf. *Long v Curtis*

Publishing Co, 295 Mich 494; 295 NW 239 (1940); *Rowe v Colwell*, 67 Mich App 543, 550-551; 241 NW2d 284 (1976); *Ten Brink v Mokma*, 13 Mich App 85, 87; 163 NW2d 687 (1968); *Burch v Wargo*, 1 Mich App 365, 371; 136 NW2d 750 (1965), rev'd on other grounds 378 Mich 200 (1966).

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Janet T. Neff