STATE OF MICHIGAN

COURT OF APPEALS

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA, and RANGER TRANSPORTATION, INC.,

Plaintiffs-Appellees,

UNPUBLISHED
September 6, 1996

v

No. 177355
LC No. 93-453793

AUTO OWNERS INSURANCE COMPANY,

Defendant-Appellant.

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10) in this declaratory action involving the determination of insurer priority under the no-fault act. We affirm.

Paul and Shirley Curtis were injured in an automobile accident while operating their tractor/trailer. The tractor/trailer was the subject of a motor vehicle agreement between the Curtises and Ranger Transportation. Through this agreement, the Curtises leased the tractor/trailer to Ranger and the Curtises operated it. The Curtises held a no-fault insurance policy issued by defendant, involving their personal vehicle. National Union insured Landstar Holdings Corporation, the parent company of Ranger. After the accident, the Curtises filed a claim for recovery of personal injury protection (PIP) benefits from both defendant and National Union. Ranger made payments to the Curtises, and plaintiffs sought reimbursement from defendant. Auto Owners refused to reimburse plaintiffs, and this declaratory action ensued.

We review the trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo to determine whether the moving party was entitled to judgment as a matter of law. *Horn v Dep't of Corrections*, 216 Mich App 58, 66; 548 NW2d 660 (1996). All pleadings,

* Circuit judge, sitting on the Court of Appeals by assignment.

affidavits, depositions, admissions and other evidence must be viewed in the non-moving party's favor and we grant the non-moving party the benefit of any reasonable doubt. *Id.*, citing MCR 2.116(C)(10). The motion should be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Horn*, *supra*; MCR 2.116(C)(10).

Defendant first asserts that the trial court erred in concluding that it was first in priority for coverage of the PIP benefits to the Curtises. According to defendants, because Ranger was the "owner" of the tractor/trailer, National Union was first in priority because its policy indicated that it provided coverage to the owner of the vehicle covered. We disagree.

The no-fault act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.*, provides that "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." It is well established that the intent of the Legislature in enacting the no-fault act was "to provide benefits whenever, as a general proposition, an insured is injured in a motor vehicle accident, whether or not a registered or covered motor vehicle is involved; and in its narrower purposes intended that an injured person's personal insurer stand primarily liable for such benefits whether or not its policy covers the motor vehicle involved and even if the involved vehicle is covered by a policy issued by another no-fault insurer." *Lee v DAIIE*, 412 Mich 505, 515; 315 NW2d 413 (1981). This conclusion was drawn from the language of the statute, MCL 500.3114(1); MSA 24.13114(1):

> Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3103(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

Thus, the general rule requires that we look to the Curtises' own insurer for no-fault benefits unless one of the statutory exceptions applies. *See Parks v DAIIE*, 426 Mich 191, 202-203; 393 NW2d 833 (1986).

Defendant argues that application of subsection (3) is appropriate. MCL 500.3114(5); MSA 24.13114(5) provides:

> An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

First, defendant asserts, Ranger is the "owner" of the tractor/trailer based upon the no-fault act's definition of the term: "owner" includes "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." MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i). While we may agree that Ranger, through the motor vehicle agreement that provided it with exclusive possession, control and use of the tractor/trailer during the term of the lease and which was for a period of greater than thirty days, was an "owner" under the no-fault act, we find

that the trial court correctly concluded that the Curtises were not employees of Ranger. Therefore, the exception was not applicable.

To determine whether, for purposes of the no-fault act, there exists an employment relationship, this Court has applied the economic reality test. *Citizens Ins Co v Auto Club Ins Ass'n*, 179 Mich App 461, 465; 446 NW2d 482 (1989). Under the test, the factors to be considered include: "(1) control of the worker's duties; (2) payment of wages; (3) the right to hire, fire and discipline; and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal." *Id.*, citing *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 623; 335 NW2d 106 (1983).

In this case, the agreement entered into between the Curtises and Ranger consistently referred to the Curtises as independent contractors, not employees. In fact, it explicitly provided that the agreement did not create an employer/employee relationship. Furthermore, the Curtises were responsible for all costs associated with the equipment, including motor fuel, oil, tires, repairs, taxes and assessment on the equipment, base plates, fuel permits and so on. The Curtises were not required to transport tendered freight and could accept or reject any freight. They also independently determined the manner in which the freight was delivered. The Curtises were permitted to hire their own employees and were solely responsible for their employees' compensation, direction and discharge. The agreement provided that Ranger would compensate the Curtises on a load-by-load basis, and Ranger withheld no state or federal taxes from its compensation to the Curtises. Additionally, the agreement was terminable at will by either Ranger or the Curtises, and Ranger did not carry worker's compensation insurance on them.

Considering these facts and the factors of the economic reality test, we conclude that the trial court correctly determined that the Curtises were not employees of Ranger, but were independent contractors. Therefore, subsection (5) did not apply and Auto Owners had first priority to provide coverage to the Curtises. The trial court did not err in granting plaintiffs' motion for summary disposition.

Defendant next argues that the policy itself, through Endorsement 11A, superseded this statutory scheme. We disagree. As noted by plaintiffs, Endorsement 11A clearly provides that it is applicable to a policy other than that at issue in this case. Defendant indicates that, based on plaintiffs' argument that another case was identical the instant one, it retrieved the endorsement from the policy involved in the other case. There is no evidence that the endorsement was a part of the policy here in question. We find defendant's argument on this issue to be without merit.

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Timothy P. Pickard