STATE OF MICHIGAN

COURT OF APPEALS

RANDALL GAGE and CHRISTINE GAGE, Plaintiffs-Appellants,	UNPUBLISHED October 29, 1996
v	No. 190053 LC No. 90-004059 NI
JOSEPH MEDINA and LISA OWENS, Defendants, and CITIZENS INSURANCE COMPANY OF AMERICA, Garnishee Defendant-Appellee.	ON REMAND

Before: Cavanagh, P.J., and Corrigan and White, JJ.

PER CURIAM.

This case is before us pursuant to an order of remand by the Supreme Court. 450 Mich 887. The Supreme Court has ordered us to reconsider our earlier holding, *Gage v Medina*, unpublished opinion per curiam of the Court of Appeals, issued October 11, 1994 (Docket No. 152713), in light of *Goins v Greenfield Jeep Eagle, Inc*, 449 Mich 1; 534 NW2d 467 (1995); *Citizens Ins Co of America v Federated Mutual Ins Co*, 448 Mich 225; 531 NW2d 138 (1995), and *Clevenger v Allstate Ins Co*, 443 Mich 646; 505 NW2d 553 (1993). We affirm.

Joseph Medina and Lisa Owen purchased an automobile from Dale Foley, d/b/a Dale's Used Kars, through Ray Alvarado, an authorized sales agent. Although Medina and Owen gave Alvarado the purchase price of the car, they did not have the money for the sales tax and title fees, and they did not have proof of insurance. Accepting their promise to return with proof of insurance and the additional fees, Alvarado kept the unsigned title and gave them a temporary registration sticker. Medina and Owen never returned with the money or proof of insurance. Plaintiff[1] Randall Gage was subsequently injured when Medina struck him with the vehicle purchased from Dale's Used Kars.[2]

Plaintiff thereafter obtained a default judgment against Medina and Owen. Plaintiff now seeks to collect the amount of the default judgment from defendant[3] Citizens Insurance Co, arguing that Medina and Owen were insured under the garage liability insurance policy issued by defendant to Foley.

The no-fault act, MCL 500.3101 *et seq*.; MSA 24.13101 *et seq*., does not define "owner." Under the Motor Vehicle Code, "owner" can mean any of the following:

> (a) Any person . . . renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period that is greater than 30 days.
>
> (b) Except as otherwise provided in section 401a, a person who holds the legal title of a vehicle.
>
> (c) A person who has the immediate right of possession of a vehicle under an installment sales contract. [MCL 257.37; MSA 9.1837.]

Owners of motor vehicles are liable under the Motor Vehicle Code for injuries caused by the negligent operation of those vehicles. MCL 257.401; MSA 9.2101; *Goins*, *supra* at 4.

Owen and Medina were owners of the car under the Motor Vehicle Code because they had the exclusive use of the vehicle for more than thirty days. See MCL 253.37(a); MSA 9.1837(a). This finding is in accord with the purpose of the owner's liability statute, which is to put the risk of injury on the person who has the ultimate control of the vehicle. *Ringewold v Bos*, 200 Mich App 131, 134; 503 NW2d 716 (1993). However, under the Motor Vehicle Code a car may have several owners, with no one owner possessing all the normal incidents of ownership. *Goins*, *supra* at 5. The question, then, is whether Foley[4] was still an owner of the car such that defendant is obligated to provide coverage.

Auto dealers may transfer ownership by complying with the Motor Vehicle Code. MCL 257.217; MSA 9.1917. When a transfer is successful, the dealer is relieved of liability. MCL 257.240; MSA 9.1940; *Goins*, *supra* at 5-6. Thus, if Foley properly transferred ownership to Medina and Owen, defendant is not responsible for providing coverage because it did not insure Medina and Owen.

In *Goins*, an automobile dealership sold a vehicle. The buyer indicated that he had no-fault insurance on the application for title; however, this statement was untrue. The Secretary of State received the application and issued a certificate of title, registration, and license plate to the buyer. Several days later, while driving the vehicle, the buyer struck and injured the plaintiff. The plaintiff argued that the dealer was the owner of the vehicle at the time of the accident and as a result was liable for her injuries. *Goins*, *supra* at 3.

The Supreme Court held that the dealership was not the owner of the vehicle at the time of the accident. The Motor Vehicle Code does not require a dealership to verify that a buyer has insurance coverage. Because both an application for title had been made and the Secretary of State had issued a

certificate of title, registration, and license plate to the purchaser, the dealership was not liable for the plaintiff's injuries. *Id*. at 14-15.

In *Clevenger*, JoAnn Williams sold her car to her nephew. Williams signed her name to the certificate of title and gave it to the nephew. However, the nephew drove away with the license plate issued to Williams still affixed to the car and her certificates of registration and insurance in the glove compartment. On his way home, the nephew was involved in a head-on collision with Clevenger. The nephew had no insurance. Williams did not cancel her policy until four days after the accident. *Clevenger*, *supra* at 648-649.

Allstate, Williams' insurer, argued that because Williams assigned the certificate of title to her nephew, the vehicle was no longer an "owned vehicle" under the policy. The Supreme Court held that Allstate's insurance policy remained in effect at the time of the accident. The policy did not provide for cancellation upon transfer of the vehicle, and the policy requirements for cancellation were not satisfied until after the accident. *Id*. at 655. Moreover, because Williams did not remove the registration plate and the certificates of registration and insurance from the vehicle, the Court concluded that Williams voluntarily remained the insuring registrant of the automobile. *Id*. at 660-661.

After reviewing the pertinent case law, we conclude that Foley was the owner of the vehicle when Medina drove it into plaintiff. Title transfer occurs when there has been an "execution of either the application for title or the certificate of title." MCL 257.233(5); MSA 9.1933(5); *Goins*, *supra* at 14. Because Medina and Owen did not complete the title application or submit the necessary fees, and consequently the Secretary of State did not issue a certificate of title, title was not transferred. See *id*. Thus, Foley remains liable as an owner of the vehicle.

Defendant argues that, despite the fact that Foley was an owner of the vehicle, an exclusionary clause in its policy precludes coverage. Defendant's policy provides:

> None of the following is an insured:
>
> * * *
>
> (iii) any person or organization, other than the **named insured**, with respect to any **automobile**
>
> * * *
>
> (b) possession of which has been transferred to another by the **named insured** pursuant to an agreement of sale[.]

In granting defendant's motion for summary disposition, the trial court relied on *Lilje v Allstate Ins Co*, 393 Mich 259; 224 NW2d 279 (1974). *Lilje* involved the applicability of an auto dealership's liability insurance when an accident occurred when title to the vehicle in question was still in the dealer's name.[5] The Supreme Court held that the principle barring exclusions in a policy of automobile liability

insurance when a particular vehicle is insured does not apply when the policy was not issued on a particular vehicle. *Id*. As in *Lilje*, the policy at issue was a general policy encompassing all the cars on the lot of Dale's Used Kars.

Plaintiff argues that *Lilje* does not apply because the accident in that case occurred before the enactment of the no-fault act, and because the *Lilje* Court decided the case not under the no-fault act, but rather under the financial responsibility act, MCL 257.520; MSA 9.2220. However, the scope of coverage in an auto accident is determined by the financial responsibility act. *State Farm Mutual Auto Ins Co v Snappy Car Rental, Inc*, 196 Mich App 143, 146; 482 NW2d 500 (1992), overruled in part on other grounds 452 Mich 25 (1996). Thus, the fact that *Lilje* was decided before the enactment of the no-fault act does not automatically render it inapplicable. Nevertheless, "[a]n insurance policy that is repugnant to the clear directive of the no-fault act otherwise cannot be justified by the financial responsibility act." *Citizens Ins Co*, *supra* at 232. Thus, the pertinent issue is whether the exclusionary clause relied on by defendant contravenes the no-fault act.

An exclusionary clause that conflicts with the liability coverage required by the no-fault act is invalid. However, an exclusionary clause is not void because it is not specifically authorized by statute. *Snappy Car Rental*, *supra* at 147. Moreover, an exclusionary clause is not per se invalid simply because it is not specifically provided for in the no-fault act. *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 331; 520 NW2d 656 (1994). In fact, this Court has determined that certain insurance policy exclusions do not violate the no-fault act. See, e.g., *Husted v Auto-Owners Ins Co*, 213 Mich App 547; 540 NW2d 743 (1995). Accordingly, we must now determine whether the above exclusionary clause contravenes the no-fault act.

In *Citizens Ins Co*, *supra*, Federated Insurance Company had issued policies to the owners of the vehicles involved in two accidents. The individuals who were driving the vehicles at the time of the accidents at issue carried insurance through other carriers for other automobiles. *Citizens Ins Co*, *supra* at 227-228. In arguing that it was not primarily liable for insurance benefits, Federated relied upon policy language stating that primary residual liability coverage was provided only if the driver of a "covered" vehicle were uninsured or underinsured. The Supreme Court held that the policy was invalid because the no-fault act directs that a policy sold pursuant to the act must provide residual liability coverage for *use* of the insured vehicle. *Id*. at 231.

We conclude that the exclusion in defendant's policy does not violate the no-fault act. Unlike the provision at issue in *Citizens Ins Co*, the exclusion in defendant's policy does not completely deny residual liability coverage for losses arising from the use of a covered vehicle, except in circumstances where the driver is uninsured or underinsured. The exclusion at issue merely states that coverage is not provided on a vehicle that has been transferred to another pursuant to an agreement of sale. Thus, the policy only excludes coverage when the insured permanently gives up control over the vehicle.

The purpose of making both residual liability coverage and personal injury protection benefits compulsory under the no-fault act is "to protect the members of the public at large from the ravages of automobile accidents." *Coburn v Fox*, 425 Mich 300, 309; 389 NW2d 424 (1986). We believe that

the intent of the Legislature is not violated by an exclusion that precludes coverage when the insured permanently relinquishes control of a vehicle. The no-fault act is not contravened by holding responsible those who have the ultimate control over a vehicle. Moreover, without the exclusion, insurers' ability to assess the risk of insuring an automobile dealership's vehicles would be eviscerated.

We hold that the exclusion in defendant's policy does not violate the no-fault act. We therefore conclude that the trial court did not err in granting summary disposition for defendant.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Maura D. Corrigan

[1] Christine Gage, plaintiff's wife, joins him as plaintiff. Because her loss of consortium claim is derivative and dependent on Randall Gage's claim, and to avoid confusion, we will refer only to plaintiff Randall Gage.

[2] Medina was later convicted of felonious assault for intentionally driving into Gage.

[3] Because Medina and Owen are not parties to this appeal, we will refer to Citizens Insurance Co exclusively as defendant.

[4] Foley was originally a defendant in this action but was granted summary disposition pursuant to MCR 2.116(C)(10). The trial court found that Foley was not liable because Medina acted intentionally in causing the injuries to Gage. Plaintiff has not appealed this ruling.

[5] See *Lilje v Allstate Ins Co*, 54 Mich App 378, 379; 221 NW2d 185, rev'd 393 Mich 259 (1974).