STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff,

v

NATIONAL UNION FIRE INSURANCE COMPANY OF PENNSYLVANIA,

Defendant-Appellee,

and

OLD REPUBLIC INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

No. 183933
Kent Circuit Court

LC No. 94-005350-NF

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Defendant Old Republic Insurance Company appeals as of right from the trial court's order granting defendant National Union Fire Insurance Company of Pennsylvania summary disposition pursuant to MCR 2.116(C)(10). The trial court found that Old Republic and National Union were in an equal order of priority for purposes of paying no-fault benefits on behalf of Orlo Hinkin pursuant to MCL 500.3114(3); MSA 24.13114(3). We affirm.

A motion for summary disposition pursuant to MCR 2.116(C)(10), which tests the factual basis of a claim, may be granted when, except with regard to the amount of damages, no genuine issue regarding any material fact exists and the moving party is entitled to judgment as a matter of law. *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993). A court reviewing the motion must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the nonmoving party and grant the benefit of any reasonable doubt to the opposing

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

party. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). The opposing party may not rest upon mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4).

It is undisputed that National Union is the insurer of Hinkin's employer, Brooks Beverages, and that Old Republic is the insurer of Ryder Truck Rental, who leased the truck to Brooks that Hinkins was driving at the time of his automobile accident. After Citizens, Hinkins' insurer, paid his personal insurance protection (PIP) benefits, it sued National Union and Old Republic, National Union reimbursed Citizens for a portion of the PIP benefits paid to Hinkins, and Citizens dismissed the suit against both defendants. National Union, however, filed a cross-claim against Old Republic seeking contribution from Old Republic for a portion of the amount National Union paid to Citizens, based upon the language in MCL 500.3114(3); MSA 24.13114(3). On appeal, we must determine whether the trial court erred in finding that the phrase "insurer of the furnished vehicle" contained in § 3114(3) included any insurer of the vehicle, not just the insurer of the employer or owner. We find no error.

In reviewing statutes, our primary goal is to ascertain and give effect to the Legislature's intent. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993); *VanGessel v Lakewood Public Schools*, ___ Mich App ___; ___ NW2d ___ (Docket No. 182954, issued November 12, 1996), slip op at 2). Where reasonable minds can differ concerning a statute's meaning, only then is judicial construction appropriate. Judicial construction is neither necessary nor permitted when the statute's plain and ordinary meaning is clear. *VanGessel, supra*. We must look to the object of the statute, the harm that it was designed to remedy, and apply a reasonable construction in order to accomplish the statute's purpose. *Id.*

To determine whether National Union and Old Republic share the same level of priority under MCL 500.3114(3); MSA 24.13114(3), thereby requiring Old Republic to reimburse National Union for one-half of the PIP benefits it paid to Citizens, we must construe the language of §3114(3), which reads as follows:

> 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. [Emphasis added.]

According to the plain meaning of the statute, the phrase "insurer of the furnished vehicle" is broad and all-encompassing. If, in fact, the Legislature desired to expose only the employer to liability for accidents that employees suffer while driving the employer's vehicle, the Legislature could have narrowly drafted the phrase to read "the insurer of the employer," but it did not.[1] Indeed, both the Legislature and this Court likely recognize that many employers lease, rather than own, their fleet of company vehicles. By considering the involved vehicle and the parties who insure that vehicle in determining coverage priorities under §3114(3), the Legislature has signified that it will not require the employer alone to provide coverage for employees injured in automobile accidents while in the course

of their employment. Thus, according to the plain meaning of the statute, *Lorencz, supra*, the trial court did not err in finding that Old Republic and National Union share the same level of priority because both parties insured the involved vehicle.

We are unpersuaded that *Transport Ins Co v Home Ins Co*, 134 Mich App 645, 654; 352 NW2d 701 (1984), requires a different result.[2] While we agree with the conclusion in *Transport Ins Co* that §3114(3) applies only to motor vehicles that the employer owned or registered where an employee is hurt in an automobile accident while driving that motor vehicle, we do not agree that §3114(3) necessarily requires that the employer of the owned or registered vehicle is solely liable for providing no-fault insurance coverage in the event of an accident. Indeed, by using the broader reference to anyone who insures the involved vehicle, the Legislature apparently intended to hold more than just the employer liable, thereby also ensuring that the injured employee would receive no-fault protection even where the employer, for example, was not properly insured. Applying this reasonable construction to §3114(3) and in light of the Legislature's desire to provide employees with no-fault PIP benefits when they are injured while driving their employer's vehicle, we affirm the trial court's grant of summary disposition for National Union. *VanGessel, supra.*

Further, although Old Republic asserts on appeal that its policy specifically excludes coverage under the circumstances presented in this case, Old Republic failed to properly preserve this issue on appeal by not raising these exclusions before the trial court. This issue is, therefore, waived. *Allen v Keating,* 205 Mich App 560, 564-565; 517 NW2d 830 (1994).

Affirmed.

/s/ Roman S. Gribbs
/s/ Jane E. Markey

Justice Thomas G. Kavanagh, did not participate.

[1] We are not persuaded by defendant's argument that because §3114(3) refers to the existence of an employee-employer relationship, the "insurer of the furnished vehicle" language can only be interpreted to mean the employer. We also disagree that §3114(3) refers primarily to the responsibilities of the injured party's employer; rather, it only refers to the fact that this section applies where an employee is involved in a automobile accident while an occupant of a vehicle that the employer owns or registers.

[2] In *Transport Ins Co*, *supra*, this Court refused to apply §3114(3) to the facts before it because even assuming that an employee-employer relationship were established, the employer did not own or register the rig that the employee was driving at the time of the accident—the employee owned the semi-tractor and trailer and leased it to his employer. Accordingly, *Transport Ins Co* is factually distinguishable from the instant case.