STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM FRANCIS LAWRENCE,

Plaintiff-Appellant,

v

DEAN ARBOUR FORD JEEP EAGLE, a/k/a DEAN ARBOUR FORD, INC., and UNIVERSAL UNDERWRITERS,

Defendants-Appellees.

UNPUBLISHED
February 25, 1997

No. 192164
Washtenaw Circuit Court
LC No. 94-003669-CK

Before: Sawyer, P.J., and Neff and A. L. Garbrecht,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court denying his motion for summary disposition and dismissing his claim against defendants. We reverse and remand for further proceedings.

I

The underlying facts of this case are undisputed. Plaintiff contracted with defendant Dean Arbour Ford for the use of a courtesy car. As part of the arrangement, plaintiff signed a courtesy car agreement which provided that defendant Dean Arbour Ford, the owner of the courtesy car, was not providing insurance coverage, and that plaintiff agreed to pay for all loss and damage to the vehicle and to hold defendant Dean Arbour Ford harmless for any liability resulting from plaintiff's use of the vehicle.

Subsequently, plaintiff, while driving the courtesy car, was involved in a motor vehicle accident with a third party, Dorothy Towler. Towler filed a personal injury action against plaintiff and defendant Dean Arbour Ford, as operator and owner of the courtesy car, respectively. Defendant Universal Underwriters refused plaintiff's formal request to provide coverage and defense, citing the courtesy car agreement as releasing it from any obligation to cover or defend plaintiff in the action. Consequently,

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

plaintiff's no-fault insurance carrier, Auto Club Insurance Association ("ACIA"), assumed plaintiff's defense and provided coverage.

Plaintiff initiated a declaratory action to determine primary coverage responsibility as between ACIA and defendant Universal Underwriters. The circuit court summarily found against plaintiff on a motion for summary disposition and dismissed plaintiff's action with prejudice.

II

Plaintiff contends that the circuit court erred in summarily disposing of his claim against defendants. We review a circuit court's grant or denial of summary disposition *de novo*. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1996).

Michigan's no-fault act, MCL 500.3101 et seq; MSA 24.13101 et seq., requires insurers to pay medical expenses and work-loss benefits to their policyholders for injuries resulting from motor vehicle accidents, regardless of fault. MCL 500.3105; MSA 24.13105, *Powers v DAIIE*, 427 Mich 602, 611; 398 NW2d 411 (1986). However, a person injured seriously as a result of a motor vehicle accident may still sue the negligent driver in tort to recover noneconomic damages. MCL 500.3135; MSA 24.13135.

As our Supreme Court has stressed, the act unambiguously requires that the owner or registrant of a motor vehicle must provide coverage for residual liability arising from the use of the vehicle. *Citizens Ins Co v Federated Mut Ins*, 448 Mich 225, 228-230; 531 NW2d 138 (1995). Moreover, the financial responsibility provisions of the Michigan Vehicle Code require that an owner's motor vehicle liability insurance policy extend not only to the person named in the policy, but also to any permissive user of the covered vehicle. MCL 257.520(b)(2); MSA 9.2220(b)(2).

It is without question, then, that defendant Dean Arbour Ford, as owner of the courtesy car, was required to provide insurance coverage for the vehicle. However, defendants argue that defendant Dean Arbour Ford was entitled to enter into an agreement with plaintiff for the purpose of establishing the priority of coverage applicable for the satisfaction of a potential claim. We disagree.

The case on which defendant's rely, S*tate Farm v Snappy Car Rental*, 196 Mich App 143; 492 NW2d 500 (1992), stated the following regarding such agreements:

> [A]lthough [the owner of a motor vehicle] is not permitted to contract away its statutory obligation to provide residual liability insurance . . . , or its statutory obligation to provide insurance for permitted users, neither the no-fault act nor the financial responsibility act specifically require that an owner provide primary residual liability insurance for permitted users. [*Id*. at 149-150.]

We note, however, that *Snappy* recently has been reversed by our Supreme Court. In *State Farm v Enterprise Leasing*, 452 Mich 25; 549 NW2d 345 (1996), the Court stated:

> The no-fault act makes the owner or registrant of a vehicle primarily responsible for providing liability insurance coverage for the use of the car by any permissive user. Permitting an owner to shift that liability to the users of the vehicle would violate the intent of the act. Furthermore, even if the act permitted such shifting, a driver cannot unilaterally bind the driver's insurer to provide primary coverage. Any agreement to do so is void. . . . [*Id*. at 40.]

The Court expressly overturned *Snappy* "to the extent that it holds that car owners may avoid primary responsibility for vehicle insurance coverage by agreeing to allocate that responsibility to the driver or the driver's insurer." *Id*. at 34.

In light of our Supreme Court's decision in *Enterprise Leasing*, we find that the courtesy car agreement in the instant case violates the intent of the no-fault act and that defendant Universal Underwriters is required to provide primary insurance coverage for the courtesy car. Accordingly, we conclude that the trial court erred in denying plaintiff's motion for summary disposition and dismissing plaintiff's case.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ Allen L. Garbrecht