

STATE OF MICHIGAN
COURT OF APPEALS

DEBORAH WOLOCK, Individually and as Next
Friend of SARAH WOLOCK and
JACOB WOLOCK,

UNPUBLISHED
February 28, 1997

Plaintiffs-Appellants,

v

No. 190632
Wayne Circuit Court
LC No. 94-420975

CITIZENS INSURANCE COMPANY of
AMERICA,

Defendant-Appellee,

and

SPARTAN TIRE STORES OF
WASHTENAW, INC.,

Third-Party Defendant.

Before: Bandstra, P.J., and Neff and M.E. Dodge,* JJ.

PER CURIAM.

Plaintiffs, Deborah Wolock, individually and as next friend of Sarah Wolock and Jacob Wolock, appeal as of right the trial court's order dismissing third-party defendant, Spartan Tire Stores of Washtenaw, Inc., from suit in this insurance claim seeking survivor loss no-fault benefits. Plaintiffs specifically challenge the trial court's order granting defendant, Citizens Insurance Company of America, summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Decedent, Ronald Wolock, was fatally injured in an automobile accident while driving an uninsured vehicle. The facts were undisputed that neither Wolock nor any family member held a no-fault insurance policy. It was also undisputed that, if Wolock could be considered an owner of the

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

vehicle under MCL 500.3113(b); MSA 24.13113(b), plaintiffs could not recover for personal protection survivor benefits. Therefore, the dispositive issue here was whether Wolock could be considered an owner of the vehicle. With respect to that question, it was undisputed that in January, 1993, after a co-employee had totaled Wolock's truck, Wolock's employer traded a 1985 Mercury Marquis for the demolished truck. After accepting the Marquis, Wolock was free to use the vehicle as he wished, whenever he wished, as his personal vehicle.

We review a motion for summary disposition brought pursuant to MCR 2.116(C)(10) de novo to determine whether a genuine issue of material fact remains for trial. *Horn v Dep't of Corrections*, 216 Mich App 58, 66; 548 NW2d 660 (1996).

MCL 500.3113(b); MSA 24.13113(b) provides:

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

* * *

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) defines "owner" as "[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." "When applying any legislation, it must first be determined whether the language of the statute is clear and unambiguous....Where the language is clear and unambiguous, no judicial interpretation is warranted." *Bachman v Dep't of Treasury*, 215 Mich App 174, 181; 544 NW2d 733 (1996). Because we find the language of MCL 500.3101(2)(g)(i); MSA 24.13101(2)(g)(i) to clearly and unambiguously define an owner as someone who has use of a vehicle for greater than thirty days, we need not engage in any judicial interpretation. *Id.* We therefore conclude that, because Wolock had use of the vehicle for greater than thirty days at the time of his fatal accident, he was the statutory owner of the vehicle. The trial court did not err in granting defendant's motion for summary disposition.

We acknowledge plaintiffs' arguments that, because Wolock's employer had given Wolock the vehicle to use as a replacement for Wolock's truck, which was totaled during the course of business, but retained title to the vehicle and had mistakenly told Wolock the vehicle was insured, Wolock should not be considered the statutory owner. While we have sympathy for plaintiffs' position, we also conclude that these facts have nothing to do with the clear definition of "owner" provided in the statute.

We affirm.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge