

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT RAY DEVRIES,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

January 6, 1998

No. 200407

Kent Circuit Court

LC No. 96-007444 NF

Before: Griffin, P.J., and Markman and Whitbeck, JJ.

MEMORANDUM.

In this action in which plaintiff seeks no-fault insurance benefits, plaintiff appeals by right from an order granting summary disposition in favor of defendant insurance company. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured while driving a vehicle for which legal title was in the name of his then wife. Plaintiff's deposition testimony established, however, that he had furnished the funds to purchase the vehicle, and that he had principal use of the vehicle, because his wife drove a second vehicle, also titled in her name. Both spouses could freely use either vehicle without permission of the other, and so each sometimes drove both vehicles. The vehicle involved in the accident had a separate insurance policy from the second vehicle. Plaintiff's wife failed to pay the premiums on the vehicle involved in the accident, and the insurance lapsed prior to the date of the accident.

Plaintiff submitted his claim under the assigned claims facility provisions of the no-fault act, MCL 500.3171; MSA 24.13171. The assigned claims facility then referred the claim to defendant Citizens Insurance Company, which rejected the claim, generating the present lawsuit.

Defendant sought and was granted summary disposition on the basis that, as a matter of law, plaintiff was an "owner" of the vehicle he was driving, and was therefore precluded, in consequence of having failed to obtain and maintain no-fault insurance on the vehicle, from obtaining no-fault benefits. MCL 500.3113(b); MSA 24.13113(b). Plaintiff is an "owner," under the definition of "owner" found in § 3101(2)(g)(i) of the no-fault act, as a person renting a motor vehicle "or having the use thereof, under a lease or otherwise, for a period that is greater than thirty days." At the time of the accident, the

vehicle in question had been in plaintiff's family more than thirty days, and was available for continuing use by plaintiff.

Plaintiff contends that because his wife also had use of the vehicle, he was not an "owner" because ownership requires exclusive use. Defendant relies on *Ringewold v Bos*, 200 Mich App 131, 135; 503 NW2d 716 (1993), where the Court was addressing the definition of "owner" found in the motor vehicle code, MCL 257.37(a); MSA 9.1837(a). In that statute, the Legislature expressly included the phrase "the exclusive use thereof." In contrast, in § 3101(2)(g)(i) of the no-fault act, such terminology is conspicuously absent. This Court has determined that the specific definition of "owner" in the no-fault act is properly construed without resort to the definition of "owner" in the motor vehicle code. *Auto-Owners Ins Co v Hoadley*, 201 Mich App 555, 560-561; 506 NW2d 595 (1993). Hence, that plaintiff had use of the vehicle for more than thirty days is the key fact which renders him, as a matter of law, an "owner" of the involved vehicle under the no-fault act, even though his ex-wife may also have been simultaneously an owner of the vehicle. There can be more than one owner for no-fault purposes. *Integral Ins Co v Maersk Co*, 206 Mich App 325, 332; 520 NW2d 656 (1994).

To the extent that, in opposition to defendant's motion for summary disposition, plaintiff submitted an affidavit in which he sought to contradict his clear and unequivocal deposition testimony, the affidavit was insufficient to raise an issue of fact. *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 155; 565 NW2d 868 (1997), *Gamet v Jenks*, 38 Mich App 719, 726; 197 NW2d 160 (1972). Given plaintiff's status as an "owner" of the involved motor vehicle, and the failure to have in force at the time of injury a policy of no-fault insurance on the vehicle, plaintiff is statutorily barred from recovering no-fault personal protection insurance benefits.

Affirmed. Defendant being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin

/s/ Stephen J. Markman

/s/ William C. Whitbeck