

Court of Appeals, State of Michigan

ORDER

James Jackson v Mark David Radzwion

Docket No. 315137

LC No. 11-008651-NI

Kurtis T. Wilder
Presiding Judge

Christopher M. Murray

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the February 15, 2013, order of the Wayne Circuit Court granting plaintiff's motion for reconsideration hereby is REVERSED. Plaintiff's deposition testimony and answers to interrogatories established that he was a longtime Michigan resident but his vehicle was insured in Georgia. Because plaintiff was a resident of Michigan and was driving his car in Michigan, he was required to register and insure the vehicle in Michigan and it is undisputed that he did not do so. He therefore is not eligible for benefits, MCL 500.3135(2)(c). Although plaintiff later submitted an affidavit that contradicted his deposition testimony, a party is bound by his or her deposition testimony and cannot, in an effort to overcome a motion for summary disposition, contradict that testimony by submission of an affidavit. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 396; 729 NW2d 277 (2006). The circuit court should not have considered his contrary affidavit and abused its discretion in granting reconsideration. The case is REMANDED to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 01 2013

Date

Chief Clerk