[Cite as *Auto Club Ins. Assn. v. Zautner*, 2005-Ohio-6401.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Auto Club Insurance Association	Court of Appeals No. L-05-1088
Appellant	Trial Court No. CI-04-1393
v.	
Brian T. Zautner	**DECISION AND JUDGMENT ENTRY**
Appellee	Decided: December 2, 2005

* * * * *

William C. Eickholt, for appellant.

Raymond H. Pittman, III, and Allison M. Taylor, for appellee.

* * * * *

PARISH, J.

{¶ 1} This is an appeal of the judgment of the Lucas County Court of Common Pleas which granted summary judgment to appellee, Brian T. Zautner. For the reasons set forth below, the judgment of the trial court is affirmed.

{¶ 2} On appeal, appellant sets forth four assignments of error:

{¶ 3} "I. Whether The Trial Court Erred In Finding And Ruling That Michigan Abolished Motor Vehicle Tort Liability.

{¶ 4} "II. Whether The Trial Court Erred In Relying Upon M.C.L. 500.3116 In Finding That Appellant Was Only Entitled To Seek Reimbursement From Appellee Under The Conditions enumerated in said section.

{¶ 5} "III. Whether The Trial Court Erred In Finding That Appellant Predicated Its Entitlement To Make A Claim Against Appellee On M.C.L. 500.3101.

{¶ 6} "IV. Whether The Trial Court Erred In Ruling That M.C.L. 500.3175, As Appellant's Alternate Basis For Suing Appellee, Did Not In Fact Authorize Appellant's Claim."

{¶ 7} The following undisputed facts are relevant to the issues raised on appeal. This matter originates from a motor vehicle accident in Detroit, Michigan, occurring on January 23, 2002. At the time of this collision, appellee resided in Perrysburg, Ohio, and maintained an Ohio-based insurance policy through Grange Mutual Casualty Company ("Grange"). Appellee's vehicle was registered in Ohio. Appellee's passenger at the time of the collision, Arthur Edwards ("Mr. Edwards"), was a resident of Michigan. Mr. Edwards sustained injuries in the collision. As a qualifying Michigan resident, Mr. Edwards was eligible to recover, and did recover, for his injuries under Michigan's No Fault statutes.

{¶ 8} Appellant, a Michigan insurance carrier, was assigned pursuant to the Michigan No Fault statutes to adjust and resolve Mr. Edward's claim. Appellant adjusted Mr. Edwards' claim in the amount of approximately $48,000. This amount was tendered to and accepted by Mr. Edwards. In addition, appellee's carrier, Grange, settled with Mr. Edwards in the amount of $62,500.

{¶ 9} On January 23, 2004, appellant filed a complaint against appellee in Lucas County, Ohio. The express basis of the complaint was statutory, with the claims arising pursuant to Michigan's No Fault statutes. As a preliminary matter, appellant alleged appellee was subject to the requirements of Michigan's no fault statutes. Appellant asserted appellee was "required by MCL 500.3101 and 3102 of the Michigan No-Fault Act" to carry the type of insurance required for compliance with No Fault. Appellant asserted appellee was "uninsured" as defined by Michigan's No Fault statutes. Although appellant's amended complaint alleged appellee was "uninsured', appellant now concedes it is aware appellant was insured by Grange and Grange has paid Mr. Edwards. Appellant's argument is that appellee was "uninsured" under Michigan's No Fault statues despite the Grange policy and payout. Lastly, appellant claimed it was entitled to reimbursement from appellee for any benefits paid to Mr. Edwards pursuant to section 500.3177 of the Michigan No Fault act.

{¶ 10} On April 12, 2004, appellant filed an amended complaint. In the amended complaint, appellant again claimed appellee was subject to the Michigan No Fault statutes pursuant to M.C.L. 500.3101 and 500.3102 and asserted appellee was

"uninsured". Significantly, appellant's amended complaint revised the statutory basis of the alleged right to reimbursement. The amended complaint cited M.C.L. 500.3175 as the basis of the right of reimbursement, versus the M.C.L. 500.3177 basis given in the initial complaint.

{¶ 11} On April 27, 2004, appellee filed an answer to appellant's amended complaint. In the answer, appellee denied that he was subject to the Michigan No Fault insurance coverage requirements. Appellee further presented an affirmative defense that appellant had no statutory right of reimbursement under Michigan No Fault from appellee. This alleged statutory right of reimbursement served as the premise upon which appellant crafted its claims against appellee. Thus, we note that our review must, by necessity, be built upon statutory interpretation of Michigan's No Fault statutes as applied to the facts of this case.

{¶ 12} On August 19, 2004, appellee filed for summary judgment. On November 15, 2004, appellant filed its memorandum in opposition. On November 19, 2004, appellee filed a reply brief in support of his motion for summary judgment. On February 11, 2005, the trial court granted appellee's motion for summary judgment. Appellant filed a timely notice of appeal on March 15, 2005.

{¶ 13} We note at the outset, an appellate court reviews the trial court's granting of summary judgment de novo, applying the same standard used by the trial court. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio App.3d 127, 129; *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Summary judgment is granted when there remains

no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 14} Appellant's assignments of error evince a common thread. The assignments are rooted in the disputed premise that appellant had a right to reimbursement from appellee under the Michigan No Fault statutes for monies paid Mr. Edwards. This contested statutory issue constitutes the crux of this case. We must review whether appellant had a right of reimbursement under Michigan No Fault. For clarity, we will analyze the assignments in reverse order as the reverse order corresponds to the order of relevancy to the key issue. Did appellant have a statutory right of reimbursement from appellee for monies paid to Mr. Edwards?

{¶ 15} In appellant's fourth assignment of error, he claims the trial court erred in ruling that M.C.L. 500.3175 does not authorize his claim. It is this assignment that has the greatest bearing in relevancy to our review of the case. This is the statutory basis of the case cited by appellant in its amended complaint.

{¶ 16} M.C.L. 500.3175(2) states in relevant part:

{¶ 17} "This section shall not preclude an insurer from entering into reasonable compromises and settlements with third parties against whom rights to indemnity or reimbursement exist."

{¶ 18} Appellant's desired interpretation of this statute is misplaced. Rather than create a right of reimbursement, this statutes preserves the option of negotiated settlement

for Michigan insurance companies when there is a statutory right of reimbursement already in existence. M.C.L. 500.3175 delineates settlement rights of an assigned claims insurer when there is a statutory right of reimbursement. Appellant's fourth assignment of error is not well-taken. Thus, we proceed with analysis of whether appellant possessed a statutory right of reimbursement.

{¶ 19} We next examine appellant's third assignment of error. In appellant's third assignment of error, it claims the trial court erred in finding its claim was predicated upon M.C.L. 500.3101. The record shows that both appellant's initial complaint and amended complaint explicitly cite M.C.L. 500.3101 in support of appellant's claim. Appellant is a Michigan insurance carrier assigned pursuant to Michigan's No Fault statutes to adjust Mr. Edwards' claim. Appellant's case is inextricably linked to the Michigan No Fault statutes. The statutes are determinative on whether there is a statutory right of reimbursement from appellee. It must be determined whether appellee was covered by Michigan No Fault so as to be bound by its provisions.

{¶ 20} M.C.L. 500.3101 and 500.3102 expressly define those who are subject to the Michigan No Fault insurance coverage requirements. These provisions, cited by appellant in both complaints, establish the boundaries of those covered by Michigan No Fault. Appellant claims appellee was "uninsured" under Michigan No Fault. Thus, we must determine whether appellee was covered by Michigan No Fault. If not, he cannot be "uninsured" under an inapplicable statue.

{¶ 21} M.C.L. 500.3101 covers residents of Michigan. It states in pertinent part: "The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance." This section establishes that Michigan residents are covered by the statute and its requirements.

{¶ 22} M.C.L. 500.3102 covers out of state vehicles driven in Michigan. This section requires non-Michigan residents whose vehicles operate more than 30 days in a calendar year in Michigan to comply with the compulsory Michigan No Fault insurance coverage requirements.

{¶ 23} The record shows appellee was a resident of Wood County, Ohio. M.C.L. 500.3101 does not apply to appellee. The record shows appellee's vehicle was not operated in the state of Michigan for more than 30 days in the calendar year of the collision. M.C.L. 500.3102 does not apply to appellee. Simply put, appellee was not covered by No Fault and was not bound by its coverage requirements.

{¶ 24} While appellant summarily concludes its alleged right of reimbursement arises from M.C.L. 500.3175(2), this is not the section which actually delineates the statutory right of reimbursement under the Michigan no fault statutes. M.C.L. 500.3177, cited by appellant in its initial complaint, states, "An insurer obligated to pay personal protection insurance benefits for accidental bodily injury to a person may recover such benefits paid * * * from the owner or registrant of the *uninsured* motor vehicle * * *. An uninsured motor vehicle for the purpose of this section is a motor vehicle with respect to

which security as required by sections 301 and 302 is not in affect at the time of this accident."

{¶ 25} In order for appellant to prove the claimed statutory right of reimbursement against appellee, it must be shown that appellee was "uninsured" pursuant to the Michigan No Fault definition at the time of the accident. As shown above, appellee was not covered by Michigan No Fault and was not required to carry the coverage in Michigan. Appellee did maintain proper insurance in his home state of Ohio. Appellee cannot be defined as "uninsured" under Michigan's No Fault statutes. Appellant has no right of reimbursement from appellant pursuant to M.C.L. 500.3177. Appellant's third assignment of error is not well-taken.

{¶ 26} In his second assignment of error, appellant contends the trial court erred in relying upon M.C.L. 500.3116. In support, appellant claims because the parties did not cite that particular section in their arguments to the trial court, the lower court should not have taken that section into consideration. Appellant cited Michigan No Fault as the basis for recovery in his complaint. It was clearly within the discretion of the trial court to review various provisions of the statute given appellant's reliance on Michigan No Fault in support of its claims. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 27} M.C.L. 500.3116 establishes three statutory scenarios in which Michigan insurance carriers have a right of reimbursement. Since appellant was claiming a statutory right of reimbursement, the trial court was well within its discretion in reviewing provisions which could have lent support to appellant's claim. M.C.L.

500.3116 grants a right of reimbursement to assigned carriers in the following scenarios; an out of state accident, an accident within Michigan involving an uninsured vehicle, and accidents caused by intentional tort. We find none of these are applicable in the instant case. This accident occurred within Michigan, did not involve an uninsured vehicle, and was not the product of an intentional tort. Appellant has no right of reimbursement pursuant to M.C.L. 500.3116.

{¶ 28} We find that the trial court did not err in relying upon or ruling that appellant is not entitled to reimbursement pursuant to M.C.L. 500.3116. Appellant's second assignment of error is not well-taken.

{¶ 29} Appellant's claimed right of reimbursement must fail. Appellee was not covered by the Michigan No Fault provisions. Appellee was not required to carry the mandatory Michigan No Fault insurance. Appellee was not "uninsured" under Michigan law. Appellee carried Ohio insurance through Grange, which tendered payment to Mr. Edwards. Appellant has no statutory right of reimbursement.

{¶ 30} Appellant's first assignment of error contends the trial court erred in finding the Michigan No Fault insurance act abolished tort liability. We note that appellant's own opposition to appellee's motion to summary judgment directly quoted M.C.L. 500.3135 which states in relevant part, "Tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required in section 3101 was in effect is abolished." Thus, appellant cited statutory excerpts discussing the tort liability abolition. We find that the trial court's discussion of this issue

was nothing more than an acknowledgement that the passage of Michigan's No Fault statutes impacted tort liability in Michigan. Appellant has no statutory right to reimbursement. The nature of Michigan No Fault's impact on tort liability has no bearing on the above conclusion. Based upon our findings, appellant's first assignment of error is not well-taken.

{¶ 31} On consideration whereof, this court finds no genuine issue of fact remaining and, after considering the evidence presented in the light most favorable to appellant, appellee is entitled to summary judgment as a matter of law. The judgment of the Lucas County Court of Common Pleas is affirmed.

{¶ 32} Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J.

William J. Skow, J.

Dennis M. Parish, J.
CONCUR.

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JUDGE

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JUDGE

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JUDGE