STATE OF MICHIGAN

COURT OF APPEALS

FRANKENMUTH MUTUAL INSURANCE COMPANY, Plaintiff-Appellant,	UNPUBLISHED October 25, 2005
v	No. 262345 Genesee Circuit Court
TITAN INSURANCE COMPANY, Defendant-Appellee.	LC No. 03-076529-NZ

Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We reverse.

Steven Onore was killed in an automobile accident while he was a passenger in a car driven by Chad Furtick and owned by Larry Furtick. Larry Furtick owned four motor vehicles, three of which, including the 1998 Chevy Camaro involved in the accident, were insured with plaintiff, and one of which was totally unrelated to the accident and insured with defendant. Onore was not the named insured on any no-fault policy, nor did he have a spouse or resident relative with any such insurance.

Onore's survivors claimed benefits from plaintiff, who paid personal injury protection (PIP) benefits, then sought partial recoupment from defendant. When the defendant refused, plaintiff commenced this action. The parties brought cross-motions for summary disposition on the basis of their respective readings of MCL 500.3114(4), which provides in relevant part that

> a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

Plaintiff acknowledged that it specifically listed the Camaro on its insurance declaration sheet, but nevertheless maintained that defendant was also technically an "insurer of the owner

of the vehicle" in question because Larry Furtick insured the unrelated car through defendant. Plaintiff asserted that the plain language of MCL 500.3114(4) made defendant an insurer of equal priority, so the priority statute, MCL 500.3115(2), requires defendant to share the liability for paying PIP benefits. Defendant argued that MCL 500.3114(4)(a) envisions only a single insurer, so only plaintiff was liable as the provider of the policy of insurance on the Camaro. The trial court agreed and granted defendant's motion for summary disposition.

On appeal, plaintiff argues that the trial court erred when it interpreted MCL 500.3114(4) to mean that only one insurance company could ever be responsible for providing PIP benefits. We agree. We review de novo a trial court's decision on a motion for summary disposition. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Likewise, we review de novo a trial court's interpretation of a statute. *Id*. at 690. "'The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature.'" *Id*., quoting *Michigan Basic Property Ins Ass'n v Ware*, 230 Mich App 44, 49; 583 NW2d 240 (1998).

Our Supreme Court's handling of a similar situation in *Detroit Automobile Inter-Insurance Exchange [DAIIE] v Home Ins Co*, 428 Mich 43, 48; 405 NW2d 85 (1987), and the statutory scheme itself contradicts defendant's proposition that only one insurer is ever liable for PIP benefits under MCL 500.3114(4)(a). In *DAIIE*, our Supreme Court held that two companies that each insured a different car owned by one man should share liability for paying PIP benefits to the man's widow, even though neither insurance company covered the car that he was driving at the time of his fatal accident. *DAIIE*, *supra*. The Court held the companies equally responsible because the statute stated that, "the injured person's insurer shall pay all of the benefits . . . ." MCL 500.3114(1). Despite the statute's plain use of the singular "insurer," the Court rephrased the statute as "Since benefits would be payable by either the insurer(s) of the injured person . . . , or the insurer of the injured person's spouse . . . , the benefits are to be paid by the insurer(s) of [the deceased driver]." *DAIIE*, *supra*. Therefore, the Supreme Court recognized that the Legislature's use of the singular noun did not reflect its intent to hold only one insurer responsible for paying benefits in a given case.

This interpretation of the statute accords with the Legislature's adoption of MCL 500.3115(2), which states that two or more insurance companies of equal priority must split the burden of paying PIP benefits. All of the priority provisions in MCL 500.3114 use the singular form of the noun "insurer" when discussing priority, but MCL 500.3114(6) and MCL 500.3115(2) each indicate an awareness that multiple insurers might sometimes wind up in the highest priority category. Obviously, if MCL 500.3114 ultimately held only one insurer liable in each situation, the provisions requiring shared liability would be nugatory. Therefore, the Legislature anticipated that more than one insurer might fit the description in MCL 500.3114(4)(a), and, through MCL 500.3115(2), it took precautionary steps to resolve any controversy that would result. This forethought belies defendant's argument that the Legislature never intended to include more than one insurer in the priority category of MCL 500.3114(4)(a).

Defendant essentially wants us to superimpose our own priority configuration over the Legislature's so that we can narrow multiple statutorily liable insurers down to one, ultimately liable insurer. Of course, defendant argues that *it* could not be "the [responsible] insurer" because it did not list the Camaro on its declaration sheet and plaintiff did. However, defendant fails to point to any statutory basis for its proposed "tiebreaker." We do not believe that

amending the statutory priority scheme according to our preferences would effectuate the Legislature's intent.

However, we will not order the trial court to enter summary disposition in plaintiff's favor either, because several questions remain regarding whether defendant fits into the same category of priority with plaintiff. For example, the record lacks any indication that defendant insured the accident at all, especially given the fact that plaintiff clearly insured it. We note that many car insurance policies, including plaintiff's, ordinarily exclude coverage for accidents that occur in automobiles that the owner does not expressly insure under the policy but, instead, insure with a different company under a different policy. Obviously, if defendant does not cover the accident at issue, it is no more an "insurer" for purposes of MCL 500.3114(2) than the insurer of Larry Furtick's life, home, or boat. While we suspect that an exclusion of this type will ultimately relieve defendant from liability, the issue is not before us.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen Fort Hood
/s/ Peter D. O'Connell

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

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WHITE, J. (*concurring*).

I agree that the circuit court erred in granting summary disposition to defendant.

Defendant correctly observes that this case is controlled by *Pioneer State Ins v Titan Ins* 252 Mich App 330, 336-337; 652 NW2d 469 (2002). While *Pioneer State* involved interpretation of MCL 500.3115(1)(a), which uses the words "[I]nsurers of owners or registrants of motor vehicles involved in the accident," the use of the plural in this section simply reflects that multiple vehicles may be involved in an accident in which a pedestrian or non-occupant is injured. Correspondingly, the use of the singular in MCL 500.3114(4)(a) reflects that a person can only occupy one vehicle. The same principles are involved in both sections, however.

MCL 500.3115(1)(a) and MCL 500.3114(4)(a) both address the situation of a claimant who does not have insurance applicable to him under MCL 500.3114(1), and who therefore is directed by statute to look to the insurers of the owners or registrants, or operators, of the vehicles involved in the accident, if a pedestrian, or of the vehicle occupied, if an occupant. In *Pioneer,* in the case of a pedestrian who had no insurance under MCL 500.3114(1), the Court held that the insurer of the owner of the vehicle involved in the accident, rather than an insurer assigned by the Assigned Claims Facility, MCL 500.3171, was liable for PIP benefits notwithstanding that the insurer of the owner did not insure the vehicle that was involved in the accident. The Court concluded that under the plain language of the statute, liability attaches to the insurer of the owner or registrant of the vehicle, without regard to whether the insurer has issued insurance applicable to the vehicle involved in the accident. The Court noted that when the Legislature intended to tie liability to the insurance covering the vehicle, rather than the owner, it explicitly so provided. *Pioneer, supra* at 336-337, citing MCL 500.4114(2) and (3). The use of the singular "insured" in MCL 500.3115(1) is not dispositive, where the language in

500.3114(4)(a), like the language in 500.3115(1)(a), refers to the insurer of the owner or registrant of the motor vehicle.

/s/ Helene N. White