STATE OF MICHIGAN

COURT OF APPEALS

HOME-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee/Cross-Appellant,

v

IMAD BEYDOUN, EDDIE TRUCKING, INC., UNKNOWN/JOHN DOE TRUCKING COMPANY, UNKNOWN/JOHN DOE INSURANCE COMPANY and LEXINGTON INSURANCE COMPANY,

Defendants,

and

RESERVE TRANSPORTATION SERVICES, INC., ROADLINK USA NATIONAL, L.L.C., ROADLINK USA MIDWEST, L.L.C., and ACE AMERICAN INSURANCE COMPANY,

Defendants-Appellants,

and

CLEARWATER INSURANCE COMPANY and GREAT AMERICAN INSURANCE COMPANY,

Defendants-Appellees/Cross-Appellees.

UNPUBLISHED
June 15, 2010

No. 290227
Wayne Circuit Court
LC No. 08-110532-NF

Before: METER, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

In this insurance priority case, defendants, Reserve Transportation Services, Inc., Roadlink USA National, L.L.C., Roadlink USA Midwest, L.L.C., (collectively "Roadlink") and Ace American Insurance Company, appeal as of right the circuit court's order finding Ace American first in priority to pay first-party personal injury protection (PIP) benefits. Plaintiff, Home-Owners Insurance Company, cross appeals this same order insofar as it also found

defendants, Clearwater Insurance Company and Great American Insurance Company, exempt from liability under their policies. We affirm.

I. BACKGROUND

On April 27, 2007, Nemr Dakroub was injured in a three-vehicle accident while driving a semi-tractor owned by Eddie Trucking and leased to Reserve Transportation. The lease was for an indefinite period of greater than 30 days and granted Reserve Transportation, which the lease identified as an independent contractor, exclusive control over the vehicle during the lease period. The lease additionally required Reserve Transportation to obtain and pay for all insurance for the operator or driver of the tractor. The traffic incident report and Dakroub's logbook indicated that Dakroub was driving for Roadlink National, Reserve Transportation's successor in interest, at the time of his accident.

Dakroub subsequently claimed first-party PIP benefits from Home-Owners, his personal no-fault carrier, which in turn paid PIP benefits before filing the instant suit against various other insurers and their insureds to determine the priority of benefits due to Dakroub. In its suit, Home-Owners named as defendants Eddie Trucking/Beydoun, the owner/registrant of the semi-tractor and its "bobtail" insurers[1], Clearwater Insurance Company and Great American Insurance Company. Reserve Transportation, Roadlink, and Ace American were also named in the action.

Shortly after filing suit, Home-Owners filed a motion for summary disposition arguing that because Dakroub was an employee of Roadlink, Ace American as the employer's insurer was first in priority under MCL 500.3114(3).[2] Roadlink contested the motion on the grounds that Dakroub was an independent contractor. The trial court denied the motion without prejudice to allow for further discovery. Following further discovery, Home-Owners renewed its motion, this time adding that Dakroub was an employee under 49 CFR 390.5[3] as adopted by MCL 480.11a of the Motor Carrier Safety Act (MCSA), and therefore Ace American was first in priority. Alternatively, Home-Owners asserted that Clearwater or Great American was liable as the insurer of Eddie Trucking/Beydoun, the owner/registrant. Ace American responded that Dakroub's status as an independent contractor triggered an exclusion under its insurance policy thereby rendering MCL 500.3114(3) inapplicable and that federal regulations were also inapplicable as they were enacted to govern third-party benefits. Clearwater concurred that Ace American was first in priority, but claimed its "bobtail" policy precluded its liability.

After hearing arguments, the trial court found that under the economic reality test Dakroub was an employee of Roadlink given Roadlink's control over and direction of Dakroub and because Dakroub carried and provided the insurance issued by Roadlink to police following

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[1] "Bobtail" insurers issue policies at a reduced premium to cover tractors without a trailer.

[2] Under MCL 500.3101(h)(ii), an owner includes an entity with exclusive use of a motor vehicle for more than 30 days.

[3] Independent contractors while in the course of operating a commercial motor vehicle are considered employees under that regulation. 49 CFR 390.5.

the accident. Thus, having characterized the positions taken by Ace American and Roadlink as "fictions" designed to exonerate their liability, the court concluded that Ace American was first in priority under MCL 500.3114(3). Finally, Clearwater and Great American's "bobtail" policies were found to exclude them from liability. Accordingly, on January 20, 2009, an order was entered granting Home-Owners's motion for summary disposition. The instant appeal and cross appeal ensued.

II. ANALYSIS

Appellants claim that the court erred in finding Ace American first in priority where under the economic reality test Dakroub's status was that of independent contractor rather than employee. Summary disposition rulings are reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when the moving party is entitled to judgment as a matter of law because there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue of material fact exists when reasonable minds could differ after drawing reasonable inferences from the record. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing this motion, the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence and construe them in light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Similarly, the application of the legal standards, such as the economic reality test, is a question of law subject to de novo review. *Walker v Dep't of Social Services*, 428 Mich 389, 401 (RILEY, C.J., dissenting); 410 NW2d 698 (1987), citing *Askew v Macomber*, 398 Mich 212, 217; 247 NW2d 288 (1976).

Priority of insurers for payment of PIP benefits is governed by MCL 500.3114. The usual rule, applicable when the claimant was injured while in a noncommercial vehicle, is that one looks to his own insurance company for such coverage. MCL 500.3114(1). However, MCL 500.3114(3) provides that an employee injured "while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits . . . from the insurer of the furnished vehicle."

To determine the existence of an employment relationship under the Michigan no-fault act, we apply the economic reality test.[4] *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 624; 335 NW2d 106 (1983). The following non-exclusive list of factors should be considered under this test: "(1) control of a worker's duties, (2) payment of wages, (3) right to hire, fire and discipline, and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal." *Mantei v Michigan Pub School Employees Retirement Sys*, 256 Mich App 64, 78-79; 663 NW2d 486 (2003) (citations omitted). In applying this test, "[w]eight should be given to those factors that most favorably effectuate the objectives of [MCL 500.3114(3)]." *Id.* at 79. Thus, we proceed mindful that "cases interpreting that section have given it a broad reading designed to allocate the cost of

[4] It is undisputed that Roadlink was the owner of the vehicle having leased it over 30 days. See MCL 500.3101(h)(ii)

injuries resulting from use of business vehicles to the business involved through the premiums it pays for insurance." *Celina Mut Ins Co v Lake States Ins Co*, 452 Mich 84, 89; 549 NW2d 834 (1996).

The trial court did not err in finding that Dakroub was an employee of Roadlink under the economic reality test. Roadlink memoranda carried and signed by Dakroub strongly point to Roadlink's control over him. In particular, the documents expressly reserve to Roadlink the right to fire and discipline Dakroub should he fail to comply with Roadlink's regulations regarding passengers, who were expressly excluded from coverage under Roadlink's policy. Consistent with Roadlink's memoranda, Roadlink's lease also indicated that Roadlink had exclusive control over its drivers, that any discipline or discharge was at Roadlink's sole discretion, and additionally noted that Roadlink was required to insure its drivers. Moreover, that Dakroub's log books were recorded on Roadlink's forms betrays appellants' argument that Dakroub's duties did not form an integral part of Roadlink's business. On this score, Dakroub elaborated that Roadlink essentially instructed him on his whereabouts. Even the insurance Dakroub provided to police following the accident was the Ace American policy issued to Roadlink, and the results of Dakroub's alcohol test following the accident – upon which Roadlink was identified as Dakroub's employer – were sent to Roadlink. In view of these circumstances, it would contravene the objectives of MCL 500.3114(3) as well as a broad reading of that section to conclude Dakroub was not an employee.

In reaching this decision, we are cognizant that Roadlink did not pay Dakroub directly, that the vehicle lease expressly classifies drivers as independent contractors, and that Roadlink did not technically furnish the vehicle to Dakroub. However, to accord weight to such formalities would exalt form over substance and give disproportionate weight to facts that would lend a narrow reading to MCL 500.3114(3).

Before concluding, we note that Home-Owners, Clearwater, and Great American argue at length that the definition of employee provided in 49 CFR 390.5 should govern our analysis because that section was expressly adopted by MCL 480.11a of the MCSA. However, we decline to construe the no-fault act and the MCSA *in pari materia* to reach "one harmonious outcome" where the two acts seek very different goals[5] and Michigan courts since *Parham* have consistently applied the economic reality test in resolving employee status under MCL 500.3114(3). See, e.g., *Mantei*, 256 Mich at 79; *Celina Mut Ins Co*, 452 Mich at 89; *Citizens Ins Co v Automobile Club Ins Ass'n*, 179 Mich App 461, 465; 446 NW2d 482 (1989). We would add that our conclusion is consistent with our Supreme Court's reversal of this Court's holding in *Dep't of Transportation v Initial Transport, Inc*, 276 Mich App 318, 325-329; 740 NW2d 720 (2007), that construed the MCSA and the federal regulations incorporated therein *in pari materia* with the property damages cap in the no-fault act. *Dep't of Transportation v Initial Transport,*

[5] The goal of the no-fault act is to provide victims with prompt reparation for their losses, *Rednour v Hastings Mut Ins Co*, 468 Mich 241, 246; 661 NW2d 562 (2003), whereas the MCSA is a regulatory scheme imposing minimum amounts of financial responsibility and civil penalties for certain motor carriers to promote highway safety, *Dep't of Transportation v Initial Transport, Inc*, 276 Mich App 318, 334-341 (WHITBECK, C.J., dissenting); 740 NW2d 720 (2007).

Inc, 481 Mich 862, 862-863; 748 NW2d 239 (2008). Notwithstanding, for the reasons already stated, the trial court correctly concluded that Dakroub was an employee of Roadlink and that Ace American was therefore first in priority.

In light of this holding, Home-Owners's alternative claim on cross-appeal challenging the court's ruling that Clearwater and Great American's "bobtail" policies precluded their liability is moot, and we need not address it.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering