STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH LASHBROOK,

Plaintiff-Appellant,

and

GLENN LASHBROOK,

Plaintiff,

V

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

LIBERTY MUTUAL INSURANCE COMPANY and AMERISURE INSURANCE COMPANY,

Defendants.

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UNPUBLISHED
March 21, 2013

No. 307936
Oakland Circuit Court
LC No. 2010-108873-NF

Before: GLEICHER, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

In this first-party no-fault insurance action, plaintiff, Deborah Lashbrook, appeals by right the trial court's order granting summary disposition in favor of defendant, State Farm Mutual Automobile Insurance Company. We reverse and remand for proceedings consistent with this opinion.

Plaintiff purchased a Peterbilt tractor, and the title was issued to her in Ohio on August 24, 1999. She operated the motor vehicle through her corporate entity, M & J Express, Inc. Both plaintiff and her husband were truck drivers. Plaintiff insured the Peterbilt tractor with Owner-Operator Services, Inc, and obtained a bobtail policy. Plaintiff also owned a 1993 Ford

Ranger which was insured by defendant. At the time of the accident, the Peterbilt tractor was leased to Northfield Trucking. Specifically, plaintiff testified that, six months before her accident, she and her husband drove, on a weekly basis, from Michigan to Texas pulling a Northfield trailer. On March 25, 2009, plaintiff was driving the Peterbilt tractor while her husband slept. Plaintiff was involved in a single-vehicle accident while traveling on I-70 West in Indiana. The Peterbilt tractor left the roadway, struck a guardrail, and traveled for approximately 1,000 feet before striking a tree line and coming to a stop. Plaintiff did not know the cause of the accident, but denied falling asleep. In her deposition, plaintiff testified that a representative of Northfield Trucking indicated that the Peterbilt tractor experienced a blowout.

This litigation involves plaintiff's attempt to recover personal protection insurance (PIP) benefits. Plaintiff made a claim for benefits to Owner-Operator, Services, Inc., but was advised that her bobtail policy only provided PIP benefits when the Peterbilt tractor was not hauling a trailer. Therefore, plaintiff made a claim for benefits through Northfield Trucking, but was told that benefits were not available. Consequently, plaintiff filed this suit, seeking to recover PIP benefits from defendant, the insurer of her personal vehicle. Defendant moved for summary disposition, alleging that the terms of the policy did not afford plaintiff benefits and the failure to obtain PIP benefits in accordance with MCL 500.3113(b) barred plaintiff's claim. The trial court granted defendant's motion for summary disposition, and plaintiff appeals by right.

Plaintiff alleges that the trial court erred by holding that her policy terms did not provide for insurance benefits arising from the accident involving the Peterbilt tractor. We agree. A trial court's ruling on a motion for summary disposition presents a question of law subject to review de novo. *Titan Ins Co v Hyten*, 491 Mich 547, 553; 817 NW2d 562 (2012). Initially, the moving party must support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). Once satisfied, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id*. "The nonmoving party may not rely on mere allegations or denials in the pleadings." *Id*. The documentation offered in support of and in opposition to the dispositive motion must be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail are insufficient to create a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 372; 547 NW2d 314 (1996).

The purpose of the no-fault act is "to provide accident victims with assured, adequate and prompt reparations at the lowest cost to both the individuals and the no-fault system." *Williams v AAA Michigan*, 250 Mich App 249, 257; 646 NW2d 476 (2002). "Given the remedial nature of the no-fault act, courts must liberally construe its provisions in favor of the persons who are its intended beneficiaries." *Frierson v West American Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004) (further citation omitted). Personal protection insurance benefits are also known as "first party" or "PIP" benefits. *McKelvie v Auto Club Ins Ass'n*, 459 Mich 42, 44 n 1; 586 NW2d 395 (1998). "Under the no-fault automobile insurance act, MCL 500.3101 *et seq*., insurance companies are required to provide first-party insurance benefits referred to as personal protection insurance (PIP) benefits for certain expenses and losses. MCL 500.3107; MCL 500.3108. PIP benefits are payable for four general categories of expenses and losses: survivor's loss, allowable expenses, work loss, and replacement services." *Johnson v Recca*, 492 Mich 169, 173; 821 NW2d 520 (2012).

When moving for summary disposition, defendant asserted that the terms of plaintiff's insurance policy failed to provide coverage because the Peterbilt tractor did not qualify as "your car" or "newly acquired car" pursuant to the terms of the policy. Because this policy interpretation is contrary to provisions contained in the no-fault act, MCL 500.3010 *et seq*., defendant's position is without merit, and the trial court erred by granting summary disposition on this basis. In the absence of a governing statute, insurance policies are contracts subject to the principles of contract construction applicable to any other type of contract. *Titan Ins Co*, 491 Mich at 554. The insurance policy and statute must be read together, incorporating the statute into the contract, because it is presumed that the policy satisfied the statutory requirements and the contract was intended to fulfill the statute's purpose. *Id*. (citation omitted). "Thus, when a provision in an insurance policy is mandated by statute, the rights and limitations of the coverage are governed by that statute." *Id*.

"[I]t is the policy of the no-fault act that persons, not motor vehicles, are insured against loss." *Lee v Detroit Auto Inter-Ins Exch*, 412 Mich 505, 509; 315 NW2d 413 (1982). In *Lee*, the plaintiff, an employee of the United States Postal Service, injured his back while unloading mail from a government owned truck. Although the plaintiff obtained compensation benefits from the federal system, he filed suit against the defendant, the no-fault insurance carrier of the plaintiff's personal vehicle, seeking PIP benefits. The defendant denied the claim because it was not the insurer of the vehicle furnished by the plaintiff's employer. Our Supreme Court analyzed the legislative purpose of the no-fault act and held that the entitlement to benefits was contingent on the "use of a motor vehicle as a motor vehicle," not whether the vehicle was "registered, insured, or covered." *Id*. at 511-513 (internal quotations omitted).

> [T]he Legislature, in its broader purposes, intended to provide benefits whenever, as a general proposition, an insured is injured in a motor vehicle accident, whether or not a registered or covered motor vehicle is involved; and in its narrower purposes intended that an injured person's personal insurer stand primarily liable for such benefits whether or not its policy covers the motor vehicle involved and even if the involved vehicle is covered by a policy issued by another no-fault insurer. . . . [T]he personal insurer of an injured claimant may stand liable for benefits despite the fact that it has written no coverage respecting any vehicle involved in the accident and indeed that no vehicle involved in the accident has any coverage whatever. [*Id*. at 515, 517.]

This requirement, that the insurer of a personal vehicle must provide benefits regardless of whether the insured vehicle is involved in the accident, currently remains applicable. See *Parks v Detroit Auto Inter-Ins Exch*, 426 Mich 191, 206-207; 393 NW2d 833 (1986); *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 255; 819 NW2d 68 (2012); *Frierson v West American Ins Co*, 261 Mich App 732, 737-738; 683 NW2d 695 (2004); *Madar v League Gen Ins Co*, 152 Mich App 734, 742-743; 394 NW2d 90 (1986). Consequently, defendant cannot through the terms of the policy attempt to circumvent the provisions set forth in the no-fault act. "Where insurance policy coverage is directed by the no-fault act and the language in the policy is intended to be consistent with the act, the language should be interpreted in a consistent fashion, which can only be accomplished by interpreting the statute, rather than individual policies." *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 530; 502 NW2d 310 (1993) (footnote omitted). When a compulsory insurance statute is in effect that declares minimum standards that

must be enforced, the policy cannot be written with more restrictive coverage. *Id*. at 530 n 10. Accordingly, the trial court erred by concluding that the terms of the policy did not cover the Peterbilt tractor because "persons, not motor vehicles are insured against loss," *Lee*, 412 Mich at 509, and an injured person's personal insurer stands primarily liable for payment of benefits regardless of whether the covered vehicle is involved, *id*. at 515, 517.

Next, plaintiff asserts that the trial court erred by holding that plaintiff failed to comply with the security provisions of MCL 500.3113(b). Because defendant failed to make and support its motion for summary disposition, we reverse and remand for proceedings consistent with this opinion.

MCL 500.3101 governs security for payment of no-fault benefits and provides, in relevant part:

> (1) 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, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway. …
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> (e) "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped . . . Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code . . . .
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> (h) "Owner" means any of the following:
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> (*i*) A person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days.
>
> (*ii*) A person who holds the legal title to a vehicle, other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.
>
> (*iii*) A person who has the immediate right of possession of a motor vehicle under an installment contract.

MCL 500.3113 entitled "Persons not entitled to personal protection benefits" provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

> (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle.
>
> (b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.
>
> (c) The person was not a resident of this state, was an occupant of a motor vehicle or motorcycle not registered in this state, and was not insured by an insurer which has filed a certification in compliance with section 3163. [footnotes omitted.]

This statute is subject to the following rules of statutory construction, and the rules are well established:

> Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. In ascertaining legislative intent, this Court gives effect to every word, phrase, and clause in the statute. We must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. This Court must avoid a construction that would render any part of a statute surplusage or nugatory. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and we must enforce the statute as written. A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. [*Zwiers v Growney*, 286 Mich App 38, 44; 778 NW2d 81 (2009) (citations and quotations omitted).]

"When a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). Terms that are not defined must be given their plain and ordinary meaning, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004).

In the present case, plaintiff purchased two policies of insurance, one with defendant for coverage of her personal vehicle, and a bobtail policy governing the Peterbilt tractor. "Generally, a 'bobtail' policy is a policy that insures the tractor and driver of a rig when it is operated without cargo or a trailer." *Integral Ins Co v Maersk Container Serv Co, Inc*, 206 Mich App 325, 331; 520 NW2d 656 (1994); see also *Besic v Citizens Ins Co*, 290 Mich App 19, 22 n 1; 800 NW2d 93 (2010). "The tractor and trailer are two separate motor vehicles within the meaning of the no-fault act." *Jasinski v Nat'l Indemnity Ins Co*, 151 Mich App 812, 819; 391 NW2d500 (1986).

In the present case, defendant concluded that plaintiff was the owner of the Peterbilt tractor for which she did not obtain the requisite security required by the no-fault act, and

therefore, she was precluded from receiving PIP benefits pursuant to MCL 500.3113(b). As previously noted, the moving party has the initial burden to make and support its claim for summary disposition with admissible documentary evidence. *McCoig Materials, LLC*, 295 Mich App at 693. If the moving party satisfies this requirement, the burden shifts to the nonmoving party to demonstrate a genuine issue of material fact exists for trial. *Id*. "The duty to interpret and apply the law is allocated to the courts, and the statement of a witness is not dispositive." *Id*. at 698 n 4.

Defendant assumed that plaintiff was the owner of the Peterbilt tractor. Here, although plaintiff acknowledged that she purchased the Peterbilt tractor, at the time of the accident, she had leased the tractor to Northfield Trucking. Specifically, in her deposition, plaintiff testified that, in the six months prior to the accident, the couple drove the truck every week from Michigan to Texas, hauling a Northfield trailer. Pursuant to MCL 500.3101(h)(*i*), an "owner" is defined as "[a] person renting a motor vehicle or having the use thereof, under a lease or otherwise, for a period that is greater than 30 days." In light of the no-fault act's definition of the term "owner," it is unclear if plaintiff can be construed as the "owner" for purposes of MCL 500.3101(h)(*i*) because of the lease agreement with Northfield Trucking.[1] The parties did not submit this leasing agreement. Under the circumstances, we cannot determine whether plaintiff can be considered the owner for purposes of MCL 500.3113(b). Therefore, the trial court erred by granting summary disposition in favor of defendant.[2]

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[1] The parties did not address whether plaintiff could be deemed a registrant, however, the only registration contained in the lower court record was from Ohio. It is unclear if the lease with Northfield Trucking had any bearing on who was required to register the vehicle. Similarly, we note that MCL 500.3113(b) does not require that an insurer deem the claim to be payable. Rather, the only requirement is that insurance coverage be "in effect." The phrase "in effect" and the term "effect" are not defined in the no-fault act. Accordingly, on remand, the parties should address, with the appropriate documentary evidence whether MCL 500.3113(b) applies in accordance with the plain and ordinary meaning of the terms, *Halloran*, 470 Mich at 578.

[2] We also note that the parties conceded that the entire bobtail policy was not submitted in the trial court or submitted for our review with a motion to expand the appellate record. Therefore, although the parties raise various claims regarding the bobtail policy coverage, we do not have the endorsements or any itemization to determine the total premium paid and the fee charged for the respective coverage. Moreover, the parties' reliance on any insurance representative's determination regarding coverage is not dispositive. It is our duty to interpret and apply the law. *McCoig Materials, LLC*, 295 Mich App at 698 n 4. We further note that appellate review is hampered by the failure to provide the policy of insurance obtained by Northfield Trucking. See 49 CFR 376.12(j). Insurance policies may contain exclusionary clauses addressing PIP benefits, but further provide that PIP benefits are recoverable when coverage is not available under any other policy. See *Besic*, 290 Mich App at 26; *Jasinski*, 151 Mich App at 816-819. We presume that the parties will correct these deficiencies on remand.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff, the prevailing party, may tax costs.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Karen M. Fort Hood