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STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB GROUP INSURANCE COMPANY,

Plaintiff-Appellee,

v

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
October 21, 2021

No. 354664
Wayne Circuit Court
LC No. 19-000763-NF

Before: SHAPIRO, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Defendant, Government Employees Insurance Company (GEICO), appeals as of right the trial court's denial of its motion for summary disposition and the trial court's granting of Auto Club Insurance Group's (Auto Club) motion for summary disposition. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

This case arises from a priority dispute between GEICO and Auto Club over which insurer is required to pay no-fault benefits to Donald Ray Layman. In May of 2017, Layman flew from California to Michigan to help his mother, JoAnn Layman, take care of his terminally ill father—who was also named Donald Ray Layman.[1] A couple months after Layman arrived in Michigan, his father passed away. After his father's passing, Layman remained in Michigan for the next eight months[2] to help care for his mother. About three months before he returned to California, Layman was injured in a car accident.

[1] Neither Layman had a suffix at the end of their name, so to avoid confusion, we will refer to Layman the father as "Layman's father" and to Layman the son as "Layman."

[2] JoAnn testified that Layman moved back in either April 2018 or May 2018, but Layman attested he moved back in March 2018.

Layman had lived in California since 1978. He had a California address, a California bank account, and a California driver's license. According to JoAnn, when he left for Michigan, he packed only his clothes and a suit. Taking an airplane to Michigan, he left his car—a 2004 Mustang—garaged in California. Layman had an insurance policy issued by GEICO on his Mustang. He attested that he intended to return to California after his stay in Michigan.

Layman's parents owned a 2009 Volkswagen that was insured under a no-fault policy issued by Auto Club. JoAnne was unable to drive because of medical reasons, so while he stayed with her, Layman would drive the Volkswagen to take JoAnne wherever she needed to go. According to JoAnne, while Layman was staying in Michigan, he was the only person who drove the Volkswagen. But whenever he drove it, JoAnne testified, she was with him. JoAnne averred Layman did not use the Volkswagen for his own personal business. Also, Layman did not keep keys to the Volkswagen on his person.

About a month after Layman's father passed away, on August 23, 2017, JoAnne called Auto Club. According to an Auto Club internal record titled, "Agent Remarks," JoAnne told Auto Club that Layman's father passed away and could be removed from the Auto Club policy.[3] Debra Little, a sales agent for Auto Club, spoke to JoAnne on either September 18, 2017 or September 19, 2017 about renewing the Auto Club policy, but Little explained she was unaware that Layman's father had passed away. She indicated that she and JoAnne spoke only of renewing the Auto Club policy at a reduced rate. According to Little, during their telephone conversation JoAnne did not inform Little Layman's father had died.

On September 20, 2017, someone renewed the Volkswagen's registration with the Michigan Secretary of State. JoAnne testified she might have done this, but she could not remember for certain. The registration stated the owner of the Volkswagen was "Donald Ray Layman" and listed Layman's parents' home address.

A week or so later, on October 1, 2017, Little renewed the Auto Club policy on the Volkswagen. Little testified that, had she known Layman's father had passed, she would not have renewed the policy. Little acknowledged she could have discovered that Layman's father had passed if she had she looked at the "Agent Remarks" in Auto Club's records, but had no reason to do so when rewriting the policy:

> [W]hen I'm making a change, I cannot view the agent remarks. I would have to get out and get into a different area, just like underwriting remarks. It's not something that I have the view of and there is no reason for me to look anything up if I'd been in conversation several months prior about rewriting to a lower rate.

Little testified that when using Auto Club's system to renew policies, one cannot list an individual without a valid Michigan driver's license as a named insured on a policy.

[3] JoAnne indicated she did not remember if she made this call, but Auto Club's internal records indicate JoAnne did.

On the declaration certificate of the renewed Auto Club policy, the "Principal Named Insured" is listed as "Donald R Layman," and his address is listed as Layman's parents' home address. There are no other named insureds on the declaration page. The declaration page states that "Donald R Layman" is "65 years of age or older" and that his income level is "retired." At the time Little issued the declaration, however, Layman was 59 years old and was receiving disability payments from the Social Security Administration.[4]

About three months after the renewal of the Auto Club policy, while driving the Volkswagen with JoAnne as his passenger, Layman was in a car accident. As a result of the accident, Layman incurred approximately $44,420.23 in medical expenses, and the Volkswagen was totaled. A few months after the accident, on April 4, 2018, "Donald R. Layman" transferred title of the Volkswagen to Auto Club. But JoAnne testified she transferred the title to Auto Club. According to JoAnne, Layman was not involved in transferring title to the Volkswagen.

Layman filed a claim with GEICO, and GEICO refused to pay. In written note dated June 14, 2018, JoAnne wrote to Auto Club, explaining that Layman's "GEICO insurance [was] not paying any of his bills." Auto Club paid Layman's $44,420.23 in medical expenses. After doing so, Auto Club sought reimbursement from GEICO, which GEICO refused.

Auto Club filed a complaint seeking a declaratory judgment, asking the trial court to find GEICO was the insurer highest in the order of priority for payment of benefits and to enter a judgment in favor of Auto Club for $44,420.23. Auto Club alleged that GEICO was responsible under MCL 500.3163(1) and MCL 500.3114(1). GEICO moved for summary disposition under MCR 2.116(C)(10), arguing that MCL 500.3163(1) did not require it to pay Layman because Layman was not insured under its policy. GEICO's policy provided coverage to Layman only if he were injured while occupying an "owned vehicle" or a "non-owned vehicle." But the Volkswagen was neither an "owned vehicle" nor a "non-owned vehicle" under the terms of GEICO's policy. Therefore, reasoned GEICO, Layman was not insured under his GEICO policy.

In response, Auto Club asked the trial court to deny GEICO's motion and to grant summary disposition instead in favor of Auto Club under MCR 2.116(I)(1) and (2). Auto Club argued that MCL 500.3163(1) required GEICO to reimburse it because GEICO was a certified insurance carrier in Michigan, Layman was a named insured under a GEICO policy, and Layman's injuries arose from the operation of a motor vehicle. Citing *Transp Ins Co v Home Ins Co*, 134 Mich App 645, 651, 653; 352 NW2d 701 (1984), Auto Club argued it was immaterial that GEICO's policy did not cover the Volkswagen.

GEICO raised a new argument in reply. It noted the renewed Auto Club policy issued on October 1, 2017, listed "Donald R Layman" as the principal named insured. GEICO opined that Layman—rather than his father—had been made the named insured. In support of this argument, GEICO cited two internal records from Auto Club. In one record, titled "Agent Remarks," an Auto Club agent noted that he or she had spoken with JoAnne, who had informed the agent that Layman's father had passed away and could remove Layman's father from the no-fault policy. In

[4] Little testified that the declaration page would list income level as "disability" when someone was receiving disability payments.

the other record, Auto Club's Claims Special Investigation Unit (CSIU) indicated that Layman was supposed to have taken over his parents' insurance policy. Specifically, the report stated: "[s]on, Donald Layman[,] was to take over policy, [he] resides in California." The report also remarked that the "[p]olicy was rewritten due to Donald Layman passing away on 7/12/2017" and that "[s]ame vehicle coverages were extended when the policy was rewritten with an effective date of 10/1/2017."

The trial court denied GEICO's motion for summary disposition and granted Auto Club's motion for summary disposition. The trial court rejected GEICO's argument that MCL 500.3163 applied only if the out-of-state insured's policy applied to the accident at issue. Citing this Court's decision in *Transp Ins Co*, the trial court noted that, when an insurance company has filed a certification under MCL 500.3163, the insurance company cannot rely on policy exclusions to avoid its obligation to pay its out-of-state insured's benefits. Accordingly, the trial court denied GEICO's motion for summary disposition and granted Auto Club's motion. This appealed followed.

II. ANALYSIS

We review de novo a trial court's ruling on a motion for summary disposition. *Heaton v Benton Constr Co*, 286 Mich App 528, 531; 780 NW2d 618 (2009).

> A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. [*Zaher v Miotke*, 300 Mich App 132, 139-140; 832 NW2d 266 (2013) (quotations marks and citations omitted).]

"Circumstantial evidence can be sufficient to establish a genuine issue of material fact, but mere conjecture or speculation is insufficient." *McNeill-Marks v Midmichigan Med Ctr-Gratiot*, 316 Mich App 1, 16; 891 NW2d 528 (2016). "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). "If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2)." *Cadillac Rubber & Plastics, Inc v Tubular Metal Sys, LLC*, 331 Mich App 416, 421-422; 952 NW2d 576 (2020), quoting *Lockwood v Ellington Twp*, 323 Mich App 392, 400-401; 917 NW2d 413 (2018).

On appeal, GEICO argues the trial court erred in concluding GEICO is liable under MCL 500.3163. This Court reviews de novo questions of statutory interpretation. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009), citing *Eggleston v Bio-Med Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003), reh den 468 Mich

1223 (2003). Likewise, to the extent this matter presents questions concerning the proper interpretation of contractual language, this Court's review is de novo. *Rednour v Hastings Mut Ins Co*, 468 Mich 241, 243; 661 NW2d 562 (2003).

We note that all references herein to the no-fault act, MCL 500.3101 *et seq*., are to the version in effect before June 11, 2019. The no-fault act was substantially amended by 2019 PA 21, effective June 11, 2019, but "this case was commenced before the amendment and, therefore, it is controlled by the former provisions of the no-fault act." *George v Allstate Ins Co*, 329 Mich App 448, 451 n 3; 942 NW2d 628 (2019).

When this case was commenced on January 17, 2019, MCL 500.3163 stated:

> (1) An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident *who is insured under its automobile liability insurance policies*, is subject to the personal and property protection insurance system under this act.
>
> (2) A nonadmitted insurer may voluntarily file the certification described in subsection (1).
>
> (3) Except as otherwise provided in subsection (4), if a certification filed under subsection (1) or (2) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have the rights and immunities under this act for personal and property protection insureds, and claimants have the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage.
>
> (4) If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state, the insurer is only liable for the amount of ultimate loss sustained up to $500,000.00. Benefits under this subsection are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits. [MCL 500.3163 (emphasis added)].

We have written: "An insurer becomes liable under § 3163 when (1) it is certified in Michigan, (2) there exists an automobile liability policy between the nonresident and the certified carrier, and (3) there is a sufficient causal relationship between the nonresident's injuries and the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle." *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 109; 553 NW2d 353 (1996). In this case, there is no dispute that GEICO is certified under MCL 500.3163 and that there is a sufficient causal

relationship between Layman's injuries and his use of the Volkswagen. The issue is whether an automobile liability policy exists between Layman and GEICO. GEICO argues that Layman was not insured under the automobile liability policy it issued to him in California for this accident.

Even if GEICO's interpretation of its policy is correct, GEICO is still liable under MCL 500.3163. For an out-of-state resident to be considered "insured" under an automobile liability policy, MCL 500.3163 requires only that automobile insurance liability *exist* between the out-of-state resident and the insurer. See *Goldstein*, 218 Mich App at 109 (emphasis added). MCL 500.3163 does not require the vehicle used by the out-of-state resident be one that is covered by the foreign insurance policy. *Transp Ins Co*, 134 Mich App at 651.[5] We illustrated this point in *Transp Ins Co*, which involved an out-of-state resident insured under an automobile liability policy issued in another state. See *id*. at 648-649. The policy covered the out-of-state resident's semitruck, but the policy "expressly excluded coverage under the policy if the [semitruck] were used for business purposes." *Id*. at 648. Although the out-of-state resident was using the semitruck for business purposes when he got into an accident in Michigan, this Court held that MCL 500.3163 applied. *Id*. at 650. This Court reasoned that the plain language of MCL 500.3163 required only that an automobile insurance liability policy between the out-of-state resident and insurer exist. *Id*. at 651. Nothing in MCL 500.3163 suggested the vehicle used by the out-of-state resident must be *covered* by the out-of-state resident's insurance policy. *Id*. at 651, 653 (emphasis added).

GEICO argues that *Transp Ins Co* is distinguishable from the case at bar because its insurance policy excluded Layman himself. However, we discern no appreciable legal difference. In both *Transp Ins Co* and here, the out-of-state insured was a named insured in an automobile liability policy issued by the out-of-state insurance company. In both *Transp Ins Co* and here, that automobile liability policy excluded coverage under certain conditions: in *Transp Ins Co*, if the out-of-state insured was using the semitruck for business purposes; here, if Layman were using an owned vehicle not listed in his policy. In brief, like the policy in *Transp Ins Co*, the policy here excluded Layman only because it excluded the vehicle he was driving at the time of the accident. As in *Transp Ins Co*, the GEICO policy excluded *acts or actions* undertaken by Layman. Accordingly, and contrary to GEICO's argument, the GEICO policy did not actually exclude Layman.

GEICO argues this Court should not follow *Transp Ins Co*, because it is inconsistent with the plain meaning of MCL 500.3163.

As previously noted, although *Transp Ins Co* was decided before November 1, 1990, its holding is still precedentially binding because this Court reaffirmed it in *Goldstein*. See *Goldstein*, 218 Mich App at 109 Perhaps equally important, *Transp Ins Co*'s was decided based on the plain language of MCL 500.3163. See *Transp Ins Co*, 134 Mich App at 651. As this Court held in *Transp Ins Co*, and later reaffirmed in *Goldstein*, 218 Mich App at 109, the plain language of MCL

[5] "Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority." *In re Stillwell Trust*, 299 Mich App 289, 299; 829 NW2d 353 (2012). Regardless, this Court reaffirmed *Transp Ins Co*'s holding in *Goldstein*, 218 Mich App at 109, which was decided after November 1, 1990.

500.3163 requires only that the out-of-state insurer be certified to sell insurance in Michigan, that the out-of-state resident be insured under an automobile liability policy issued by that out-of-state insurer, and that the out-of-state insured by injured through his or her ownership, operation, maintenance, or use of a motor vehicle. There is nothing in the language of MCL 500.3163 that suggests the motor vehicle the insured used must be one covered under the terms of the out-of-state policy. As this Court in *Transp Ins Co* indicated, to hold otherwise would require this Court to add the word "covered" before "motor vehicle." *Transp Ins Co*, 134 Mich App at 651, 653. Doing so would not only be at odds with the plain meaning of MCL 500.3163, it would also be at odds with the statute's purpose: to ensure that nonresidents injured in Michigan are protected to the same extent as Michigan residents. See *Goldstein*, 218 Mich App at 110 (noting that apparent intent of MCL 500.3163 "is to guarantee that insured nonresidents injured in Michigan are protected against economic losses to the same extent as Michigan residents"), citing *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 407; 509 NW2d 829 (1993). Accordingly, we decline GEICO's invitation to abandon prior precedent.

GEICO next argues that, even if it is liable under MCL 500.3163, it would not be first in priority under MCL 500.3114. As it did below, GEICO argues Layman was the named insured on the renewed Auto Club policy.

Unless an exception applies, MCL 500.3114(1) provides that an injured party must turn to his or her own insurer for payment of no-fault benefits, regardless of whether the injured party's insured vehicle was involved in the accident. *Titan Ins Co v American Country Ins Co*, 312 Mich App 291, 298; 876 NW2d 853 (2015), citing *Farmers Ins Exch v AAA of Mich*, 256 Mich App 691, 695; 671 NW2d 89 (2003). In this case, GEICO argues Auto Club is Layman's insurer. GEICO argues when the Auto Club policy was renewed on October 1, 2017, Layman—rather than his father—was made the named insured. Therefore, Auto Club was first in priority to pay Layman's benefits, regardless of whether MCL 500.3163 applies.

Layman had no obligation to insure the Volkswagen under the no-fault act, MCL 500.3101, *et seq*. Under MCL 500.3101(1), the "owner or registrant" of a motor vehicle must carry insurance on that motor vehicle. *Ardt v Titan Ins Co*, 233 Mich App 685, 689; 593 NW2d 215 (1999); MCL 500.3101(1). Layman was neither the owner nor the registrant of the Volkswagen.

MCL 500.3101(2)(k)(*i*) defines an "[o]wner" as "[a] person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days." And as this Court has noted, to have use of a motor vehicle under this provision, a person must have more than incidental use of a vehicle under the direction or with the permission of another:

> Because we infer from these provisions that they were enacted in furtherance of the sound public policy imperative that users of motor vehicles maintain appropriate insurance for themselves as indicated by their actual patterns of usage, we hold that "having the use" of a motor vehicle for purposes of defining "owner," means using the vehicle in ways that comport with concepts of ownership. The provision does not equate ownership with any and all uses for thirty days, but rather equates ownership with "having the use" of a vehicle for that period. Further, we observe that the phrase "having the use thereof" appears in tandem with references to

> renting or leasing. These indications imply that ownership follows from proprietary or possessory usage, as opposed to merely incidental usage under the direction or with the permission of another. [*Ardt*, 233 Mich App at 690-691 (citation omitted)].

Here, it is not disputed that Layman's use of the Volkswagen was purely incidental and done under the direction and with the permission of JoAnne. JoAnne testified that Layman only drove the vehicle to take JoAnne where she needed to go, that whenever Layman used the car, JoAnne was with him, and that Layman did not keep the keys to the car on his person. There is no evidence in the record indicating that Layman ever used the car for his personal affairs. Hence, Layman was not the "owner" of the Volkswagen under MCL 500.3101(2).

There is also no evidence Layman was the registrant of the Volkswagen. Noting the registration for the Volkswagen was renewed on September 20, 2017, with the owner of the Volkswagen being listed as "Donald Ray Layman," GEICO argues that this must refer to Layman rather than his father, but GEICO merely speculates this is the case. See *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993) ("[P]arties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact."). For the name on the registration to refer to Layman, Layman's father would had to have previously transferred the title of the Volkswagen to Layman. See MCL 257.227(1) ("Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for the vehicle, as provided by law"); MCL 257.227(2)("Every application shall be accompanied by the certificate of title pertaining to the vehicle, showing ownership in the person applying for registration at the time of the application. The secretary of state may waive the presentation of the certificate of title"). There is no evidence Layman's father ever transferred the title to Layman, and there is no evidence the Secretary of State waived the requirement of such presentation. Hence there is no evidence the registration was renewed in Layman's name on September 20, 2017.

Regardless of Layman's obligation to insure the Volkswagen, the evidence shows the name "Donald R Layman" on the Auto Club policy declaration page refers to Layman's father. While an internal record from Auto Club states, "[s]on, Donald Layman was to take over policy, resides in California," and another internal record acknowledges that JoAnne informed Auto Club of Layman's father's death, these do not create a genuine issue of material fact as to whether Layman was the named insured on the Auto Club policy. Neither of these records were created by the Auto Club agent, Little, who actually renewed the subject policy. Little testified when renewing the policy at the request of JoAnne, that she had no idea Layman's father had passed away. When she wrote "Donald R Layman," she explained, she was referring to Layman's father, as she would not have renewed a policy for a deceased person. Corroborating Little's testimony is the information Little listed on the policy's declaration page. The declaration page describes "Donald R Layman" as a person "65 years of age or older" with an income level of "retired." At the time the declaration page was created, Layman was 59 years old and on disability. Also, Little testified that to add a new person to a policy, Auto Club's system required the person to be added have a valid Michigan driver's license—which Layman did not have. Hence, Layman was not insurable Auto Club's system.

Additionally, Layman attested that he was not the named insured on the Auto Club policy. This is corroborated by the fact that Layman intended on returning to California and was driving the Volkswagen only to chauffeur JoAnne. Considering Layman had no obligation to insure the vehicle, and in the absence of any evidence that Layman sought to take over his mother's and father's insurance policy for the Volkswagen, summary disposition for Auto Club was warranted. Accordingly, because Layman was the named insured only on his GEICO policy at the time of the accident, GEICO was first in order of priority, under MCL 500.3114. to reimburse payment of Layman's benefits. See *Farmers Ins Exch*, 256 Mich App at 695.

GEICO next argues that, if Layman was not named on the Auto Club policy, then Auto Club cannot be entitled to recover from GEICO under a theory of subrogation. According to GEICO, were Layman not the named insured on the Auto Club policy, Auto Club would have had no obligation to pay Layman benefits in the first place, making Auto Club a volunteer.

" 'The doctrine of subrogation rests upon the equitable principle that one who, in order to protect a security held by him, is compelled to pay a debt for which another is primarily liable, is entitled to be substituted in the place of and to be vested with the rights of the person to whom such payment is made, without agreement to that effect.' " *Auto Club Ins Ass'n v New York Life Ins Co*, 440 Mich 126, 132; 485 NW2d 695 (1992), quoting *Machined Parts Corp v Schneider*, 289 Mich 567, 574; 286 NW 831 (1939). Subrogation is not available to a volunteer. *Auto Club Ins Ass'n*, 440 Mich at 132, citing *DAIIE v Detroit Mut Auto Ins Co*, 337 Mich 50, 59; 59 NW2d 80 (1953). "To avoid being a volunteer, a subrogee must be acting to fulfill a legal or equitable duty." *Eller v Metro Indus Contracting, Inc*, 261 Mich App 569, 573-574; 683 NW2d 242 (2004). "Thus, '[w]hen an insurance provider pays expenses on behalf of its insured, it is not doing so as a volunteer.' " *Id.*, quoting *Auto-Owners Ins Co v Amoco Prod Co*, 468 Mich 53, 59; 658 NW2d 460 (2003). "This is true even if the insurer's obligation was only secondary to another carrier's, so that it would not have been liable to pay benefits until the policy limits of the primary carrier were exhausted." *Eller*, 261 Mich App at 573-574. "The rationale is that an insurance company that pays a claim that another insurer may be liable for is 'protecting its own interests and not acting as a volunteer . . . [and] [i]s entitled to invoke the doctrine of equitable subrogation.' " *Eller*, 261 Mich App at 573-574, quoting *Auto-Owners Ins Co*, 468 Mich at 60.

Although Layman was not a named insured on the Auto Club policy, Auto Club was not acting as a volunteer when it paid benefits to him. Before the no-fault act was amended on June 11, 2019, if there was no personal, spousal, or residing relative's policy, the next insurer in line of priority for paying PIP benefits was the insurer of the owner or registrant of the vehicle occupied. *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 531; 740 NW2d 503 (2007); MCL 500.3114(1) and (4). Accordingly, if Layman had no insurance, Auto Club would have been the next insurer in the line of priority, because it was the insurer of the vehicle occupied. Hence, by paying Layman's benefits, Auto Club was protecting its own interests and not acting as a volunteer. See *Eller*, 261 Mich App at 573-574, quoting *Auto-Owners Ins Co*, 468 Mich at 60.

GEICO argues this Court should reform the Auto Club policy so that Layman is the named insured. GEICO did not raise this argument below, therefore it is unpreserved. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). GEICO has therefore waived appellate consideration of this issue. See *id*. At any rate, GEICO has presented no grounds on which to reform the Auto Club policy.

"It is a 'bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent . . . a contract in violation of law or public policy.' " *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 256; 819 NW2d 68 (2012), quoting *Rory*, 473 Mich at 469 (quotation marks and citation omitted). "Reformation of an insurance policy is an equitable remedy." *Corwin*, 296 Mich App at 256 (citation omitted). "[C]ontracting parties are assumed to want their contract to be valid and enforceable." *Corwin*, 296 Mich App at 257, citing *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002). This Court may reform an insurance policy when a policy's named insured has no insurable interest or if the policy contravenes the legislative intent of the no-fault act. See *Corwin*, 296 Mich App at 257.

GEICO argues this Court should reform Auto Club's insurance policy to name Layman as the policy's named insured; for if Layman's father remains the named insured on the policy, the policy will cover no insurable interest. This is irrelevant to resolving the issue on appeal. Whether the Auto Club policy insuring Layman's deceased father is void does not absolve GEICO of its liabilities. GEICO also argues it would be inequitable for Auto Club to not pay benefits to Layman because Layman paid a premium to Auto Club. Regardless of whether this would furnish a legal basis to reform an insurance contract, the record is devoid of any evidence Layman paid a premium to Auto Club. To the contrary, Layman explicitly denied being a named insured on the Auto Club policy. In short, GEICO has presented no reason that this Court should reform the Auto Club policy.

Affirmed. Plaintiff having prevailed is entitled to costs. MCR 7.219.

/s/ Douglas B. Shapiro
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien