

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

v

Case No. 2013-136778-NF
Hon. Wendy Potts

MEMBERSELECT INSURANCE
COMPANY,

Defendant.

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

On
JAN 22 2015

Norene Davis owns a 1993 Mercedes that was insured by Defendant MemberSelect Insurance Company under a policy issued to Davis's significant other, Percy Madison. Although MemberSelect's policy covered the vehicle, it wrongly stated that Madison was the vehicle owner and did not include Davis as a named insured. Davis claims that that she went with Madison to MemberSelect's Detroit office in 2010 to obtain the policy and told MemberSelect's employees or agents that she was the owner and should be covered. She further claims that she provided documents showing the vehicle was titled and registered in her name. Neither Madison nor Davis objected to the policy MemberSelect issued. Davis did not have any other no-fault policy naming her as an insured or covering her vehicle.

In November 2011, Davis filed a claim with MemberSelect for personal injury protection (PIP) benefits for injuries she suffered in an accident, however, they denied the claim because

she was not insured under the policy. Davis then filed a claim with the Michigan Assigned Claims Plan, and Plaintiff State Farm Mutual Automobile Insurance Company was assigned to handle her claim. State Farm filed this action in October 2013 seeking a declaratory judgment that MemberSelect has higher priority to pay Davis's PIP benefits and must reimburse State Farm for the benefits it already paid her.

MemberSelect now moves for summary disposition under MCR 2.116(C)(10), which tests the factual support for the claims. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). MemberSelect asserts that there is no question of fact that its policy does not cover Davis and it owes her no obligation to pay PIP benefits. Among other arguments, MemberSelect asserts that Davis is not entitled to receive no-fault benefits because she is the sole owner of the vehicle and she did not insure it. In November 2014, the Court of Appeals published its decision in *Barnes v Farmers Ins Exchange*, ___ Mich App ___; ___ NW2d ___; 2014 Mich App LEXIS 2184 (2014), which is factually analogous and holds that a vehicle owner is barred under MCL 500.3113(b) from seeking no-fault PIP benefits if no owner obtains insurance. *Id* at slip op 4. The no-fault act states that a person is barred from claiming PIP benefits if at the time of the accident she is the owner of a vehicle involved in the accident for which "the security required by section 3101 or 3103 was not in effect." MCL 500.3113(b). Prior case law suggested that MCL 500.3113(b) is satisfied if there is any insurance covering the vehicle. See *Iqbal v Bristol West Ins Group*, 278 Mich App 31; 748 NW2d 574 (2008). However, the Court in *Barnes* concluded that *Iqbal* stands for the proposition that if any owner obtains insurance, other vehicle owners are not precluded from seeking PIP benefits. Because the vehicle in *Barnes* was insured, but not by its owners, the Court concluded that the plaintiff owner was not entitled to PIP benefits. *Id* at slip op 4. As in *Barnes*, Davis's vehicle was insured but not by her, the sole owner.

Because Davis did not maintain coverage for her vehicle, she may not recover PIP benefits. *Barnes, supra.*

State Farm contends that Davis is, in fact, an additional insured under MemberSelect's policy citing the definitions of "insured car" and "insured person" in the policy. The term "insured person" means "for use of your car, you and any resident relative, and any other person using it with your permission." The policy defines "insured car" as "your car, which is the vehicle described on the Declaration Certificate and identified by a specific vehicle reference number." Although State Farm's argument is less than clear, it appears to be claiming that because the policy described Davis's vehicle and she was the owner, she is necessarily an insured. However, State Farm has not explained or cited authority for its position that Davis is covered under MemberSelect's policy language simply because her vehicle is covered. Davis was not a named insured, nor was she identified as a vehicle owner in the policy. Further, State Farm cites no language in MemberSelect's policy stating that it covers all of the vehicle's owners. Because Davis was not a named insured and she does not fall under any definition of an insured under MemberSelect's policy, her claim for coverage under that policy is without merit.

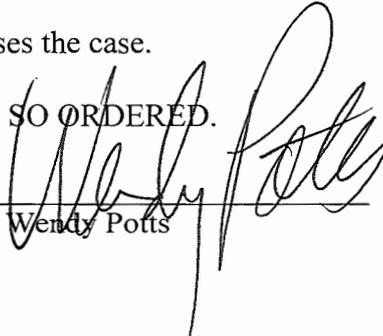
Because Davis was not insured by MemberSelect's policy and she did not maintain coverage as required by the no-fault act, she is not entitled to claim PIP benefits and MemberSelect has no obligation to provide benefits. Thus, the Court grants MemberSelect summary disposition and dismisses State Farm's claims with prejudice.

This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Dated:

JAN 22 2015



Hon. Wendy Potts