

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

TERRANCE E. BRATCHER, and)
VIRGINIA BRATCHER,) C.A. No. K11C-04-042 JTV
)
Plaintiffs,)
)
v.)
)
LAURIE CAPP and DINO CAPP,)
)
Defendants.)

Submitted: January 11, 2013

Decided: April 29, 2013

Robert J. Taylor, Esq., Barros, McNamara, Malkiewicz & Taylor, Dover,
Delaware. Attorney for Plaintiffs.

Andrew R. Silverman, Esq., Weber, Gallagher, Simpson, Stapleton, Fires &
Newby, Dover, Delaware. Attorney for Defendants.

*Upon Consideration of Defendants’
Motion for Partial Summary Judgment*

GRANTED

VAUGHN, President Judge

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OPINION

This pre-trial motion asks the court to decide whether 21 *Del. C.* § 2118(h) bars Plaintiffs' recovery of certain personal injury protection ("PIP") benefits as special damages from defendants.

FACTS

On May 4, 2009, plaintiff Terrance Bratcher was operating a motor vehicle on Boyd's Corner Road approaching the intersection of Route 896, Summit Bridge Road in New Castle County. Plaintiff Virginia Bratcher was a passenger in the vehicle. While the plaintiffs were stopped at a red light, their vehicle was rear-ended by a vehicle driven by defendant Laurie Capp. Defendant Dino Capp was a passenger in that vehicle. Plaintiffs allege that the defendants' negligence caused them serious and permanent injuries.

At the time of the accident, the plaintiffs had recently moved from Delaware to Maryland. They had sold their Delaware home. Their vehicle was still registered in Delaware and had not been registered in Maryland, they still held Delaware driver's licenses and their automobile insurance policy in effect at the time of the accident was issued when plaintiffs resided in Delaware. They had informed their insurer of their move from Delaware to Maryland, but the only change made to the policy was a change of address.¹ It appears that when the accident occurred, the plaintiffs' policy continued to provide insurance intended to keep the insureds in compliance with

¹ The plaintiffs assert that the insurer mistakenly failed to change the address where they principally garage their vehicles from their former home address in Wilmington, Delaware to their Maryland residence. For purposes of this motion, I will assume this to be the case.

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Delaware law. The policy's "Mandatory PIP Limit" recited the Delaware requirement,² although the plaintiffs also secured "Added PIP" coverage well beyond the mandatory minimum of either Delaware or Maryland.³

CONTENTIONS

The defendants contend that Delaware PIP benefits were available to the plaintiffs, and that while an injured party may sue a tortfeasor for damages under common law negligence theories, that party may not sue for PIP expenses payable by the injured party's no-fault insurer. They contend that 21 *Del. C.* § 2118 precludes the presentation of special damages to the jury because the vehicle involved was registered in Delaware at the time of the accident; the policy was purchased when they lived in Delaware; and they contracted specifically for a Delaware policy, including the mandatory PIP limits.

The plaintiffs contend that the clear statutory reading of 21 *Del. C.* § 2118 excludes them from any class of persons covered by the Delaware no-fault statute. They contend that at the time of the accident they were Maryland residents; that their motor vehicle was primarily garaged in Maryland; that they are not subject to 21 *Del. C.* § 2118 because their vehicles were not "required to be registered in [Delaware];"⁴

² Delaware requires owners of motor vehicles required to be registered in this state to purchase certain minimum PIP coverage, namely \$15,000 for any one person and \$30,000 for all persons injured in any one accident. 21 *Del. C.* § 2118(a)(2)(b).

³ The plaintiffs' policy maintained added personal injury protection coverage in the amounts of \$85,000 per person and \$270,000 per accident. Maryland requires the purchase of \$2,500 as its mandatory minimum PIP coverage. Md. Code Ann., Ins. § 19-505.

⁴ 21 *Del. C.* § 2118(a).

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that out of state residents do not have a reasonable expectation that Delaware PIP benefits apply to them; that the collateral source rule applies,⁵ as it does in all cases where not specifically forbidden by statute; that the locations where the PIP benefits were originally negotiated and contracted upon are immaterial; and that the policy had been converted to a *de facto* Maryland insurance policy.

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.⁶ “[T]he moving party bears the burden of establishing the non-existence of material issues of fact.”⁷ If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.⁸ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁹ Thus, the court must accept all undisputed factual assertions and accept the non-movant’s version of any disputed facts.¹⁰ Summary judgment is inappropriate “when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire

⁵ *Yarrington v. Thornburg*, 205 A.2d 1, 2 (Del. 1964) (“Under the collateral source rule, a tortfeasor has no right to any mitigation of damages because of payments or compensation received by the injured person from an independent source.”).

⁶ Super. Ct. Civ. R. 56©.

⁷ *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

⁸ *Id.*

⁹ *Pierce v. Int’l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

¹⁰ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

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more thoroughly into the facts in order to clarify the application of law to the circumstances.”¹¹

DISCUSSION

Section 2118(h) of Title 21 provides:

Any person eligible for benefits described in paragraph (2) or (3) of subsection (a) of this section¹² . . . is precluded from pleading or introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available under paragraph (2) or (3) of subsection (a) of this section without regard to any elective reductions in such coverage and whether or not such benefits are actually recoverable.

Subsection (a) of § 2118 begins with the phrase “No owner of a motor vehicle required to be registered in this State . . .” As mentioned, the plaintiffs contend that their vehicle was no longer required to be registered in Delaware when they moved to Maryland and ceased to be Delaware residents.

There is much case law in Delaware on PIP coverage and eligibility. However, no case has been brought to the Court’s attention, and the Court can find none, which presents the same fact pattern as this one.

In order to be lawfully operated in Delaware, the plaintiffs’ vehicle was

¹¹ *Mumford & Miller Concrete, Inc. v. New Castle Cnty.*, 2007 WL 404771, at *1 (Del. Super. Jan. 31, 2007).

¹² “Paragraphs (2) and (3) of subsection (a) define all aspects of the required insurance for a vehicle registered in Delaware, other than coverage for damage done to the insured's vehicle, which is discussed in paragraph (4), and indemnity coverage, which is discussed in paragraph (1).” *Redding v. Ortega*, 840 A.2d 1224, 1226 n.2 (Del. 2003) (citing 21 *Del. C.* § 2118(a)).

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required to be registered somewhere.¹³ My ruling is that since the plaintiffs had not yet registered their vehicle in Maryland, and continued to operate it in Delaware, they were under a continuing requirement to have it registered in Delaware until such time as they did register it in Maryland. I therefore conclude that at the time of the accident, for purposes of § 2118, they were still required to have their vehicle registered in Delaware.

I next consider whether the plaintiffs are persons eligible for PIP benefits in Delaware, the “dispositive issue” in deciding whether § 2118(h) applies to them.¹⁴ The Delaware Supreme Court, in *Read v. Hoffecker*, defined an eligible person as “any person ‘within the class of persons to whom the statutorily required [no-fault insurance] coverage extends.’”¹⁵ Delaware courts look to the subparagraphs of § 2118(a)(2) to make the eligibility determination.

The plaintiffs fall into the class of eligible persons set forth in subparagraph © of § 2118(a)(2).¹⁶ That provision has been interpreted as recognizing as eligible “[a]ll persons who are injured while ‘occupying’ a motor vehicle which is registered and

¹³ When the accident occurred, their vehicle was not required to be registered in Maryland. Maryland law provides that “[a] vehicle owned by a new resident of this State during the first 60 days of residency” is exempt from the state’s registration requirements “provided the vehicle displays valid registration issued by the jurisdiction of the resident's former domicile.” Md. Code Ann., Transp. § 13-402(c)(7). The accident took place during this grace period.

¹⁴ *Redding*, 840 A.2d at 1227.

¹⁵ 616 A.2d 835, 837 (Del. 1992) (quoting *Deel v. Rizak*, 474 F. Supp. 45, 46 (D. Del. 1979)).

¹⁶ 21 *Del. C.* § 2118(a)(2)©.

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insured in Delaware.”¹⁷ The plaintiffs’ vehicles were registered—and required to be registered—in Delaware at the time of the accident. In addition, their policy provided insurance intended to keep them in compliance with Delaware law, including the state’s mandatory PIP limits. I find that the plaintiffs’ vehicle was “registered and insured in Delaware,” as contemplated by 21 *Del. C.* § 2118(a)(2)(c).

CONCLUSION

For the foregoing reasons, I conclude that the plaintiffs were eligible for PIP benefits under § 2118 and that they are precluded from introducing such damages into evidence at trial. Defendants’ Motion for Partial Summary Judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

cc: Prothonotary
Order Distribution
File

¹⁷ *Hoffecker*, 616 A.2d at 837 (quoting *Deel*, 474 F. Supp. at 46).