SECREST WARDLE

no-fault newsline

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Supreme Court Takes Some of the Joy Out of Joyriding

By Drew Broaddus

Although the No-Fault Act is remedial in nature, and intended to afford broad relief to motor vehicle accident victims regardless of fault, the Act does, for public policy reasons, entirely bar certain types of claimants. An example of this is MCL 500.3113(a), which bars a person from receiving personal injury protection (PIP) benefits when their injuries were suffered while using a vehicle that he or she "had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle."

SECREST WARDLE NOTES:

***Priesman's* "family joyriding" exception to § 3113(a) is abrogated by *Spectrum Health*.**

Likewise, *Bronson's* "chain of permissive use" theory is no longer good law, at least where the end user's use is expressly prohibited by the owner.

The *Spectrum Health* opinion specifically noted that it will have full retroactive effect.

Whether a vehicle had been "taken unlawfully" has proven to be a difficult question in cases where the "taking" is by a member of the owner's household. When does the owner's son, daughter, or spouse "reasonably believe" that he or she can use the vehicle? In *Spectrum Health v Farm Bureau*, __ Mich __ (2012), released July 31, 2012, the Supreme Court squarely addressed "whether a person injured while driving a motor vehicle that the person had taken contrary to the express prohibition of the owner may avail himself or herself of" PIP benefits, notwithstanding § 3113(a)." The Court held that "any person who takes a vehicle contrary to a provision of the Michigan Penal Code – including MCL 750.413 and MCL 750.414, informally known as the "joyriding" statutes – has taken the vehicle unlawfully for purposes of" § 3113(a). The Court further held "that the use of the phrase 'a person' in [§ 3113(a)] clearly and plainly includes a family member who has taken a vehicle unlawfully…." Justice Zahra authored the majority opinion, which garnered the votes of Chief Justice Young and Justices Markman and Mary Beth Kelly. Justices Cavanagh and Hathaway authored separate dissents, both of which earned Justice Marilyn Kelly's vote.

The Supreme Court's decision in *Spectrum Health* actually resolved two consolidated appeals, *Spectrum Health* and *Progressive Marathon Insurance v DeYoung*. In *DeYoung,* Ryan DeYoung took his wife's car, which had been insured by Progressive Marathon, without consent. He had not held a driver's license for nearly 10 years, had four drunk driving convictions, was listed as an excluded driver on the policy, and had been forbidden by his wife from driving the automobile. DeYoung ended up crashing the car while driving drunk and suffered serious injuries. He then filed for PIP benefits, but Progressive denied the claim on the grounds that he had taken the car unlawfully. The trial court agreed with the insurer, recognizing that *Priesman v Meridian Mut Ins*, 441 Mich 60 (1992) established a "family joyriding" exception to § 3113(a), but finding that the exception could not be extended to a driver that had expressly been excluded on the no-fault policy. But the Court of Appeals reversed, finding that it was bound by precedent to apply the family joyriding exception. The Court of Appeals thus allowed DeYoung and his healthcare providers to pursue PIP benefits despite § 3113(a).

Spectrum Health v Farm Bureau presented slightly more complicated facts, only because the owner in that case did consent to the vehicle's use. The dispute related to the scope of that consent and who was authorized to use the vehicle. Craig Smith, Jr. was injured in a single-car accident that occurred while he was driving a vehicle owned by his father, Craig Smith, Sr. The vehicle was insured by Farm Bureau. Craig Sr. had forbidden Craig Jr. to operate the vehicle because Craig Jr. had no valid

driver's license. Craig Jr. acknowledged that he knew he was forbidden to operate the vehicle. Craig Sr. entrusted the vehicle to Craig Jr.'s girlfriend, Kathleen Chirco. Craig Sr. instructed Kathleen – in Craig Jr.'s presence – that she was not to allow Craig Jr. to drive it. That night, Craig Jr. began drinking and asked Kathleen for the keys to Craig Sr.'s vehicle. Although she initially resisted, Kathleen eventually gave him the keys, and he later crashed the vehicle into a tree. The trial court disagreed with the insurer, finding that § 3113(a) did not apply because Kathleen – who had permission to use the vehicle – had been presumptively empowered to permit Craig Jr.'s use. The Court of Appeals affirmed, applying the chain-of-permissive-use theory from *Bronson Methodist Hosp v Forshee*, 198 Mich App 617 (1993) to conclude that Craig Jr. had not taken the vehicle unlawfully.

The Supreme Court reversed the Court of Appeals in both cases, finding that in both cases § 3113(a) barred the claimants. The Court majority found that "the legality of the taking does not turn on whether the driver intended to steal the car, [§ 3113(a)] applies equally to joyriders. Moreover, because [§ 3113] refers to 'a person,' the Legislature clearly and plainly intended to exclude from receiving PIP benefits even a relative who took a vehicle unlawfully."

In *DeYoung*, the Court examined the "family joyriding exception" to § 3113(a) – first articulated in Justice Levin's plurality opinion in *Priesman* – and determined that the exception had no basis in the statute's plain language. Justice Levin opined that the Legislature did not intend for a relative's "joyride" to be considered an unlawful taking because, given that most legislators are parents, they may have experienced children who used a family vehicle without permission. Thus, he concluded that the Legislature did not truly intend to exclude teenagers who joyride in their relatives' automobiles. The *Spectrum Health* Court found that Justice Levin's opinion strayed too far from the statute's text (which contains no such exception), and that *Priesman* was not binding precedent because it was a plurality opinion. Thus, *Priesman* was "disavowed" and Court of Appeals decisions that had relied upon it were "overruled."

As to the Court of Appeals' decision in *Spectrum Health v Farm Bureau*, the Court examined –and rejected – *Bronson's* "chain of permissive use" theory. Under this theory, when a vehicle's owner authorizes the vehicle's use by another person (the intermediate user), who in turn authorizes a third person (the end user) to use the vehicle, the end user's use is also deemed "permitted." However, the Supreme Court held "that *Bronson* erred by applying a theory developed in owner-liability caselaw to the context of [§ 3113(a)] because this caselaw did not address whether the end user of a vehicle violated the Michigan Penal Code, including MCL 750.413 or MCL 750.414, by unlawfully taking a vehicle." Thus, the Court overruled "*Bronson's* application of the 'chain of permissive use' theory as inconsistent with" § 3113(a).

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