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New Auto Liability Limits, Old Contract Law Principles Meet in Published Court of Appeals Opinion

By Drew W. Broaddus **January 10, 2024**

The 2019 amendments to MCL 500.3009 continue to generate controversy and appellate filings. For example, last October in *Progressive Marathon Ins Co v Pena*, 995 NW2d 838 (Mich, 2023), the Supreme Court requested supplemental briefs from the parties and amicus curiae "addressing whether automobile policies delivered or issued for delivery prior to July 2, 2020 … are subject to heightened liability coverage limits effective after July 1, 2020. See MCL 500.3009(1)(a), (b)."

This week, the Court of Appeals issued its opinion in *Newton v Progressive Marathon Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2024) (Docket No. 364569). The *Newton* litigation started with Eric Moyer, a minor, allegedly crashing his 2005 Honda Accord into Newton and her motorcycle in November 2020. Eric was the sole owner and titleholder of the Honda Accord, which Progressive insured through a no-fault policy that Eric's mother, Nykie Moyer, purchased. Nykie was listed on the application as the "Applicant/Named Insured." The policy declarations identified Nykie, Eric, and her other minor son as individuals covered by the policy. *Id.* at __; slip op at 1-2.

Nykie signed the application on September 3, 2020, and the application stated that the policy would be effective September 8, 2020, through March 8, 2021. Eric was a minor when Nykie signed the policy and when the accident happened. *Id.* at ___; slip op at 2. For the 2005 Honda Accord, Nykie elected bodily injury liability of $50,000 per person and $100,000 per occurrence, "lower than the statutory defaults" of $250,000/$500,000. *Id.* Nykie confirmed that she received a list of available coverage options, that she understood that her coverage election applied to her "and any other person covered by this policy," and that the limits she

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In June of 2019, the Legislature amended MCL 500.3009 as part of a collection of no-fault reform measures. *Progressive Marathon Ins Co v Pena*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 358849); slip op at 3. The reforms included changes to liability coverage and raised the minimum bodily injury liability limits in automobile policies. *Id.*

For policies "delivered or issued for delivery" after July 1, 2020, bodily injury liability limits of at least $250,000 per person and $500,000 per accident are required. MCL 500.3009(1).

However, those limits are subject to MCL 500.3009(5), which allows "an applicant for or named insured in" such a policy to select coverages of $50,000 per person and $100,000 per accident.

In *Newton v Progressive Marathon Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2024) (Docket No. 364569), the panel held that a parent's selection of the lower limits was binding on her son, who was under 18 but owned the insured vehicle.

chose would be "effective as long as the policy was in effect or she changed those limits." *Id.* By signing, Nykie acknowledged that she read and understood her choices and the "potentially severe risks" of selecting lower liability coverage described in the application. *Id.*

Shortly after filing suit against Eric, Newton filed this declaratory judgment action against Progressive. Specifically, Newton sought a declaration that Nykie's election of the lower limits was not binding on Eric and therefore, Progressive's policy limit was $250,000 instead of $50,000. Both sides moved for summary disposition, and Progressive prevailed. The Court found that Nykie "checked the right boxes and achieved the lower insurance policies," noting that although Newton would not be "compensated for all [her] damages … these [were] the legal choices that are allowed" by the statute. *Newton,* ___ Mich App at ___; slip op at 3. The trial court further noted that Nykie "had legal authority to elect the lower default rates in her contract" for Eric's vehicle, and that because her son was a resident relative in the policy, "the contract stands as [written]." *Id.* Newton appealed by right.

In affirming, the panel first rejected Progressive's argument that Newton lacked standing to file the declaratory judgment action. Although not explained in the opinion, Progressive's objection was based on MCL 500.3030, which states that "[i]n the original action brought by the injured person, or his or her personal representative in case death results from the accident … the insurer shall not be made or joined as a party defendant…." The panel found that Newton's suit was proper because she met the criteria for filing a declaratory judgment action under MCR 2.605: there was a "case of actual controversy" within the jurisdiction of the Court, and Newton was an "interested party" by way of her tort claim against Eric. *Newton,* ___ Mich App at ___; slip op at 4.

Turning to the substantive arguments under MCL 500.3009, the panel noted that minors such as Eric "occupy a unique and awkward space in contract and tort" because they can own a motor vehicle and be held liable for negligent operation of a vehicle, but lack the capacity to enter into an insurance contract. *Id.* at ___; slip op at 6. Therefore, the only way Eric could meet his statutory obligation of insuring his 2005 Honda Accord was if his mother bought insurance for him. *Id.* at ___; slip op at 7. This is what Nykie did, and as "an applicant for or named insured" in the policy, her election controlled under the plain language of MCL 500.3009(5). *Id.* at ___; slip op at 8. The panel rejected Newton's argument that the statutory words "applicant" or "named insured" should be read to include the owners of any insured vehicles. *Id.*

The panel also rejected Newton's argument that Nykie improperly waived Eric's rights, contrary to *Woodman v Kera LLC,* 486 Mich 228 (2010), which involved a parent's release of their minor child's tort claim. *Newton,* ___ Mich App at ___; slip op at 9-10. The panel distinguished *Woodman* because "Nykie did not seek to waive, release, or otherwise compromise a claim or defense belonging to Eric." *Id.* at ___; slip op at 10.

Finally, the panel rejected Newton's arguments for reforming the policy. The panel explained that common law reformation was not an available remedy here because (1) "Newton was not a party to the contract between Progressive and Nykie, nor was she in privity with them," and (2) Newton could not "establish that there was a mistake or fraud in the drafting of the document." *Id.* at ___; slip op at 12. And, while statutory reformation can be sought under MCL 500.3012, that provision would only apply if the policy were otherwise contrary to MCL 500.3009 – which it was not for reasons explained earlier in the opinion.

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