

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

RICHARD R. COOCH  
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE  
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***Re: Maria Orozco v. Colby J. Mitchell, Randy C. Mitchell, and  
Randy C. Mitchell Painting, Inc.***  
**C.A. No. 09C-05-210 RRC**

Submitted: August 20, 2010

Decided: August 27, 2010

Upon Defendants' "Motion in Limine to Exclude Evidence of Any Special  
Damages Payable Under 21 Delaware Code Section 2118."

**DENIED.**

Dear Counsel:

**INTRODUCTION**

This negligence action arises from a motor vehicle collision that occurred in Milford. Allegedly, Defendant, Colby Mitchell, disregarded a stop sign and struck the driver's side of Plaintiff's vehicle.<sup>1</sup>

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<sup>1</sup> Dkt. 1 at ¶ 13-14.

The issue sought to be presented by Defendants' motion *in limine* is whether a plaintiff who is the owner of an uninsured vehicle and is aware that the vehicle is uninsured at the time of a motor vehicle accident may recover PIP special damages normally payable pursuant to 21 *Del. C.* § 2118.

However, this Court does not reach this issue because it has determined that Defendants have not produced sufficient evidence at this juncture (1) to establish when Plaintiff learned that her insurance coverage had lapsed, and (2) that Plaintiff was the record owner or otherwise the legal owner of the vehicle at the time of the accident. Accordingly, Defendants' motion *in limine* is **DENIED**.

### FACTS

In September 2007, Plaintiff was injured when Defendant, Colby Mitchell, allegedly ran a stop sign and collided with Defendant's vehicle. It is undisputed that Plaintiff was uninsured at the time of the accident.<sup>2</sup> The police report prepared at the scene of the accident listed Usabldo Trevino as the owner of Plaintiff's automobile.<sup>3</sup> However, despite the information contained in the police report, Plaintiff testified at her deposition that she was the owner of the vehicle.

[Mr. Hartnett]: And who was the owner of the vehicle? At the time of the accident, I'm sorry.

[Ms. Orozco]: Well, at the time of accident, as far as the owner went, that car was given to me.

Q: Okay. So did you consider it to be your property and that you were the owner of the vehicle?

A: Yes, sir.<sup>4</sup>

Plaintiff also testified that she had no motor vehicle insurance at the time of the accident, but stated that she could not remember when the insurance coverage had expired.<sup>5</sup>

[Mr. Hartnett]: Okay. Did you have any motor vehicle insurance on that vehicle?

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<sup>2</sup> Ans. Br. ¶ 7.

<sup>3</sup> No evidence has been presented to the Court regarding Mr. Trevino's position on whether he, Plaintiff, or some other person or entity was the owner of the vehicle at the time of the accident. Defendant has not produced the certificate of title or cited any legal authorities to the effect that a person's statement that that person "considered" himself/herself to the owner is legally sufficient to establish actual ownership.

<sup>4</sup> Op. Br. Ex. A at 7-8.

<sup>5</sup> The police report listed Plaintiff as having insurance as of the date of the accident. However, Plaintiff has admitted that the police report was incorrect. *See* Ans. Br. ¶ 7.

[Ms. Orozco]: No. It had expired at that time.

Q: When did it expire?

A: I don't remember.

Q: How long had the vehicle been yours?

A: I don't remember.<sup>6</sup>

## **PARTIES' CONTENTIONS**

Defendants have filed a motion *in limine* to exclude any evidence of special damages normally payable pursuant to 21 *Del. C.* § 2118. In support of this argument, Defendants contend that special damages are inappropriate in a case where a plaintiff is the owner of the vehicle and does not have insurance on that vehicle.<sup>7</sup> Defendants assert that Plaintiff was “the owner of the uninsured vehicle and was the one who was responsible for making insurance payments.”<sup>8</sup> Defendants argue that Plaintiff should thus be precluded from recovering damages because she was knowingly driving an uninsured vehicle.<sup>9</sup>

In response, Plaintiff argues that she is an “innocent” plaintiff in that she “unfortunately” turned out not to have insurance.<sup>10</sup> Plaintiff argues that disallowing special damages in this case would result in a “windfall” for the tortfeasor because she would not be eligible to recover the full amount of her medical expenses.<sup>11</sup>

## **DISCUSSION**

The issue sought to be presented by the motion *in limine* is whether a plaintiff who is the owner of an uninsured vehicle and is aware that the vehicle is uninsured at the time of a motor vehicle accident may recover PIP special damages normally payable pursuant to 21 *Del. C.* § 2118.

21 *Del. C.* § 2118(h) states in pertinent part:

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<sup>6</sup> *Id.*

<sup>7</sup> Op. Br. at ¶ 6-10.

<sup>8</sup> *Id.* at ¶ 5.

<sup>9</sup> Defendant specifically takes issue with possible PIP coverage in this case, which is approximately \$26,000. Defendant asserts that “[u]nder 2118, any recovery by the PIP carrier can only be recovered from the tortfeasor’s carrier and only to the extent of insurance. An uninsured tortfeasor may be subject to direct subrogation claims for both PIP and uninsured motorist payments.” Op. Br. at ¶ 9.

<sup>10</sup> Ans. Br. ¶ 19.

<sup>11</sup> *Id.*

Any person eligible for benefits described in paragraph (2) or (3) of subsection (a) of this section, other than an insurer in an action brought pursuant to subsection (g) of this section, 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.

In applying 21 *Del. C.* § 2118(h), the Delaware Supreme Court in *Redding v. Ortega* held, under the particular facts of that case, that a motorist and a passenger who were not covered by any Delaware insurance policies were nevertheless not precluded from introducing evidence of medical expenses under 21 *Del. C.* § 2118(h).<sup>12</sup>

In *Redding*, the plaintiffs, who were not the owners of the motor vehicle involved in the accident, were not covered by any statutorily required Delaware insurance policies.<sup>13</sup> The registered owner of the vehicle also did not have such insurance.<sup>14</sup> In holding that the plaintiffs were entitled to recover medical expenses, the Supreme Court reasoned that:

Under the circumstances of this case, an application of the evidentiary restriction in section 2118(h) would result in punishment for innocent plaintiffs who cannot recover under a Delaware no-fault automobile policy and in a windfall for an otherwise liable tortfeasor. Neither of those results is consistent with the statutory framework enacted by the General Assembly. First, the penalties for not having statutorily-mandated insurance are specific and do not include forfeiting the right to recover monetary damages from a tortfeasor. Second, the no-fault statute does not provide protection for a tortfeasor when the mandatory no-fault coverage is extant. Accordingly, we hold that section 2118(h)'s evidentiary restriction does not apply in actions against tortfeasors by plaintiffs who are not eligible for benefits under a statutorily required Delaware automobile policy.<sup>15</sup>

Despite Defendants' attempt to distinguish *Redding*, this Court holds that *Redding* is applicable to the current facts as set forth in the record. Defendants have failed factually to establish that Plaintiff is distinguishable from the "innocent plaintiffs" in *Redding*. Although Defendants argue that a plaintiff who knowingly fails to purchase insurance on a vehicle that person owns should not be permitted to recover special damages, this Court concludes that the record is ambiguous and

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<sup>12</sup> *Redding v. Ortega*, 840 A.2d 1224 (Del. 2003).

<sup>13</sup> *Id.* at 1226.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1228.

undeveloped as to whether Plaintiff did, in fact, own the vehicle because the vehicle's record owner was Usabldo Trevino. Plaintiff's bald statement at her deposition that she "considered" herself the owner of the vehicle is insufficient to warrant her being the "owner" for purposes of 21 *Del. C.* § 2118(h), especially in the absence of legal authorities supplied by Defendant.

Additionally, although there is some evidence that Plaintiff was not covered by insurance, on the present record it is unclear whether Plaintiff realized before the accident that the vehicle's insurance policy had lapsed. There is not sufficient evidence at this time that Plaintiff knew or should have known about the lack of insurance coverage, especially given the lack of evidence as to who was the legal owner of the vehicle at the time of the accident. It is unclear from the record, and the Court is not able to draw any inferences, as to whether Plaintiff knew she had to purchase insurance on the vehicle and whether she made a decision not to purchase such insurance.

Finally, this Court notes that *Redding* reasoned that "the penalties for not having statutorily-mandated insurance are specific and do not include forfeiting the right to recover monetary damages from a tortfeasor."<sup>16</sup> This Court finds that reasoning equally applicable in the case at bar.

For all the reasons stated above, Defendants' motion *in limine* is **DENIED**.  
**IT IS SO ORDERED.**

Very truly yours,

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Richard R. Cooch, J.

cc: Prothonotary

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<sup>16</sup> *Id.* at 1228.