

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

May 20, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3608

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**FRANK NORDSTROM, JENNIE PELOQUIN, AND JAMES
PELOQUIN,**

PLAINTIFFS-RESPONDENTS,

V.

WISCONSIN MUTUAL INSURANCE COMPANY,

DEFENDANT-APPELLANT,

VALLEY CREDIT UNION,

DEFENDANT.

APPEAL from an order of the circuit court for Chippewa County:
RODERICK A. CAMERON, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

CANE, P.J. Wisconsin Mutual Insurance Company appeals a summary judgment granted to Frank Nordstrom, Jennie Peloquin and her spouse James Peloquin, deciding that insurance coverage exists for vehicular damage and personal injuries sustained by Nordstrom in a car accident. Wisconsin Mutual argues that disputed issues of material fact exist regarding the ownership of the vehicle, and misrepresentations made by Jennie Peloquin to Wisconsin Mutual's insurance agent regarding Nordstrom as a driver of the Achieva were sufficient to void the insurance claim.

Nordstrom and the Peloquins assert that factual disputes as to immaterial issues are not a sufficient basis upon which to deny summary judgment, Wisconsin Mutual waived its misrepresentation claim, Jennie Peloquin did not make any intentional misrepresentation to Wisconsin Mutual's agent, and there is a conclusive presumption that Peloquin was the owner of the vehicle and had an insurable interest as the owner of the vehicle.¹ Based on undisputed facts, we conclude that summary judgment was appropriate because Peloquin owned the vehicle at the time of the accident and did not make misrepresentations to Wisconsin Mutual. We therefore affirm the order.

On January 27, 1994, Frank Nordstrom bought a 1992 Oldsmobile Achieva, in anticipation of a new job that he subsequently did not acquire. Nordstrom's mother, Jennie Peloquin, agreed to give him money for his car loan payments in exchange for the car. Nordstrom delivered the Achieva's certificate of title, signed by him in blank, with no odometer reading, and dated February 1,

¹ In the alternative to their ownership argument, Nordstrom and the Peloquins argue that Peloquin had an insurable interest in the Achieva. Because we conclude that Peloquin owned the Achieva, we do not address this argument.

1994, to Peloquin. Peloquin kept the title in her home, and neither endorsed it nor filed an application to transfer title. Her deposition testimony was that she believed she was the owner of the Achieva when Nordstrom signed the title and turned the car over to her.

On February 1, 1994, Peloquin obtained auto insurance for the Achieva from Wisconsin Mutual, through which she and her husband had auto insurance. After giving the insurance agent the Achieva's description, vehicle identification number and value, and telling him where it was financed, she told the agent to add the Achieva to her existing auto insurance policy. Without asking Peloquin who owned the Achieva or who would be driving it, he insured the car. Peloquin kept the Achieva at her residence and used it as her personal car for just about everything but commuting to work. Nordstrom used the vehicle about once a month.

Nordstrom and the Peloquins assert these arrangements were made because Nordstrom could not afford the Achieva when he did not get the new job he anticipated. Wisconsin Mutual contends the arrangement was made so that Nordstrom, an uninsurable driver because of his driving record, could get car insurance through Wisconsin Mutual.

On September 24, 1994, Nordstrom drove the Achieva into a ditch, resulting in personal injury to him and damage to the car. Wisconsin Mutual refused to pay the medical and collision expenses incurred by Nordstrom, alleging that Peloquin misrepresented ownership when she obtained coverage. Nordstrom and the Peloquins filed this lawsuit against Wisconsin Mutual, and the court

granted their motion for summary judgment, deciding that auto insurance coverage exists. Wisconsin Mutual now appeals.²

We review summary judgments de novo. *Universal Die & Stampings, Inc. v. Justus*, 174 Wis.2d 556, 560, 497 N.W.2d 797, 799 (Ct. App. 1993). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Section 802.08(2), STATS.

The first issue we address is the ownership of the Achieva. In Wisconsin, legal transfer of vehicle ownership is achieved by a seller's blank endorsement and delivery of the signed certificate of title to the purchaser. *Knutson v. Mueller*, 68 Wis.2d 199, 212, 228 N.W.2d 342, 349 (1975). As stated by our supreme court, "Where [certificate of title] has been endorsed and delivered, a conclusive presumption arises, as provided in sec. 342.15(3), that ownership was transferred; where it has not been endorsed and delivered, the intent and conduct of the parties govern." *Bachelor v. Employers Mut. Liab. Ins. Co.*, 93 Wis.2d 564, 573c, 290 N.W.2d 872, 874 (1980) (on reconsideration).

It is undisputed that Nordstrom delivered the Achieva and its certificate of title, signed in blank, to Peloquin. These facts are sufficient to establish a conclusive presumption of transfer of ownership under *Bachelor*.³

² The trial court also denied defendant Valley Credit Union's motion for summary judgment. That decision is not subject to appeal here, and therefore we do not address it.

³ Wisconsin Mutual argues that prior case law, including *Knutson v. Mueller*, 68 Wis.2d 199, 228 N.W.2d 342 (1975), and *Bachelor v. Employers Mut. Liab. Ins. Co.*, 93 Wis.2d 564, 287 N.W.2d 817 (1980), did not determine what constitutes transfer of a motor vehicle for purposes of a first-party claim, as opposed to a third-party personal injury claim. We are not persuaded by the distinction, and we decline to adopt such a narrow reading of these cases.

Because the undisputed facts are sufficient to establish Peloquin's ownership of the Achieva, summary judgment on this issue was appropriate.

Next, we address Wisconsin Mutual's argument on appeal that Peloquin made misrepresentations regarding Nordstrom as a driver of the Achieva.⁴ An insured's misrepresentation to his or her insurer may defeat a named insured's or additional insured's claim on the insurance contract. *Willms v. Zangl*, 119 Wis.2d 58, 61, 349 N.W.2d 95, 97 (Ct. App. 1984). However, an insured's recovery under the policy is favored when the insured, acting in good faith, has "done honestly all he is led by the [insurance] agent ... to believe he is required to do to secure protection by insurance," *Taluc v. Fall Creek Farmers Mut. Fire Ins. Co.*, 203 Wis. 319, 323, 234 N.W. 364, 366 (1931), and has answered all questions asked by the insurance agent. *Granzow v. Oakland Mut. Fire Ins. Co.*, 244 Wis. 300, 304, 12 N.W.2d 57, 58 (1943).

The record indicates that Peloquin did not misrepresent any facts to Wisconsin Mutual's agent. He did not ask her who owned the Achieva or who would be the driver of the Achieva. Nor does a vehicle owner have a duty to list the names of non-household drivers in order to obtain car insurance. The fact that Jennie and James Peloquin were listed as the drivers of their other previously insured vehicles is irrelevant to this dispute. Therefore, we conclude there is no basis for Wisconsin Mutual's misrepresentation claim, and summary judgment was appropriate.

⁴ Nordstrom and the Peloquins argue that Wisconsin Mutual waived the argument that there was misrepresentation as to Nordstrom being a driver of the car by not raising it at the trial court. We disagree. In its answer, Wisconsin Mutual asserted the affirmative defense that Nordstrom and the Peloquins misrepresented the ownership of the vehicle and parties who would be driving it. This indicates the issue was raised at the trial court and was sufficiently preserved for appeal.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

