Order

Michigan Supreme Court
Lansing, Michigan

February 7, 2024

Elizabeth T. Clement,
Chief Justice

164534

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

KAREN LOUISE BELLMORE,
Plaintiff-Appellant,

v

SC: 164534
COA: 357660
Wayne CC: 20-010926-NF

FRIENDLY OIL CHANGE, INC.,
Defendant,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant-Appellee.

_____/

On January 10, 2024, the Court heard oral argument on the application for leave to appeal the May 12, 2022 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE Part II(B) of the judgment of the Court of Appeals on the issue of whether the plaintiff's alleged injuries arose out of the "maintenance . . . of a motor vehicle as a motor vehicle" within the meaning of MCL 500.3105(1). In this case, the plaintiff arrived at an oil change facility to have her vehicle serviced. Her vehicle was parked over the service pit that the facility used to perform the oil change. While her car was being serviced, the service technician observed a filter that he thought needed to be replaced. The plaintiff was then directed to approach the front of the vehicle and examine the filter to authorize its replacement. On her way to examine the filter, she tripped and fell into the service pit, resulting in personal injury. Under these circumstances, we are satisfied that the plaintiff's injury arose out of the maintenance of her vehicle as a motor vehicle. MCL 500.3105(1). Like a hydraulic lift or jack, the service pit was designed to aid in the maintenance of motor vehicles by allowing access to certain parts of the vehicle and was being used for that purpose at the time of the injury. Because the plaintiff's injury occurred while she was participating in the maintenance of her vehicle, her injury sustained by falling into the service pit used to perform the maintenance bears a causal relationship to the maintenance

of her vehicle as a motor vehicle that was more than incidental, fortuitous, or but for. See *Thornton v Allstate Ins Co*, 425 Mich 643, 650-651, 659 (1986).

In addition, we VACATE Part II(C) of the judgment of the Court of Appeals, which held that "the trial court's conclusion that plaintiff would also be entitled to [personal protection insurance] benefits under [MCL 500.3106(1)] was erroneous." MCL 500.3106(1) does not provide an independent claim for no-fault benefits. Instead, that subsection operates as a general exclusion of the coverage provided under MCL 500.3105 for injuries involving parked motor vehicles unless one of the enumerated exceptions applies. See *Kemp v Farm Bureau Gen Ins Co of Mich*, 500 Mich 245, 252 (2017) (citing MCL 500.3106(1) and holding that "when an injury involves a parked motor vehicle, coverage is generally excluded unless the claimant demonstrates that one of three statutory exceptions applies"). But an analysis of MCL 500.3106(1) is unnecessary when an injury arises from the maintenance of a motor vehicle as a motor vehicle. See *Miller v Auto-Owners Ins Co*, 411 Mich 633, 641 (1981) (holding that the plaintiff's injury "clearly involved the maintenance of his vehicle as a motor vehicle" and that "[c]ompensation is thus required by the no-fault act without regard to whether [the] vehicle might be considered 'parked' [under MCL 500.3106(1)] at the time of injury").

ZAHRA, J. (*concurring in part and dissenting in part*).

I agree with the majority that plaintiff's injuries arose out of the maintenance of her motor vehicle within the meaning of MCL 500.3105(1). I respectfully dissent, however, from the majority's discussion of MCL 500.3106(1). For the reasons stated in my dissent in *Woodring v Phoenix Ins Co*, 504 Mich 873 (2019) (ZAHRA, J., dissenting), I would overrule *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981), and hold that MCL 500.3106(1) is inapplicable to this case because plaintiff's car was not parked within the meaning of that statute.

BERNSTEIN, J., did not participate because he has a family member with an interest that could be affected by the proceeding.