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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

CARLONDA NAISHE SWOOPE

Supreme Court No.:166790
Court of Appeals No: 362924

Plaintiff/Appellant,

v

Wayne Circuit Court
Case No 21-011492-NF
Hon. Dana M. Hathaway

CITIZENS INSURANCE COMPANY
OF THE MIDWEST
Defendant/Appellee

_____/

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PLAINTIFF-APPELLANT'S MOAA APPENDIX
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Respectfully submitted,

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Dated: June 3, 2025

EXHIBIT 1

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

CARLONDA NAISHE SWOOPE,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellant.

UNPUBLISHED
December 14, 2023
APPROVED FOR PUBLICATION
January 25, 2024
9:20 a.m.

No. 364924
Wayne Circuit Court
LC No. 21-011402-NF

Before: LETICA, P.J., and O'BRIEN and CAMERON, JJ.

CAMERON, J.

In this interlocutory appeal arising under Michigan's no-fault act, MCL 500.3101 *et seq.*, defendant, Citizens Insurance Company of the Midwest, appeals by leave granted[1] the order denying its motion for summary disposition under MCR 2.116(C)(10) (no genuine question of fact).[2] We reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

Plaintiff, Carlonda Naishe Swoope, was injured in an October 27, 2020 automobile accident. Plaintiff was driving a car owned by a friend. At the time of the accident, she did not have a valid driver's license. Neither plaintiff, nor the car's owner, maintained an automobile insurance policy. As a result, plaintiff sought personal protection insurance (PIP) benefits for her

[1] *Swoope v Citizens Ins Co*, unpublished order of the Court of Appeals, entered March 24, 2023 (Docket No. 364924).

[2] Defendant also moved for summary disposition under MCR 2.116(C)(8) (failure to state a claim), but it is apparent from the order that the trial court denied summary disposition under subsection (C)(10).

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injuries through the Michigan Assigned Claims Plain (MACP). MACP assigned plaintiff's claim to defendant.

Defendant denied coverage and plaintiff filed the instant complaint seeking payment for PIP benefits. Thereafter, defendant moved for summary disposition, arguing there was no genuine question of fact that plaintiff was unlawfully operating the car. The trial court denied the motion. Defendant moved for reconsideration, but that motion was denied. This appeal followed.

II. UNLAWFUL OPERATION

Defendant argues the trial court erred in denying its motion for summary disposition under MCR 2.116(C)(10) because there was no genuine question of fact plaintiff was unlawfully operating the car, and therefore was not entitled to PIP benefits under the no-fault act. We agree.

A. STANDARD OF REVIEW

A (C)(10) motion for summary disposition "tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In evaluating these motions, "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion." *Id.* (citation omitted). If the movant satisfies this burden,

> The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).]

This case also involves issues of statutory interpretation, which we review de novo. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009).

> The paramount rule of statutory interpretation is that we are to effect the intent of the Legislature. To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written. In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory. [*Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60; 631 NW2d 686 (2001) (citations omitted).]

B. LAW AND ANALYSIS

Under the no-fault act, automobile insurers are required to provide PIP benefits for certain injuries related to motor vehicle accidents. *Kemp v Farm Bureau Gen Ins Co of Mich*, 500 Mich 245, 252; 901 NW2d 534 (2017). "The no-fault act's initial scope of coverage for PIP benefits is

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set forth in MCL 500.3105(1) . . . ." *Id.* This statute states that insurers are "liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." MCL 500.3105(1). But, "[t]he no-fault act permits an insurer to avoid coverage of PIP benefits under certain enumerated circumstances." *Meemic Ins Co v Fortson*, 506 Mich 287, 303; 954 NW2d 115 (2020). MCL 500.3113(a) articulates one of these circumstances:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

In *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 10; 972 NW2d 860 (2021), this Court set forth a three-prong test to evaluate claims under MCL 500.3113(a). *Ahmed* held that "the disqualification applies to any person (1) willingly operating or willingly using a motor vehicle or motorcycle that (2) was unlawfully taken by someone, and (3) the person seeking benefits knew or should have known that the motor vehicle was taken unlawfully." *Id.* (quotation marks omitted). This "should have known" standard requires a person to determine whether they have permission to take a vehicle "because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking." *Id.* at 27. Indeed, "the mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the 'should have known' standard of MCL 500.3113(a)." *Id.*

"[A]ny violation of the criminal law that leads to a taking of a motor vehicle will constitute an 'unlawful taking' for purposes of MCL 500.3113(a)." *Id.* at 11 n 5. Violations of criminal law include certain provisions of the Michigan Vehicle Code, MCL 257.1 *et seq.* For example, MCL 257.301 concerns the legality of operating a vehicle without a valid driver's license. It states, in part: "[A]n individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license with the appropriate group designation and indorsements for the type or class of vehicle being driven or towed." MCL 257.301(1). Violations of this statute are considered "unlawful" for purposes of MCL 500.3113(a) because there are related criminal penalties. See MCL 257.901; see also *Ahmed*, 337 Mich App at 20 n 8 ("Violation of [MCL 257.301 and MCL 257.310e(4)] was 'unlawful' . . . because there are associated criminal penalties.").

Defendant's motion for summary disposition focused on the second and third prong of the *Ahmed* test.[3] It moved for summary disposition, in part, because plaintiff admitted she did not have a valid driver's license at the time of the accident. In support of this assertion, defendant

[3] On appeal, the parties agree the first prong—whether plaintiff operated the vehicle willingly—is not at issue.

attached plaintiff's deposition testimony in which she admitted she did not have a valid license. This information satisfied the second prong because operating a vehicle without a valid license is unlawful for purposes of MCL 500.3113(a).

This evidence also satisfied the third prong, whether plaintiff knew or should have known the motor vehicle was taken unlawfully. Plaintiff testified she knew her license was suspended when she took the vehicle and therefore she should have understood that driving the vehicle without a valid license was unlawful. See, e.g., *Ahmed*, 337 Mich App at 26-27 (drivers should know their driving status). Plaintiff also admitted during her deposition that the vehicle's owner did not give her permission to drive the car. As noted above, the "should have known" standard is only satisfied if the plaintiff took any steps to determine whether "the owner authorized the taking." *Id.* at 27. By plaintiff's own admission, she failed to take any steps to ensure the taking was authorized. Accordingly, defendant satisfied its preliminary burden to demonstrate that there existed no genuine question of fact for a jury to resolve.

The burden then shifted to plaintiff to demonstrate a genuine question of material fact to be resolved at trial. Although plaintiff presented some documentary evidence in support of her response to the motion for summary disposition, none of this evidence showed she had a valid driver's license at the time of the accident. Moreover, she offered no evidence showing the vehicle's owner authorized her use of the vehicle. She, therefore, failed to meet her burden as the nonmoving party. *Quinto*, 451 Mich at 362-363. Summary disposition should have been granted on this basis, and the trial court erred when it concluded otherwise.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Anica Letica
/s/ Colleen A. O'Brien

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EXHIBIT 2

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CARLONDA NAISHE SWOOPE,

Plaintiff,

vs. Case No. 21-011402-NF

Hon. Dana Margaret Hathaway

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant.

/

DEPOSITION OF: CARLONDA NAISHE SWOOPE
DATE: Thursday, March 31, 2022
TIME: 1:05 P.M.
LOCATION: Hall Makled, P.C.
23756 Michigan Avenue
Dearborn, Michigan
REPORTER: Lory Helland, CER-#3778
Certified Reporter

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WITNESS PAGE

CARLONDA NAISHE SWOOPE

Examination by Ms. Duenas 7

E X H I B I T S

NUMBER IDENTIFICATION PAGE

None offered.

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Dearborn, Michigan
Thursday, March 31, 2022
1:05 P.M.

* * *

COURT REPORTER: Before I swear in the deponent, I would like to confirm that all parties agree to allow me to administer the oath to the deponent over the phone. If there is an objection, please state it now.

(No objections.)

CARLONDA NAISHE SWOOPE

having been first duly sworn, was examined and testified as follows:

MS. DUENAS: Let the record reflect that this is the deposition of -- how do you pronounce your first name? Is it Carlonda Swoope?

THE WITNESS: Yes, Carlonda Swoope.

MS. DUENAS: -- of Carlonda Swoope, taken pursuant to Notice and to be used for all purposes under the Michigan Court Rules and the Michigan Rules of Evidence.

Ms. Swoope, my name is Arminia Duenas. I represent Citizens Insurance company, which is an insurance company that's been assigned by the State of Michigan to handle the No-Fault PIP benefits related

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to this October 27th, 2020, motor vehicle accident.
Have you ever taken a deposition before?
THE WITNESS: Yes.
MS. DUENAS: When was that?
THE WITNESS: When was that?
MR. MAKLED: She had a dep, Arminia, in her bodily injury case.
MS. DUENAS: Okay, for third party.
Is that the only deposition you've ever had, Ms. Swoope?
THE WITNESS: Yes.
MS. DUENAS: So I'm just going to put a couple of the guidelines on so it's just fresh in our minds.
If your answer is "yes", try to say "yes". If it's "no", please say "no".
If you say "uh huh" or "uh uh", one of us will stop you and try to make sure that it's known for the record if that was a "yes" or a "no" because the court reporter is taking down everything that you're saying, and she cannot make a determination as to what your meaning is. So we want to make sure when you answer a question "yes" or "no", and obviously, not all of your answers are going to be "yes" or "no", but when they are, we want there to be a clear "yes" or a

clear "no".
Everything has to be verbal. So if you gesture in any way we have to verbalize it for the record, because -- although we're on Zoom, it's not being recorded in a, you know, a CD to be taken to court if this had to go to trial, you know, to that effect.
If you don't understand what I'm asking you, just let me know. I'll rephrase it. I'm really -- this is just a discovery dep. I'm just trying to get some information as to your prior medical history and you're limitations and all of that.
So that's pretty much it -- oh, one last thing, with the State of Michigan, there was a completion of an application, and with that completion of an application for the State of Michigan, the only thing that they require is that there be only truthful information, truthful answers.
I know that you're under oath, but it's very important to know that if there -- if it's determined that there was a material misrepresentation in your statement and/or a false statement, a motion can be filed. So I like to give people notice of that because it's pretty significant when it comes to

assigned claims.
Okay?
THE WITNESS: Okay.
EXAMINATION
BY MS. DUENAS:
Q. Please state your full name for the record and spell your last name, please?
A. Carlonda Naishe Swoope, S-W-O-O-P-E.
Q. Have you been known by any other names?
A. No.
Q. So never married; is that correct?
A. No.
Q. What's your date of birth?
A. [redacted]
Q. How old are you?
A. 33.
Q. And what -- are you a U.S. citizen?
A. Yes.
Q. Were you born in the United States?
A. Yes.
Q. What state were you born in?
A. Michigan.
Q. Have you lived in Michigan your entire life?
A. Yes.
Q. Do you have any restrictions related to driving?

A. Yes.
Q. Are they restrictions given by a doctor?
A. No.
Q. Is it because you don't have a driver's license?
A. Yes.
Q. Have you ever owned a driver's license?
A. Yes.
Q. And what happened to your driver's license?
A. It got revoked because I had tickets to pay and I didn't pay them.
Q. And at that time of this October 27th, 2020, accident, were you driving on a revoked license?
A. Yes. It was suspended, I'm sorry.
Q. I'm sorry, suspended?
A. Yeah.
Q. How long has your driver's license been suspended?
A. I'm not sure.
Q. Has it been years?
A. Yes.
Q. And when you were -- you were driving the vehicle at the time of this accident; is that correct?
A. Yes.
Q. And you knew at the time of the accident that you did not have a valid driver's license; is that correct?
A. Yes.

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Q. And you asked to borrow someone's vehicle; is that correct?
A. I didn't ask, I just got the car because I had a family emergency. My mom needed to go to the hospital. So I was trying to hurry up to get to her.
Q. So how did you get the keys to the vehicle?
A. I just took them.
Q. So are you living with someone that has a vehicle?
A. No.
Q. So where were you when you took the keys to this vehicle?
A. I was at my friend's house in Westland.
Q. What type of vehicle was it?
A. A Saturn Vue.
Q. And whose vehicle -- who's the owner of the vehicle?
A. Kandice Valentine.
Q. You said Kandice Valentine is your friend; is that correct?
A. Yes.
Q. So you're at Kandice's house at the time of the accident -- on the date of accident. What were you doing at Kandice's house in Westland?
A. We were -- I just spent the night over her house and I left that morning to go take care of my mother.

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Q. How did you get over to the house?
A. She picked me up.
Q. And then tell me how -- so you're there the day before, which would be October 26th; is that correct?
A. Yes.
Q. And you spend the night, and at what point and what time do you take the vehicle?
A. I can't recall exactly what time, but I know it was during the morning, late morning. My mother called me and told me her chest was hurting, and the ambulance wasn't coming fast enough. So I tried to get there as fast as possible.
Q. Okay. Sorry, I thought I was going to --
So have you ever used this vehicle that you -- that's involved in this accident before this date?
A. No.
Q. Never at any point?
A. No.
Q. And you didn't ask for permission to use the vehicle?
A. No.
Q. So is it fair to say you had no permission to operate this vehicle at the time that you were operating it?
A. Correct.
Q. So prior to beginning this deposition, we talked about

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what type of PIP benefits are being alleged in this accident, and you're not making a wage loss claim; is that correct?
A. Correct.
Q. And you're not making a replacement care claim, which is like someone coming in and cleaning your house or doing household chores; is that correct?
A. Correct.
Q. And you're not making an attendant care claim; is that correct?
A. What's that?
Q. Well, that's like nursing, helping you in and out of the shower, getting dressed.
A. That's correct.
Q. This is purely for medical billing, correct?
A. Yes.
Q. Now, I don't see it on you, that's why I'm asking. I'm also on Zoom. Are you wearing a brace to any part of your body?
A. Not right now, no.
Q. Was there a doctor that prescribed a brace after this accident?
A. Yes.
Q. And what doctor prescribed the brace?
A. Dr. Shukr.

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Q. Where does Dr. Shukr work out of?
A. Pain Management, Michigan Pain. It's on Woodward.
Q. Let me just -- I'm going to pull up your -- the witness list that I have just so that -- is it Dearborn Pain Specialists?
A. Excuse me?
Q. Or is it -- let's see. This will help me. I'm going to move right to the -- Dr. Shukr. Oh, Shukr, S-H-U-K-R?
A. Yes.
Q. That's Dearborn Pain Specialists. So Dr. Mustafa Mohamad Shukr?
A. Yes.
Q. From Dearborn Pain Specialists, prescribed what type of brace?
A. A back brace, but his -- he has two locations. I go to the one on Woodward.
Q. Have you ever gone to the one in Dearborn?
A. No.
Q. Are you still getting treatment from Dearborn Pain Specialists?
A. Yes.
Q. When's the last time you received treatment?
A. Last month. I had an appointment today, but I had to reschedule because of the deposition.

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Q. And what type of treatment are you getting from Dearborn Pain Specialists?
A. I get back shots.
Q. How often do you get injections to your back?
A. Once a month, but I haven't been getting them because I was supposed to get nerve surgery, but I've been scared to get it. So I've just been prolonging.
Q. When you say "nerve surgery", do you mean that they're going in to burn a nerve?
A. Yes.
Q. And that's to your back?
A. Yes. Back and neck.
Q. Back and neck?
A. Yes.
Q. Now, do you know if anybody at Dearborn Pain Specialists actually ordered your prior medical records and reviewed them before making any type of recommendations with regard to surgery?
A. I believe so.
Q. Did you have any neck or back pain before this accident?
A. No.
Q. And so you're saying that Dr. Shukr prescribed a back brace, but you're not wearing that today, correct?
A. Correct.

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Q. Did he prescribe any other braces to any other parts of your body outside your back?
A. No.
Q. Now, I don't see a cane in the room. Have you been prescribed a cane for any purpose, any reason after this accident?
A. No.
Q. Are you a smoker?
A. No.
Q. Are you a medical marijuana holder, a cardholder?
A. No.
Q. Do you smoke marijuana?
A. No.
Q. What's your current address?
A. 14109 Riverview Street. I just moved there last April. At the accident, it was 4722 Trumbull Street.
Q. So you say last April, April 2021, correct?
A. Yes.
Q. And are you living with anyone?
A. Just my two children.
Q. And your two children, is one named Lauren; is that correct?
A. Yes.
Q. How old is Lauren?
A. 16.

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Q. And is it Drayton?
A. Yes.
Q. How old is Drayton?
A. 12.
Q. Now, I have that you also live with your mother; is that correct, or no?
A. I did.
Q. So did you live with your mother when you lived on Trumbull?
A. Yes.
Q. So from the time of this accident – how long did you live at 4722 Trumbull in Detroit, Michigan?
A. So I got my house in April, but I didn't move out until maybe June, July, maybe.
Q. But at the time of this accident of October 27th, 2020, you were living at 4722 Trumbull Street, Detroit, Michigan, correct?
A. Yes.
Q. And you were living with your mother and your son and your daughter, correct?
A. Yes.
Q. Anybody else you were living with at that time?
A. No.
Q. Okay.
And how long had you lived on Trumbull

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Street in that address, or at that address?
A. Maybe three years.
Q. Is that a house or an apartment?
A. It's a townhome.
Q. Townhome?
Is that townhome subsidized by Section 8 or the State of Michigan in any way?
A. Yes.
Q. And is that in your mother's name?
A. Yes.
Q. And when you moved out in April but fully moved out in June or July, the house that you're in now at the 14109 Riverview Street, is that also a Section 8 housing?
A. No.
Q. Are you subsidized in any way from the State of Michigan for that particular address?
A. No.
Q. And is that a house or a townhouse?
A. It's a townhouse, yes.
Q. At the time of the October 27th, 2020, accident, were you working?
A. No.
Q. And you're not currently working, correct?
A. Yes.

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Q. And are you receiving Social Security Disability?
A. No.
Q. How are you paying your bills?
A. I know said I -- I said I worked, yes. I worked.
Q. Oh, you do work? You're currently working?
A. Yes.
Q. I'm sorry. I missed that completely. Where are you working? I'm sorry. Where are you working?
A. I work at Amazon.
Q. How long have you worked at Amazon?
A. Since November.
Q. Of last year or the year before?
A. Of last year.
Q. And what do you do there?
A. Just move the little, small package. They have me -- what is it called when you get like --
Q. Restricted?
A. Yeah, I have restrictions, yes.
Q. What type of restrictions do you have?
A. They give me four extra breaks, and I don't lift anything over 20 pounds. Just small packages that I move and scan. I scan it on a robot.
Q. So they hired you after this accident knowing that you had these restrictions?
A. Yes.

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Q. Were there any letters or anything, to your knowledge, from your doctors that were generated and created for Amazon to say that you could work there?
A. Yes.
Q. What doctor did that?
A. Shukr.
Q. He wrote a letter to Amazon that said that you could work?
A. Yes.
Q. But within those parameters and restrictions, correct?
A. Yes.
Q. And do you work full time?
A. Yes.
Q. And what is full time at Amazon?
A. 10 hours.
Q. Per day?
A. Yes.
Q. That's full time. How many days do you work?
A. Four -- four days.
Q. That's good. Four days at 10 hours per day?
A. It's long.
Q. Yeah, but then you get the three days off, which is nice.
So you moved out of your mom's house. Your mom did not move with you, correct?

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A. Correct.
Q. And you're only living with your children, there's nobody else in that household, correct?
A. Correct.
Q. And at the time of this accident, which is October 27th, 2020, did your mom own a vehicle?
A. No.
Q. Did you own a vehicle at that time?
A. No.
Q. So there was nobody in the household that had a vehicle or used a vehicle on a regular basis; is that fair to say?
A. Correct.
Q. And you've never been married. So you don't have a spouse that has a policy, correct?
A. Correct.
Q. And I know these are going to sound odd, these questions, like, it's kind of obvious, but I need to ask them so that we have it on the record and that there's no question about it.
So no relative with a motor vehicle?
A. No.
Q. And then you did not have -- to your knowledge, you weren't listed on a personal automobile policy, correct, at the time of the accident?

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A. Correct.
Q. Did you have health insurance at the time of the October 27th, 2020, accident?
A. Yes.
Q. And what type of health insurance did you have?
A. Molina.
Q. Is that through the State of Michigan?
A. Yes.
Q. Now, at the time of the accident, were you working at all?
A. No.
Q. Prior to this accident, when was the last time you had worked?
A. I can't remember.
Q. Was it like three -- was it more than three years?
A. No. It was shorter than that. It was probably maybe a year.
Q. Why did you stop working?
A. It just wasn't for me anymore.
Q. The job wasn't?
A. Yes.
Q. What type of work did you do?
A. Waitress/dancer.
Q. Where was that at?
A. BT's, Dearborn.

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Q. What is that?
A. BT's, Dearborn and Tycoon, they're owned by the same people.
Q. At the time of the October 27th, 2020, accident, did you have a primary care physician, a doctor that you would go to if you needed to get a physical or if you had a cold?
A. No.
Q. And you said that you don't have a driver's license, but did you have a state identification card at the time of the accident?
A. Yes.
Q. Do you know if it was the same number as your prior driver's license number because sometimes they just transfer it over?
A. I believe it was the same thing.
Q. We're going to go off the record just to confirm your social security number. So we're off the record currently. What is your social security number?
(Off the record 1:27 P.M.)
(Back on the record 1:27 P.M.)
CONTINUING BY MS. DUENAS:
Q. We'll go back on the record. The last four digits of the social security number is [redacted]. Have you ever used a different social security number?

A. No.
Q. We talked about you have a son and a daughter. Are those your only children?
A. Yes.
Q. Are you left-handed or right-handed?
A. Right.
Q. Do you have any pre-existing medical conditions for which you treat on a regular basis?
A. Just asthma, But that's, you know, here or there. If I need a breathing treatment or something.
Q. I was going to ask, do you have -- are you hospitalized ever for breathing treatments?
A. No. Just when I was a kid.
Q. And so have you ever been diagnosed with high cholesterol?
A. No.
Q. How about high blood pressure?
A. No.
Q. How about diabetes?
A. No.
Q. Have you ever told a doctor prior to this October 27th, 2020, accident that you had anxiety or depression?
A. No.
Q. At the time of the October 27th, 2020, accident, were

you being prescribed any type of medication for any reason?
A. No.
Q. As you sit here today, are you being prescribed any type of medication?
A. Yes.
Q. And what type of medication or tions are you being prescribed?
A. Lidocaine, Norco 7.5 and naproxen and tizanidine or something like that. I can't say the name, but it's T-I-Z-A-N-D-I-N-E (sic), I believe.
Q. And what's that for?
A. For -- for the pain to -- the inflammation.
Q. And then you said Norco; is that correct?
A. Yes.
Q. And that's for pain as well?
A. Yes.
Q. And then you gave another. Is it lidocaine? Is that a patch or a cream?
A. A patch.
Q. And then what was the other last one?
A. Naproxen.
Q. And what is that for, to your knowledge?
A. Inflammation also, I believe.
Q. How often do you take the naproxen?

A. Maybe every other day, depending on if I'm in pain or not.
Q. So is the naproxen as needed?
A. Yes.
Q. And then the -- the other medication for -- that you're taking for -- it's the T-I-Z-A-N-D-I-N-E. What is -- how often are you taking that, is that as needed as well?
A. Yes.
Q. And then the Norco, do you take that pain medication every day?
A. Not every day. Just when I need it. Like, before I start my day, if I feel bad getting out of bed or something like that.
Q. So are all the medications that you're being prescribed after the accident taken as needed on a daily basis when you determine that you need it or if you don't need it?
A. Yes.
Q. And then is that the same with the patch?
A. Yes.
Q. And who's prescribing it?
A. Shukr.
Q. Is that the only doctor that you're currently receiving treatment from?

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A. Yes.
Q. How long has that been the only doctor you're receiving treatment from?
A. For it to be the only doctor, it's been since January.
Q. Of this year or last year?
A. Of this year. I was seeing the physical therapy doctor also for a year.
Q. Is that for Care (sic) Physical Therapy?
A. Yes.
Q. And how long were you getting treatment from – it's specifically identified as Care Physical Therapy, correct?
A. Yes. Up until January.
Q. Was it right after the accident in October? Was it November to January or how long were you getting treatment there?
A. Yeah. It was like right after the accident, it was November to – this year in January.
Q. How often were you going?
A. Three times a week.
Q. So to be clear, you're going three times a week from November 2020 to January 2022?
A. Yes.
Q. Did you ever get a bill?
A. No.

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Q. Did you think that the bills were being paid?
A. Yes.
Q. Is that because you never received a bill? Did you ever have any conversations with anybody in the office regarding any billing?
A. No. I didn't know anything.
Q. Three times a week. So was that Monday, Wednesday, Friday or when would you go?
A. Monday, Wednesday, Thursday. If I missed a day, then I'll make it up on a Friday or something like that.
Q. And how would you get there?
A. Their transportation.
Q. Now, the transportation, did you think that was part of the bill for the Care Physical Therapy or did you think that was a separate bill?
A. I thought it was part of the bill.
Q. Was there ever a conversation that you had with anybody regarding payment for the transportation company?
A. No.
Q. And did you schedule the transportation or did Care Physical Therapy schedule it?
A. Care Physical Therapy scheduled it.
Q. So three times a week, and it never went down from three times a week to two times a week, it was just always three times?
A. Yes.
Q. And to what parts of your body did you get the physical therapy?
A. My back and my neck.
Q. And when the transportation company would pick you up, did they have other people in the vehicle as well going to Care Physical Therapy?
A. Sometimes.
Q. Did you ever have to, when you'd get in the car, be driven to someone else's house before – to pick up someone before you would go to physical therapy?
A. Yes.
Q. Did you have to sign any paperwork related to the transportation?
A. Not that I can recall.
Q. Did you sign any paperwork as far as Care Physical Therapy that was called – and I don't, you know, you may remember, you may not remember – sometimes they give you a form called an assignment. Do you know if you signed any paperwork with regard to Care Physical Therapy that was identified or labeled as an assignment?
A. I'm not sure.
Q. Okay. That makes sense to me. They're fairly –

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they're getting – they're more common now, but it's fairly new to have that go on.
So – so just getting back to your prior medical history, have to ask for – all these questions specifically. Prior to this accident, had you ever received physical therapy?
A. No.
Q. Prior to this accident, had you ever told the doctor that you had back pain for any reason?
A. No.
Q. Prior to this October 27th, 2020, accident, did you ever tell anybody you had neck pain?
A. No.
Q. How about shoulder pain, be it left or right, before this accident?
A. No.
Q. How about pain in your hip, be it left or right side?
A. No.
Q. Had you ever gone to a chiropractor for any reason before this October 27th, 2020, accident?
A. No.
Q. Did you get – at any point in your life ever have an image, before this accident, be it x-ray, MRI, or CT Scan, an image of any kind before this accident?
A. I've had an x-ray before.

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Q. To what part of your body, if you recall?
A. My chest to check and see if I had pneumonia, I believe.
Q. Did you get pneumonia a lot due to your asthma when you were younger or was it just one time?
A. One time.
Q. And that was just to check. Were you diagnosed with pneumonia?
A. Yes. I had a little bit of pneumonia in my lungs.
Q. Had you ever been hospitalized for any reason outside of childbirth before this accident?
A. No.
Q. Had you ever been diagnosed with a broken bone before this accident?
A. No.
Q. Had you ever received any type of pain injections before this accident?
A. No.
Q. And had any doctor at any point identified you as disabled before the accident for any reason?
A. No.
Q. Did you have any psychological conditions for which you received treatment, be it depression, anxiety, bipolar, schizophrenia, anything like that before the accident?

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A. No.
Q. Have you ever had any type of injury resulting from domestic violence?
A. No.
Q. Have you ever been shot by a gun?
A. No.
Q. Have you ever been stabbed?
A. No.
Q. Had you ever had any issues with your foot, either left or right, before this accident?
A. No.
Q. It sounds like before this accident you didn't get a lot of -- you didn't have a lot of medical treatment; is that fair to say?
MR. MAKLED: Object to form and foundation.
MS. DUENAS: Sure.
CONTINUING BY MS. DUENAS:
Q. It doesn't look like you were treating – or you had any type of injuries before this accident that you treated for; is that correct?
A. Excuse me. Say that again, I'm sorry.
Q. Sure.
Because I can't ask you every question under the sun. I'm trying to get an understanding of your medical history. It looks like it's fairly, you

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know, unremarkable, but I want to know, have you ever received treatment for any type of injury or medical condition before this accident?
A. No.
Q. How about thyroid? Did you ever have an issue with your thyroid?
A. No.
Q. Because I think I saw – and I just want to – I thought I saw an enlarged thyroid. Have you ever gotten treatment for an enlarged thyroid?
A. When I went for my MRI after the accident, they told me that I had one. So yeah.
Q. But that wasn't something that you had issues with or you were getting treatment with before; is that correct?
A. No, correct.
Q. Have you ever been in the military?
A. No.
Q. Have you ever applied for Social Security Disability?
A. No.
Q. Have you ever been convicted of a crime of dishonesty?
A. No.
Q. How about untruthfulness?
A. No.
Q. How about theft?

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A. No.
Q. Are you a felon?
A. No.
Q. Have you ever had a slip and/or fall that resulted in injury?
A. No.
Q. Have you ever been injured at work and made a workers' compensation claim?
A. No.
Q. Have you been involved in any other motor vehicle accidents outside of the one for which you're here today?
A. No.
Q. Did you graduate from high school?
A. I have my GED.
Q. And did you take any college courses?
A. No, but I took some other classes. Training.
Q. Do you have a license to do any type of work?
A. No.
Q. What's the title of -- your job title at Amazon?
A. I guess it would be sorter.
Q. And you're not required to drive a truck or deliver anything, are you, for Amazon?
A. No.
Q. Do you file taxes yearly?

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A. Yes.
Q. Do you recall how the motor vehicle happened for which we're here today?
A. Yes.
Q. And I keep saying it was October 27th, 2020; is that correct?
A. Yes.
Q. And did you have anybody in the vehicle with you at the time of the accident?
A. No.
Q. And what time of day was it?
A. Late morning.
Q. And we talked about this earlier. You were operating a Saturn, correct?
A. Yes.
Q. And that was the 2008 Saturn owned by Kandice Valentine. Kandice being spelled K-A-N-D-I-C-E, Valentine, correct?
A. Yes.
Q. How long has Kandice Valentine been a friend of yours?
A. Maybe about four years.
Q. And was it dark out or light out?
A. Light.
Q. How long had you been on the road before this accident occurred?

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A. Maybe about 15, 20 minutes.
Q. And where did the accident occur?
A. 75 and Trumbull.
Q. Just tell me what happened on this day. How did the accident occur?
A. I was in the right lane and the truck was in the left lane and then it just started turning and it ran into me. It started turning right and it ran into me. It kept going, but eventually, it stopped.
Q. So you're in the right lane, the truck is to your left?
A. Yes.
Q. So does the truck -- you said the truck driver turned into you, meaning turned into and struck the left side of the vehicle you were driving?
A. Yes.
Q. You said that you were driving to pick up your mother; is that correct?
A. Yes.
Q. To take her to the hospital?
A. Yes.
Q. And Ms. Valentine's house is noted to be on 1918 Eagle Court, Westland, Michigan. Is that where you were at?
A. Yes.
Q. And then from Westland, you were driving to Detroit on Trumbull to pick up your mother?

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A. Yes.
Q. Did you have your seat belt on?
A. Yes.
Q. When the accident occurred, was it one impact or multiple impacts to the vehicle?
A. It was one.
Q. After the truck driver strikes the left side of the car, what do you do?
A. Panic. I just sat there.
Q. Do you get out of the vehicle?
A. Yes, because the guy didn't want to give me his insurance. I just checked my car and everything.
Q. So you're physically able to get out of the vehicle. Did you walk over to the other person to try to get his information?
A. Yes.
Q. Did you call the police at all?
A. Yes.
Q. And did the police ever arrive to the scene?
A. Yes.
Q. And when they arrived, was the truck driver still there?
A. Yes.
Q. Did you ask for an ambulance to come to pick you up?

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A. No, I didn't.
Q. Did the police officer ask you if you needed an ambulance?
A. Yes.
Q. And you declined at that point?
A. Correct.
Q. Did you -- was the car that you were in, that Saturn, drivable after this accident?
A. No.
Q. Was it towed from the scene --
A. Yes.
Q. -- to your knowledge?
Do you know if your mom ever made it to the hospital on this day?
A. Well, that was why I didn't get an ambulance because I wanted to get to her and we went together in a Uber.
Q. So at the scene of the accident, did you call an Uber?
A. Yes.
Q. And the Uber picked you up and then you drove to your mom's house; is that correct?
A. Yes.
Q. And then picked up your mom and drove her to the hospital; is that correct?
A. Yes.
Q. What hospital?

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A. Harper.
Q. Now when you were driving your mom to the hospital, did you also get checked out at the hospital?
A. Yes.
Q. And were you treated and admitted or treated and released?
A. Treated and released.
Q. Now, I keep seeing something like you stopped and grabbed things for your children at Burger King on your way to your mother's house. Does that make any sense to you?
A. Yes.
Q. What happened there?
A. That's how I got on 75 and Trumbull. I was getting them food to give to my mom. They were at my mom's house.
Q. And then all of you were going to go to the hospital, you and your children and your mother, or no?
A. No, just me and my mother. My daughter was old enough to watch.
Q. And then -- so you pick her up. You both go to Harper Hospital. You're evaluated. Now were you bleeding from any part of your body after this accident?
A. No.
Q. Did you have any cuts at any part -- to any part of

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your body from this accident?
A. No.
Q. Did you lose consciousness at all?
A. No, not that I can remember.
Q. Are you being treated for a closed-head injury of any kind?
A. No.
Q. Any allegations of memory loss or confusion after this accident?
A. No.
Q. And was your car upon impact pushed into anything, meaning a sign, a curb, another vehicle, anything like that?
A. I don't think so.
Q. So when the police come, do you give a statement to the police officer?
A. Yes.
Q. And you're walking and talking after the accident; is that correct?
A. I was in my vehicle.
Q. So but you never got out of your vehicle?
A. Yes, I did.
Q. So to be clear, did you give a statement to the police officer, the police officer walk up to your window and then take a statement through the car window?

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A. Yes.
Q. And then after that, the police was done with taking down statements. You get an Uber that comes to drive you and your mom to Harper Hospital?
A. Yes.
Q. And do you know if this car was totaled or repaired?
A. She never repaired it.
Q. Did you take any photos of the vehicle?
A. I have a video.
Q. And when was the video taken?
A. Right afterwards.
Q. The same day?
A. Yes.
Q. And did you take that video?
A. Yes.
Q. And does your -- did you give it to your attorney?
THE WITNESS: Do you have it?
(Witness conferred with her attorney)
THE WITNESS: Yes.
CONTINUING BY MS. DUENAS:
Q. Now, are you saying that you received injuries from this accident?
A. Yes.
Q. What type of injuries did you receive from this accident?

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A. Neck and back pain.
Q. Okay.
A. I can't stand for longs amount of time. I have a aching pain constantly. It comes and goes.
Q. So I have neck and back and aching pain. Anything else?
A. No.
Q. Were you contacted by any doctor or facility trying to schedule treatment, appointments after this accident?
A. No.
Q. Were you solicited by anybody after this motor vehicle accident?
A. No.
Q. So no one called you up and said, "Hey, we've made an appointment for you to go somewhere for treatment"; is that correct?
A. Correct.
Q. And you said you're -- so when you go to Harper Hospital, do you tell them that you have neck and back pain?
A. Yes.
Q. Any other pain that you indicated, if you can recall?
A. No.
Q. Do you know if there were any images taken, x-rays, CT Scans or MRIs?

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A. They just gave me a x-ray.
Q. Of your back or your neck, which one?
A. Of my back.
Q. And then you were treated and released, correct?
A. Yes.
Q. Was your mom also treated and released?
A. Yes.
Q. Now were you given any type of prescriptions when you left the emergency room?
A. I think they gave me Motrin.
Q. Who's the next – where do you go next for treatment?
A. I caught – We Care Physical Therapy.
Q. What is it?
A. We –
Q. Oh, We Care Physical Therapy?
A. Uh huh.
Q. How did you find out about We Care Physical Therapy?
A. I looked it up, just was looking up.
Q. What did you type in to look up physical therapy for We Care?
A. Good physical therapist.
Q. You typed in "good physical therapist", and We Care Physical Therapy came up?
A. Yeah.
Q. I'm going to try that.

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A. Yeah, maybe because it was of the area I was in, I was close to Southfield and it was right there.
Q. There are – pick a stone up and throw it, you'll hit a physical therapist in Southfield.
So no one recommended We Care, it's something you Googled and found for yourself?
A. Yes.
Q. Did you get any type of relief from the treatment that was provided at We Care Physical Therapy?
A. Yes.
Q. What type of relief did you receive from We Care?
A. My back became a little bit stronger, even though I still get pain, but it became more manageable to deal with.
Q. Why did you stop treatment with them? Because I see – you know, in January of 2020? 2022? Why did you stop treatment?
A. Because I had to work.
Q. Okay.
Do you know if there are any bills outstanding due but owed to We Care Physical Therapy?
A. Yes.
Q. And do you know how much is outstanding due and owed?
A. No, I don't.
Q. Did you ever get a bill from We Care Physical Therapy?

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A. No.
Q. How do you know there's a bill outstanding due and owed?
MR. MAKLED: I have a bill, Arminia, that I'll be sending to you.
MS. DUENAS: Okay.
CONTINUING BY MS. DUENAS:
Q. So is that something that you found out after you – or before you filed the lawsuit?
A. Yes.
Q. Now, is your attorney also the attorney for your third party?
A. Yes.
Q. So you go to We Care Physical Therapy, you went there for over a year, correct? Three times a week for a year?
A. Yes.
Q. The first time you find out about owing anything is when you filed your lawsuit and you start to look into it, correct? Because there's no bills being sent to your house?
A. Correct.
Q. What do you think of that? What's your – and I'm just asking your opinion. What's your opinion on a doctor that lets you treat somewhere for over a year

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and then just lets the bill escalate and escalate? Do you have an opinion about that?
A. No, no.
Q. No? Is that normal to you, because I can't go to my doctor without paying a $25 co-pay, but, you know, is that normal to you?
A. No.
Q. That's why you didn't know that there was a bill that was piling up, correct?
A. Correct.
Q. Okay.
And when you found out that there was a bill that was due and owed by We Care Physical Therapy, did that make you upset?
A. Yeah, yes.
Q. Because would you have liked to have known that there was an issue with payment at some point?
A. Yes.
Q. Do you know if We Care Physical Therapy ever sent any of your bills to your personal health insurance for consideration of payment? Do you know that, if that happened?
A. No.
Q. So do you know if – and you may not know, but do you know if there is a lien of any kind? And what I mean

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is, did any of your doctors or any facilities for which they've provided treatment on a regular basis send any of your bills to your Molina or Medicaid health insurance? Do you know if that happened?
A. No.
Q. So I see We Care Physical Therapy and then the Dearborn Pain Specialists. How did you get to Dearborn Pain Specialists?
A. Same -- their transportation. I would go there after I left therapy.
Q. No, I mean how did you start going to Dearborn Pain Specialists? How did you find out about them?
A. I was recommended by We Care.
Q. Do you know if We Care has any type of ownership interest in Dearborn Pain Specialists?
A. No, I don't believe so.
Q. Did they schedule appointments with Dearborn Pain Specialists on your behalf?
A. No. I did.
Q. And so did you also schedule your own appointments at We Care Physical Therapy?
A. Yes.
Q. So this is what it sounds like. The same time that you're going to We Care Physical Therapy -- because you would only go to Dearborn Pain Specialists

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once a month, right?
A. Yes.
Q. You would make sure that the time that you were going to physical therapy is also one of the times that you would go to the Dearborn Pain Specialists, correct?
A. Yes.
Q. And again, I think we talked about this, but I just want to make it clear for the record if I didn't. Do you know if there's a bill that's outstanding due and owed by Dearborn Pain Specialists?
A. Yes.
Q. And you know that there is a bill for Dearborn Pain Specialists? Do you know how much it is?
A. No.
Q. Again, that's -- they never sent a bill to you, did they?
A. No.
Q. So as far as you know, it could be $100, it could be 60,000. You wouldn't know that because you've never actually received a bill before this litigation, right?
A. Right.
Q. And again, that doesn't seem odd to you? Now, knowing that? Is that weird to you, knowing now that they've never sent a bill and some of these bills weren't

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paid? Does that seem odd to you?
A. Yes.
Q. All right.
So I also see that -- so is Harper Hospital, was it only for -- you only went once for the emergency, the day of the accident?
A. Yes.
Q. And Dearborn Pain Specialists, you are still going to Dr. Shukr once a month, correct?
A. Yes.
Q. And he's providing prescriptions for medications. Does he do that every month or does he do that every three months?
A. Every month.
Q. So you have to go to Dearborn Pain Specialists in order to get your prescriptions refilled, correct?
A. Yes.
Q. And We Care no longer -- or were no longer getting physical therapy there. I see that you went to Focus Imaging at some point; is that correct?
A. Yes.
Q. For MRIs?
A. Yes.
Q. Who prescribed that?
A. Pain Management.

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Q. Is that Dr. Shukr?
A. Yes.
Q. It seemed like to me -- and just correct me if I'm wrong -- you go to Focused (sic) Imaging and you get a lot of films at one time?
A. Yes.
Q. So let's talk about what type of MRIs were -- did you get, and were they all on one day?
A. Yes.
Q. Go ahead.
A. I just know that they scanned my upper body and my back, I believe. I'm not sure exactly what it's called.
Q. So I see the -- an MRI of your neck?
A. Yes.
Q. And was it -- how long were you at -- it looks like it was Focused Imaging. So were you picked up and taken to Focused Imaging as well?
A. Yes.
Q. Again, did anybody talk to you about having to pay for that transportation?
A. No.
Q. And did you sign anything with regard to the transportation?
A. I can't recall.

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Q. And did you order the transportation or did Focus Image (sic) order it for you when you made your appointment?
A. The Pain Management ordered it, I believe.
Q. So that would be Dearborn Pain Specialists?
A. Yes.
Q. Again, do you know if they have any type of ownership interest in Focused Imaging?
A. No.
Q. No, you do not know?
A. I don't know.
Q. When Dr. Shukr ordered these MRIs, did he say, "I'm ordering MRIs, you can go anywhere you want", or did he order the MRIs and said that you have an appointment to go to Focused Imaging or that we will schedule the MRIs at Focused Imaging?
A. I can't recall.
Q. So I see that it's an MRI of the neck, the MRI of the lower and upper back, the thoracic and lumbar spine; is that correct?
A. Yes.
Q. And then is that it? Are those the only MRIs that were taken on that day?
A. Yes.
Q. Were there MRIs taken to any other part of your body

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at any other time after this accident?
A. No.
Q. Do you know if any of those MRIs indicated that you had a disc bulge or herniation? Did you talk to your doctors about it?
A. Yes. I can't remember exactly what they said, but I know they had said I had tears in my neck and in my back.
Q. Tears in your neck and your back?
A. Yes.
Q. We got you at the ER. We have – we talked about physical therapy. Have you gone to any other locations for physical therapy outside of We Care Physical Therapy?
A. No.
Q. Any other pain management facilities outside of Dearborn Pain Specialists?
A. No.
Q. We got the focal imaging because we talked about the three MRIs, and those were the only MRIs that were taken after the emergency room, correct?
A. Correct.
Q. We talked about the various transportation companies and -- now, I see that you're doing – are you doing urine tests every time you go to Dearborn Pain

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Specialists or do you do it every other – when does that happen?
A. Every time.
Q. Every time, every month?
A. Yes.
Q. Have you ever indicated to Dr. Shukr or anybody at Dearborn Pain Specialists that you had a drug problem at any time?
A. No.
Q. So I'm not quite understanding. Do you know why you have to take a drug screen every time you go there? Has that ever been explained?
A. No.
Q. Because it seems to me that you're being prescribed medication, but you're taking them as needed, correct?
A. Yes.
Q. So they're not always going to be in your system. Have they ever talked to you about a time when they've done a drug screen and they've noticed that you're – the medications that have been prescribed are not in your system? Have you ever had a conversation like that to any of the doctors?
A. No.
Q. Why do you think you have to take a drug screen every time you go?

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A. To see if it's in my system. I'm not sure.
Q. But it seems like if it's in your system, you're not – you don't know if it's being – and it looks like it's a couple of – so are you doing the urine, meaning at Dearborn Pain Specialists, after you see the doctor, whatever? Is it normal for you to give a urine sample –
A. Yeah, they –
Q. – to them?
A. – as soon as I walk in, they give me a cup.
Q. Are they doing any type of blood draws or anything?
A. No.
Q. Again, have you been – have you received any billing from any type of drug testing facility saying that there's bills that are due and owed?
A. No.
Q. So would you – would you think that the drug test or the urine test is going to be screened by the doctor at Dearborn Pain Specialists or do you think that that's going to be sent out somewhere; do you know?
A. I'm not sure.
Q. Now, we talked about all of the facilities and doctors that I have on my witness list. Are there any other doctors or facilities that you're getting treatment

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with or you receive treatment at that we haven't discussed?
A. No.
Q. And you know that at some point you were sent to a doctor on behalf of the insurance company; is that correct?
A. Yes, yes, yes.
Q. And you appeared for that, correct?
A. Yes.
Q. Now, do you know if the insurance company said based on this doctor's evaluation of you that the treatment was no longer reasonable? Do you remember getting a letter like that?
A. Yes.
Q. And you continued to treat after?
A. Yes.
Q. And -- and you knew that at that point after treating, that the insurance company was not going to consider payment after they denied your bills due to this report, correct?
A. Yes.
Q. Did you have any conversations with any of your doctors regarding that report?
A. No.
Q. All right.

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And do you know -- and you said that you don't need, you can take care of cleaning your house yourself, correct?
A. Yes.
Q. And you can get dressed by yourself and take your own shower?
A. Yes.
Q. Okay.
MS. DUENAS: That's all I have.
MR. MAKLED: All right. Thanks, Arminia.
MS. DUENAS: Thank you very much. Thank you. I will take a copy and a mini.
COURT REPORTER: Electronic?
MS. DUENAS: Yes.
COURT REPORTER: Dan, would you like to order a copy?
MR. MAKLED: I'll take the same.
(Deposition concluded at 2:11 P.M.)

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STATE OF MICHIGAN)
COUNTY OF OAKLAND)

Certificate of Notary Public

I certify that this transcript is a complete, true, and correct record of the testimony of the witness held in this case.

I also certify that prior to taking this deposition, the witness was duly sworn or affirmed to tell the truth.

I further certify that I am not a relative or an employee of or an attorney for a party; and that I am not financially interested, directly or indirectly, in the matter.

In witness whereof, I have hereunto set my hand this 8th day of April, 2022, at Rochester Hills, Michigan, County of Oakland, State of Michigan.

Lory A Helland

LORY A. HELLAND, CER-#3778
Notary Public, Oakland Connty, Michigan
My Commission Expires: 02/15/26

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EXHIBIT 3

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

Michigan Automobile Insurance Placement Facility
PO Box 532318 | Livonia, MI 48153-2318 | Phone: 734-464-8111 | Fax: 734 744-8552
www.michacp.org

Please note, "you" referenced throughout this application is defined as the injured person applying for benefits.
This application must be completed, signed and received no later than one (1) year from the date of accident. Incomplete or illegible applications will be returned without assignment to a servicing insurer. Please also submit a copy of the police report, EMS run form and/or any other documentation. All information will be reviewed, however, please note, additional information may be required. Please be advised, **applications made to the Michigan Automobile Insurance Placement Facility should be submitted as soon as possible to expedite the initial determination of an injured person's eligibility for benefits.**

Injured Person Information

1. Name of Injured Person: First Name: Carlondon Middle Name: Nigishe Last Name: Sweeper Suffix:
2. Date of Birth: [redacted]
3. List any and all names you have previously or currently go by:
4. Social Security #:
5. Injured Person's Current Address: Street: 4722 Trumbull St Apt #: City: Detroit State: Mich Zip Code: 48208
6. Injured Person's Address at the Time of the Accident: Street: 4722 Trumbull St Apt #: City: Detroit State: Mich Zip Code: 48208
7. Home Phone #:
8. Work Phone #:
9. Cell Phone #:
10. Email Address:

11.a. Marital Status: ☐ Married ☐ Separated ☐ Divorced ☑ Never Married ☐ Widowed
b. If "married" or "separated" please provide:
Spouse Name Spouse Address Check here if spouse address is same as injured person's ☐

12. Date of Accident: 10 / 27 / 2020
13. Injured Person's Driver's License # and State or State ID #: [redacted]

14. At the time of the accident, were you a Michigan resident? ☑ Yes ☐ No
a. If no, list state:

15. At the time of the accident, did you have any auto insurance? ☐ Yes ☑ No
a. If yes, list Name of Automobile Insurance Company & Policy Number

Accident Information

16. Accident Location: Street: Trumbull And I-75 City: Det State: Mich Zip Code: 48208

17. Provide a full description of how the accident occurred. Note: If you require additional space, please attach a separate sheet with details as part of this application.
Driver was in the ~~right~~ left lane I was in right At a red light. He then started to turn right running into me.

18. Was a police report made? ☑ Yes ☑ No
a. If yes, list name of police department, police report number and date made:

19. What was your position at the time of the accident? ☑ Driver ☐ Passenger ☐ Pedestrian ☐ Motorcyclist ☐ Other
a. If you answered "Passenger", where were you seated in the vehicle? ☐ Passenger Front Seat ☐ Driver Side Back Seat ☐ Middle Back Seat ☐ Passenger Back Seat ☐ Other

20. Was the vehicle a motorcycle? ☐ Yes ☑ No If you answered "Yes" please provide the following:
a. List the name of the owner of the motorcycle:
b. Was the motorcycle insured at the time of the accident? ☐ Yes ☐ No c. Motorcycle Vin #
d. If the motorcycle was insured and you were the owner of the motorcycle, please attach a copy of your proof of motorcycle insurance.

21. Were you contacted by a doctor's office or other person about this claim? ☐ Doctor ☐ Other ☒ None
a. If you answered "Doctor", please provide:
Name of Doctor Address Phone Number

b. If you answered "Other", please provide:
Name Address Phone Number

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

Injury Information

22. Are you claiming injuries from the accident? [X] Yes [ ] No a. If yes, describe your injuries:
Back and neck pain

23. Were you treated and/or transported by an ambulance/EMS or by any other way to a hospital after the accident? [ ] Yes [X] No
a. If yes, please provide:
EMS/Ambulance/Person Name Address Phone Number

24. Were you treated in a hospital after the accident? [X] Yes [ ] No a. If yes, what type of treatment did you receive? [ ] In-Patient [X] Out-Patient
b. If yes, please provide:
Hospital Name Address Phone Number
Harper Hospital [illegible] Detroit MI 48201 313-745-8040
Note: If you were treated at more than 1 hospital, attach a separate sheet with contact information as part of this application.

25. Are you currently or were you treated by a doctor after the accident? [X] Yes [ ] No
a. If yes, please provide:
Doctor Name Address Phone Number
Newborn Pain Spine 2081 13530 Michigan Ave Suite 245 313-789-8663
b. Name of person who referred you to this doctor: _____
Note: If you were treated at more than 1 doctor, attach a separate sheet with contact information as part of this application.

26. Before this accident happened, did you have any of the same injuries as you listed in question 22? [ ] Yes [X] No
a. If yes, describe which injuries and the doctors/pharmacies you treated with:
Injuries
Doctors/Pharmacy Name Address Phone Number How long were you treating?
Note: If you sought treatment from more than 1 doctor/pharmacy, attach a separate sheet with contact information as part of this application.

27. Please list any medical conditions you had and/or medications you were taking at any time before this accident. None
a. If so, please provide the name, address, phone number(s) and length of treatment:
Doctors/Pharmacy Name Address Phone Number How long were you treating?
Note: If you sought treatment from more than 1 doctor/pharmacy, attach a separate sheet with contact information as part of this application.

28. Do you have a primary care doctor? [ ] Yes [X] No a. If yes, please provide:
Doctors Name Address Phone Number

29. Have you received any medical bills from this accident? [ ] Yes [X] No

30. Do you expect to receive medical bills from this accident? [X] Yes [ ] No

31. Did you apply for social security disability benefits at any time before or after this accident? [ ] Yes [X] No
31b. If yes, please provide all of the dates of your application(s):

Medical Insurance

32. Do you have any kind of health insurance? [X] Yes [ ] No a. If yes, please provide:
Name of Health Insurance Co. Address Phone Number
Molina 888-898-7960
Policy or Plan Number: 0060736953 Member Number: _____ Group Number: _____

33. Are you a Medicare Beneficiary? [ ] Yes [X] No a. If yes, what is your Medicare #: _____

ACF-01 (01/2018)

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23

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

Employment Information

34. Were you employed at the time of the accident? ☐ Yes ☒ No a. If yes, provide the following information; If no, skip to question 42.

Name, Address and Phone Number of Your Employer	Job Title	Average weekly income at the time of the accident	List the dates of your employment: From	To
N/A		$ N/A		

Note: If you were employed by more than 1 employer, attach a separate sheet with contact information as part of this application.

35. Have you missed any work because of your injuries? ☐ Yes ☒ No a. If yes, what is the first date you missed work? _____

36. Do you have a note from a doctor ordering you to stay home from work? ☐ Yes ☐ No a. If yes, please provide:
Doctors Name Address Phone Number

37. Have you returned to work? ☐ Yes ☒ No
a. If yes, what date did you return to work? _____

38. If not yet returned, have you been given a return date? ☐ Yes ☐ No
a. If yes, return to work date: N/A

39. Were you on the job at the time of the accident? ☐ Yes ☒ No
a. If yes, are you eligible for any benefits under workers compensation? ☐ Yes ☐ No

40. How did you normally get to work before to this accident? I.E. Public Transportation, motor vehicle, etc.
family member / N/A

41. Are you eligible for any benefits under any other wage or salary continuation plan? ☐ Yes ☒ No

Entitlement Information-Note that question 42 refers to the involved motor vehicle you were in, getting into or out of, or were struck by as a pedestrian or if applicable, the motorcycle you were on at the time of the accident.

42. Was there damage to the vehicle you were occupying or struck by? ☑ Yes ☐ No ☐ Unknown If yes, describe the damage to the vehicle:
right side is totaled

a. Was the vehicle towed? ☐ Yes ☑ No If yes, please provide: Name of Towing Company Address Phone Number

b. Was the vehicle repaired? ☐ Yes ☑ No If yes, please provide: Name of Repair Company Address Phone Number

c. Do you know the current location of the involved vehicle? ☑ Yes ☐ No If yes, please provide: Location of Vehicle Address Phone Number
Trumbull and I-75

Note: If you were struck by more than 1 vehicle as a pedestrian, attach separate sheet with contact information as part of this application.

d. Did you use the motor vehicle/motorcycle at any time before the date of the accident? ☐ Yes ☒ No Unknown

e. How often did you use the vehicle/motorcycle?
☐ Daily ☐ Once a Week ☐ Two or More Times Per Week ☐ Less than Once Per Month ☐ Rarely ☑ Other, please explain Drives

f. Did you have access to a set of keys to the vehicle/motorcycle? ☐ Yes ☑ No ☐ Unknown

g. Have you ever had to ask permission to use the vehicle/motorcycle? ☑ Yes ☐ No ☐ Unknown

h. Have you ever been denied permission to use the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

i. Did you ever put gas in the vehicle/motorcycle? ☐ Yes ☑ No ☐ Unknown

j. Did you ever pay money toward the purchase or the maintenance of the vehicle/motorcycle? ☐ Yes ☒ No ☐ Unknown

k. Did you have permission to use the vehicle/motorcycle on the date of the accident? ☑ Yes ☐ No ☐ Unknown If Yes, from who? _____

43. List the name of the owner of the vehicle (Note, if you were on a motorcycle, please provide the following information about the vehicle involved in your accident):
First Name Middle Name Last Name
Beatrice Valenzuela

Owner's Address and Phone Number
I Dont know it

a. List the Name of the Registrant of Vehicle involved in the accident if different than the owner: First Name Middle Name Last Name

Registrant's Address and Phone Number I Dont know.

b. Vehicle Involved:

Year	Make	Model	Vehicle Identification Number (VIN)	Plate Number	State the Vehicle is Registered In
2008	Saturn	Vue	3GSCL33P38S691872	EAY959	Michigan

c. Did the owner and/or registrant of this vehicle have any automobile insurance on the date of the accident? ☐ Yes ☑ No If yes:
Name of Insurance Company: None Policy #: _____
How did you confirm if the owner/registrant did or did not have insurance? Asked

d. If not you, list the name of the driver of the vehicle: First Name Middle Name Last Name

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

e. Did the driver have automobile insurance in effect on the date of the accident? ☐ Yes ☒ No If yes:

Name of Insurance Company : None Policy #: No

How did you confirm if the driver did or did not have insurance? _____

f. How many people were in the vehicle? _____

Please list all passengers in this vehicle at the time of the automobile accident:

Name	Address	Phone Number	Passenger's Insurance Company (if any)	Insurance Policy #
	None			

Note: If more than 5 passengers, attach separate sheet with the above information as part of this application.

44. Were there witnesses to the accident? ☐ Yes ☒ No If yes, please provide:

Witness Name	Address	Phone Number
Witness Name	Address	Phone Number

Note: If more than 2 witnesses, attach separate sheet with contact information as part of this application.

Entitlement Information *(continued)*

45. List all the people who lived in your home at the time of the auto accident and their relationship to you:

Name	Relationship
Rhonda Swoope	Mom
Drayton Swoope	Son
Laiven Swoope	Daughter

If more than 3, attach separate sheet with information as part of this application.

46. Describe all motor vehicles owned by you, your spouse (even if you are separated) or any relative living in your home on the date of the accident: If none, check here: ☑

Owner/Relationship	Year, Make & Model of Vehicle	Vehicle Identification Number	Plate Number	Insurance Co & Policy Number

Note: If more than 3, attach separate sheet with contact information as part of this application.

47. Have you ever made a claim for benefits (i.e. payment of medical bills) due to an injury that was caused by an automobile accident? ☐ Yes ☒ No

a. If yes, please provide:

Name of Insurance Company _____ Claim Number _____

48. Are you filing this claim with the Michigan Automobile Insurance Placement Facility because there is a dispute between two or more insurance companies concerning their obligation to provide you with insurance coverage? ☐ Yes ☒ No

a. If yes, please provide documentation of the dispute and the following:

Name of Insurance Company _____ Phone Number _____ Claim Number _____

Name of Insurance Company _____ Phone Number _____ Claim Number _____

49. Please document what actions you have taken to determine that there is no other auto insurance coverage. This question should be completed to expedite the claims process (attach additional sheet(s) if needed and any supporting documentation).

I asked the owner of the car, they said they didn't have ins.

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APPLICATION FOR PERSONAL INJURY PROTECTION BENEFITS THROUGH THE MICHIGAN ASSIGNED CLAIMS PLAN

Please note, if the top two boxes below are not acknowledged and the application is not signed and dated, the application will be considered incomplete and will be returned to the injured person or the preparer for further completion.

☐ I have reviewed the application in its entirety and attest that the information contained therein is true and accurate. If I am a medical provider and am submitting this application on behalf of the injured person, I attest that I have knowledge of the information provided, have thoroughly investigated and verified all documented information and have knowledge that all the information documented is true and accurate.

☐ I acknowledge I have read the following fraud warning:

FRAUD WARNING

A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan Automobile Insurance Placement Facility for payment or any other benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 of the insurance code that is subject to the penalties imposed under section 4511. **A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the Assigned Claims Plan.**

☐ I understand that if benefits are paid to me or for my benefit, the owner of the involved, uninsured vehicle will be financially responsible for reimbursement of all no fault benefits paid and costs associated with this claim pursuant to the Michigan No Fault Act.

☐ If I provided an email address, I understand that future correspondence and information regarding this claim may be exchanged via the email contact provided.

Signature of Injured Person or Representative	Printed Name of Injured Person or Representative	Date:
X [signature]	X Carlanda Swoope	11/11/2020
Signature of Preparer (if different than above)	**Printed Name of Preparer (if different than above)**	**Date:**
X [signature]	X Hawaa Nae	11/11/2020

Who prepared this application? ☒ Injured Person ☐ Attorney ☒ Third Party Biller ☐ Parent ☐ Legal Guardian

Preparer Name and Company: We care Pt. (Hawaa

Address: 17220 W. 12 mile Rd Ste 140

City: Satinfield State: MI Zip Code: 48076

Phone Number: 313 948 5354

WeCaretherapyLLC@Gmail.com.

If the preparer is a medical provider: Do you have an assignment of benefits?

☐ Yes ☒ No If Yes, please attach.

Michigan Assigned Claims Plan
c/o Michigan Automobile Insurance Placement Facility
PO Box 532318
Livonia, MI 48153-2318
www.michacp.org Phone: 734-464-8111
Email: info@michacp.org
Fax: 734 744-8552

EXHIBIT 4

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10/21/2022 10:58 AM Korey Pearson
WAYNE COUNTY CLERK

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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	REQUEST FOR HEARING ON A MOTION (PRAECIPE) ORDER/ADJOURNMENT	CASE NO. 21-011402-NF

2 Woodward Ave., Detroit MI 48226 | Courtroom 1007 CAYMC | Court Telephone No. 313-224-2444

Plaintiff name and address		Defendant name and address
Carlonda Naishe Swoope	v	Citizens Insurance Company of the Midwest
Plaintiff's attorney, bar no., address, and telephone no. Daniel B. Makled, P-78777 23756 Michigan Ave Ste 300 Dearborn, MI 48124-1853 (313) 582-7930		Defendant's attorney, bar no., address, and telephone no. Arminia Duenas, P-67090 350 S Main St Ste 400 Ann Arbor, MI 48104-2131 (734) 761-9000

List additional attorneys on other side

1. Motion Title: Defendant's Motion for Summary Disposition for Nonpermissive Use

21-011402-NF
FILED IN MY OFFICE
WAYNE COUNTY CLERK
8/18/2022 8:25:03AM
CATHY M. GARRETT
/s/ Korey Pearson

2. Moving Party: Defendant Telephone No. (734) 761-9000

3. Please place on the motion calendar for:

Judge Dana Margaret Hathaway	Bar No. 68588	Date: 10/14/2022	Time: 8:30 AM

Adj. To:_____ Adj. To:_____ Adj. To:_____

The motion will be decided [X] without oral argument [ ] with oral argument as indicated above; re-notice with time and Zoom info.

Comment

4. I certify that I have had personal contact with Plaintiff Counsel on 8/10/2022 regarding concurrence in the relief sought in this motion and that concurrence has been denied or that I have made responsible and diligent attempts to contact counsel requesting concurrence with motion.

Date: 8/10/2022 Attorney: Arminia Duenas Bar No. 67090

ORDER/ADJOURNMENT

Pursuant to MCR 2.119(E)(3), the Court may dispense with oral argument, IT IS ORDERED THAT THIS MOTION IS:

[ ] ORAL ARGUMENT IS ORDERED via ZOOM on _____ at _____ am/pm

[X] DENIED [ ] TAKEN UNDER ADVISEMENT [ ] A written or oral decision will be rendered by _____

[ ] GRANTED [ ] GRANTED IN PART / DENIED IN PART [ ] DISMISSED [ ] IT IS FURTHER ORDERED

Whether Plaintiff had permission to use the vehicle is a question of fact for the trier of fact.

Date 10/24/2022

/s/ Dana Margaret Hathaway
THIRD CIRCUIT COURT JUDGE

EXHIBIT 5

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Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

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Senate Bill 1140 (as enacted)
Sponsor: Senator Virgil Smith
Senate Committee: Insurance
House Committee: Insurance

PUBLIC ACT 489 of 2014

Date Completed: 4-8-15

RATIONALE

The Insurance Code governs, among other things, motor vehicle personal and property protection, commonly referred to as "no-fault" insurance. The coverage provided under the State's no-fault system includes personal injury protection (PIP) benefits for individuals injured in the course of an automobile accident. Section 3113 of the Code excludes certain people from these benefits in a variety of circumstances. In recent years, court cases have interpreted the language providing for the exclusions, and apparently have altered their scope. To address the impact of those cases, some suggested making the Code more specific as to when its PIP exclusions apply.

CONTENT

The bill amended Section 3113 of the Insurance Code to provide that a person using a motor vehicle or motorcycle taken unlawfully, or as to which he or she is named as an excluded driver, is not entitled to personal protection insurance benefits for accidental bodily injury.

The bill took effect on January 13, 2015.

Previously, a person was not entitled to be paid personal protection insurance benefits for accidental bodily injury if, at the time of the accident, the person was using a motor vehicle or motorcycle that he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to use the motor vehicle or motorcycle. The bill instead provides that a person is not entitled to those benefits if, at the time of the accident, the person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the vehicle or motorcycle was taken unlawfully.

Also, under the bill, a person who was operating a motor vehicle or a motorcycle as to which he or she was named as an excluded operator as allowed under Section 3009(2) of the Code is not entitled to personal protection insurance benefits for accidental bodily injury. (Section 3009(2) allows an insured to exclude automobile liability or motor vehicle liability coverage when a vehicle is operated by a particular person.)

Formerly, a person was not entitled to benefits if, at the time of an accident, the person was not a resident of this State, was an occupant of a motor vehicle or motorcycle not registered in this State, and was not insured by an insurer that had filed a certification in compliance with Section 3163 of the Code. The bill retains this provision but specifies that a person is not entitled to benefits if the *motor vehicle or motorcycle* was not insured by an insurer that has filed the required certification.

(Section 3163 requires insurers authorized to transact automobile insurance in this State to file a certification that accidental bodily injury or property damage occurring in Michigan as a result of

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the operation or use of a motor vehicle by an operator insured by its policies is subject to the no-fault insurance system under the Code.)

MCL 500.3113

BACKGROUND

In a 2010 opinion, *Henry Ford Health System v. Esurance Insurance Co.* (288 Mich App 593), the Michigan Court of Appeals addressed one of the exclusions to personal protection benefits under Section 3113 of the Insurance Code. This case involved a situation in which the Henry Ford Health System (Henry Ford) provided medical care to an individual injured when the stolen vehicle in which he was a passenger hit a utility pole. Henry Ford sued defendant Esurance to recover the costs of rendering medical care as a no-fault benefit. Esurance denied liability, arguing that the injured individual was not entitled to no-fault benefits because, at the time of the accident, he was using a vehicle he knew to be stolen. According to the Court of Appeals, the Code specified that a person could be denied benefits only if the injured person unlawfully took and used the vehicle. While it was established at trial that the injured individual *used* the vehicle, the Court noted that there was no evidence that he had *taken* it, unlawfully or otherwise.

A 2013 decision of the Michigan Court of Appeals, *Perkins v. Auto-Owners Insurance Co.* (301 Mich App 658) addressed the Section 3113 exclusion that applies to a nonresident of Michigan who was in a vehicle or on a motorcycle not registered in this State. In this case, a nonresident motorcyclist was injured in an accident and the insurer of the motorcycle had not filed a certification under Section 3163 of the Insurance Code, but the motorcyclist was covered under an automobile policy issued by a different insurer, which had filed a certification, for an automobile not involved in the accident. According to the Court, based on the language of the statute, because the *motorcyclist* was insured by an insurer that had filed the required certification, the exclusion did not apply and he was eligible for personal injury protection benefits. The Court stated, "Nothing in the statute requires that the insurer be the one that provided insurance for the vehicle involved in the accident."

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill clarifies the exclusions to personal protection insurance benefits under Section 3113. Before the *Henry Ford Health System* decision, some understood that if a person was knowingly using a stolen motor vehicle and was injured in an accident, that person would be ineligible for PIP benefits through the State's no-fault system. The *Henry Ford Health System* Court, however, held that only a person who had unlawfully taken and used the vehicle could be excluded from no-fault benefits. The bill will ensure that a person who willingly uses a stolen vehicle at the time of a car accident and injury is not protected by no-fault.

The bill also adds a named excluded driver provision to Section 3113. Section 3009 allows an insured to exclude certain drivers by name from coverage under his or her insurance policy, in order to secure lower premiums. This is typically done when a person in the household is uninsurable or a high-risk driver, e.g., the person has a high number of points on his or her driving record or a drunk driving conviction. According to the Insurance Institute of Michigan, courts have treated the named excluded driver situation as they have treated stolen vehicle exclusion situations. The bill establishes that excluded operators are not entitled to personal injury protection benefits if they get into an accident.

In addition, it previously was understood that Michigan's no-fault benefits did not apply to a non-Michigan resident driving a vehicle registered out-of-State, insured by an insurance company that was not authorized to do business in Michigan. As discussed above, however, the Michigan Court of Appeals held that a nonresident motorcyclist was entitled to benefits because he was insured under an automobile policy written by a Michigan-authorized insurer. The bill addresses this

interpretation of the Code and requires the *motorcycle or motor vehicle* involved in an accident to be insured by a carrier authorized to do business in Michigan, in order for a nonresident injured in the accident to receive PIP benefits.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill will have no fiscal impact on local or State government.

Fiscal Analyst: Glenn Steffens

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EXHIBIT 6

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

TODD MORRIS, SPECTRUM HEALTH HOSPITALS, and MARY FREE BED REHABILITATION HOSPITAL,

Plaintiffs-Appellees,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY and PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendants-Appellants,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, MICHIGAN ASSIGNED CLAIMS PLAN, MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, and JOHN DOE INSURANCE COMPANY,

Defendants.

UNPUBLISHED
June 11, 2020

No. 350214
Kent Circuit Court
LC No. 18-009887-NF

Before: K. F. KELLY, P.J., and FORT HOOD and SWARTZLE, JJ.

PER CURIAM.

Defendants Progressive Michigan Insurance Company and Progressive Marathon Insurance Company (collectively "Progressive") appeal as of right the trial court's grant of summary disposition to plaintiffs under MCR 2.116(C)(10). The trial court held that there was no genuine issue of material fact and plaintiff Todd Morris was entitled to personal-protection-insurance (PIP) benefits from Progressive under MCL 500.3113(a). The trial court further

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awarded plaintiffs their reasonable attorney's fees under MCL 500.3148 because Progressive unreasonably denied Morris's claim for PIP benefits.[1] We affirm.

I. BACKGROUND

On November 11, 2017, plaintiff Todd Morris was involved in an auto accident in which he suffered injuries requiring medical treatment. Plaintiffs Spectrum Health Hospitals and Mary Free Bed Rehabilitation Hospital provided medical care to him after the accident. Plaintiffs brought this lawsuit against defendants, seeking PIP benefits. For clarity, when necessary to distinguish between the plaintiffs, we refer to Spectrum Health and Mary Free Bed as the medical-provider plaintiffs.

Morris filed a claim for PIP benefits with Progressive, the insurer of the vehicle he was driving when the accident occurred. When evaluating Morris's claim for PIP benefits, Progressive conducted examinations under oath of Kathy Montuoro, Mark Montuoro, and Morris, and the facts presented to the trial court, as well as to this Court, came from those examinations. To avoid confusion, because some of the individuals involved in this action share the same last name, we refer to them by their first names.

The Montuoro Estate. Joe and Kathy Montuoro were married for many years, and shared two teenage children in common, but they divorced in 2013. In October 2017, Joe passed away, and his brother Mark was appointed as personal representative of his estate. In his will, Joe left all of his belongings to the teenage children whom he shared in common with Kathy. Because Mark lived in New Jersey and Joe's possessions were in Michigan, Mark asked Kathy to assist him in wrapping up the estate. This involved removing all of Joe's possessions from his house and liquidating or disposing of them. Kathy testified that Mark never traveled to Grand Rapids, and he placed her in charge of all the work necessary to wrap up the estate. According to Kathy, Mark told her that everything in Joe's house belonged to her children, and he asked her to remove everything of value from the house before contractors came to perform repairs.

The Vehicle. One of Joe's possessions was a Mercedes Benz that was equipped with an interlock device. Kathy testified that she advised Mark that she was going to move the Mercedes Benz from Joe's house to her house, until they decided what to do with it. Kathy further testified that, when she attempted to start the Mercedes Benz for the first time, she was unable to do so because the battery was dead. After two days of charging the battery, Kathy was able to start the vehicle, and it was driven to her house and parked in her driveway. Kathy testified that she discussed the Mercedes Benz and its interlock device with Mark on at least two occasions, and that she took the vehicle to a service facility where the device was removed.

Although Mark testified that he intended to sell the Mercedes Benz and give the proceeds to Joe and Kathy's children, Kathy stated that Mark never told her that he intended to sell the

[1] The parties stipulated to the dismissal of claims against State Farm Mutual Automobile Insurance Company, and the trial court granted summary disposition to the Michigan Assigned Claims Plan and the Michigan Automobile Insurance Placement Facility. Claims against these defendants are not at issue in this appeal.

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vehicle. Mark admitted knowing that the Mercedes Benz was equipped with an interlock device, and he admitted speaking with Kathy once about the device, but he did not remember the details of the conversation. Mark conceded that the vehicle was fairly low on his list of priorities, and he was more concerned with making repairs to Joe's house.

Mark testified that he did not know, before the accident, that Kathy had moved the Mercedes Benz from Joe's house to her own house, or that she was using the car. He testified, however, that he "assumed she had access to the car" because it was at Joe's house and Kathy had "access to the house and everything that was in it," including the Mercedes Benz. Mark stated that he and Kathy "never had any discussion about the car. You know, I didn't tell her she could or she couldn't use it. It just never was, you know, a part of the discussions we had." Mark assumed that Kathy "figured she had the implied consent" to use the car, and Mark did not think that was "an unreasonable assumption on her part." Mark admitted that he never told Kathy not to use the vehicle, and never told her that she lacked permission to allow another person to use the vehicle.

Kathy kept the Mercedes Benz in the driveway of her house for about three weeks before the accident. Aside from moving the car from Joe's house to her house and driving it to the repair facility to have the interlock device removed, Kathy drove the vehicle once to pick up her daughter from school. Kathy testified that Mark was "fully aware" that she had the keys to the vehicle, that she was using it, and that she had driven it to the service facility to have the interlock device removed. According to Kathy, Mark never told her that she could not use the vehicle, and they never discussed whether Morris could use the vehicle. Kathy testified that Mark never gave her any reason to believe that she could not use the Mercedes Benz. Kathy believed that she had Mark's permission to use the vehicle for any purpose and at any time, and that she could allow other people to use the vehicle.

Todd Morris. At the time of the accident, Morris lived with Kathy and her teenage children. Morris testified that he once told Kathy that he had a valid driver's license, but this was untrue because he had not had a valid driver's license for approximately 12 years. Kathy testified that she did not know that Morris lacked a driver's license. Morris and Kathy provided conflicting testimony regarding whether Morris drove any vehicle during the time he lived with Kathy. Morris claimed that, although he lived with her for approximately one year before the accident, he never drove the cars that Kathy owned, and always obtained a ride to work from Kathy or others. Meanwhile, Kathy testified that Morris owned two vehicles and that he regularly drove himself to work during the time he lived with her.

Morris testified that he knew Mark was the personal representative of Joe's estate, and that Mark had delegated to Kathy all of the work necessary to liquidate the estate's assets. Morris knew Mark gave Kathy the task of removing Joe's possessions from his house, so the house could be sold. According to Morris, Mark did not care about the disposition of Joe's personal assets, and he left Kathy in charge of either distributing those assets to the children or liquidating them. Morris knew that Kathy did not own the Mercedes Benz, because he understood that the vehicle belonged to Joe's estate. Yet, Morris believed Mark had given Kathy authorization to move the Mercedes Benz because she was moving all of Joe's other belongings out of his house. Morris also believed that there was an agreement between Mark and Kathy that she could use the vehicle. All of the witnesses agreed that Mark had never heard of or spoken to Morris until after the accident, and that he did not expressly grant or deny Morris permission to use the Mercedes Benz.

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The Accident. On the day of the accident, Morris and Kathy decided to visit a friend's house for a social gathering. Kathy testified that she drove the Mercedes Benz to the gathering because it was sitting in her driveway and the social gathering was at a home only a few minutes away. Both Morris and Kathy admitted that they consumed alcohol at the gathering. Their testimony conflicted, however, about how much alcohol Kathy consumed. Kathy testified that she drank one small glass of wine at the gathering, and that she saw Morris drink one craft beer. Kathy denied that she was intoxicated, and stated that she did not believe that Morris was intoxicated when they left the gathering. In contrast, Morris claimed that Kathy was too impaired to drive home safely, so he "grabbed the keys" and began to drive her home, with her permission. Morris also stated that Kathy gave him the keys and gave him permission to drive the car. The accident occurred on their drive home. Although Morris did not believe that he had consumed too much alcohol to drive safely, his bodily-alcohol content after the accident was in excess of the legal limit.

Because of the injuries she sustained in the accident, Kathy did not remember anything that occurred after she and Morris left the gathering, and she did not remember getting in the Mercedes Benz. Although Kathy had no memory of the accident, she stated that she "obviously" gave Morris permission to drive the vehicle back to her home because, after the accident, Morris was found with the keys and she was found "strapped in the passenger's seat." Kathy testified that she had no reason to question Morris's statement that she gave him the keys and permission to drive the vehicle.

Trial-Court Proceedings. Morris filed a claim with Progressive, the insurer of the Mercedes Benz, seeking PIP benefits. Progressive denied the PIP claim, taking the position that plaintiff was not entitled to PIP benefits because he was intoxicated and driving without a valid operator's license at the time of the accident. In addition, Progressive took the position that Morris had never obtained express permission from Mark to drive the vehicle.

Morris and the medical providers filed this lawsuit, seeking to recover PIP benefits. Plaintiffs filed motions for summary disposition under MCR 2.116(C)(10), based on statements that Mark, Kathy, and Morris provided to Progressive under oath. Progressive opposed those motions, and requested entry of summary disposition in its favor under MCR 2.116(I)(2). In the trial court, all parties argued that there was no genuine issue of material fact and that the matter was ripe for summary disposition. The trial court denied defendants' motion for summary disposition and granted plaintiffs' motions. In addition, the trial court granted plaintiffs their attorney's fees under MCL 500.3148.

This appeal followed.

II. ANALYSIS

A. STANDARD OF REVIEW

The interpretation of MCL 500.3113(a) presents questions of law that this Court reviews de novo. *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515; 821 NW2d 117 (2012). This Court also reviews de novo a trial court's decision on a motion for summary disposition. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), a trial court

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considers the evidence submitted by the parties in the light most favorable to the party opposing the motion. *Candler v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 772, 777; 910 NW2d 666 (2017). The trial court properly grants the motion when there is no genuine issue with respect to any material fact and the moving party is entitled to judgment as a matter of law. *Dextrom*, 287 Mich App at 415.

B. UNLAWFUL TAKING

Progressive first argues that the trial court erroneously granted summary disposition to plaintiffs because Morris committed an "unlawful taking" of the vehicle. Therefore, Progressive argues that Morris's claim for PIP benefits is barred by MCL 500.3113(a). This argument is without merit.

MCL 500.3113(a) excludes certain individuals from entitlement to PIP benefits under the no-fault act. *Rambin v Allstate Ins Co*, 495 Mich 316, 319; 852 NW2d 34 (2014). The statute provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

In *Spectrum Health*, 492 Mich at 508, the Michigan Supreme Court addressed "whether a person injured while driving a motor vehicle that the person had taken contrary to the express prohibition of the owner" may receive PIP benefits. The Court answered that question in the negative, holding "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 MCL 500.3113(a)." *Id.* at 509. The *Spectrum Health* Court further examined the phrase "taken unlawfully," and explained as follows:

> In determining the Legislature's intended meaning of the phrase "taken unlawfully," we must accord the phrase its plain and ordinary meaning, and we may consult dictionary definitions because the no-fault act does not define the phrase. The word "unlawful" commonly means "not lawful; contrary to law; illegal," and the word "take" is commonly understood as "to get into one's hands or possession by voluntary action." When the words are considered together, the plain meaning of the phrase "taken unlawfully" readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law. [*Id.* at 516-517.]

In *Rambin*, 495 Mich at 319, the Supreme Court examined the meaning of MCL 750.414, the so-called misdemeanor-joyriding statute, in the context of MCL 500.3113(a). The focus of *Rambin* was to decide whether MCL 750.414 was "a strict liability crime for purposes of applying MCL 500.3113(a)." *Id.* at 320. The Court concluded that MCL 750.414 was not a strict-liability

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crime, and that the statute "contains a *mens rea* element that the taker must intend to take a vehicle 'without authority.' " *Id.*

In that case, the plaintiff claimed that he did not knowingly lack authority to take the motorcycle he was operating at the time of his accident because he believed that the person who gave him access to the motorcycle was the rightful and legal owner of it. *Id.* at 327. In contrast, the insurance-carrier defendant argued that "absent express consent from the actual owner, plaintiff is barred from recovering PIP benefits." *Id.* That is, the insurance-carrier defendant argued that a plaintiff's "good faith is legally irrelevant because MCL 750.414 is a strict liability crime." *Id.* The Supreme Court rejected the insurance-carrier's argument and concluded that MCL 750.414 is not a strict-liability crime. *Id.* at 320. Given that MCL 750.414 addressed, "Any person who takes or uses without authority any motor vehicle without intent to steal the same," the *Rambin* Court concluded that the statute "requires a showing of knowingly taking without authority or knowingly using without authority." *Id.* at 332.

In this case, Progressive argues that Morris violated MCL 750.414 because he took the Mercedes Benz "without authority" from Mark, the personal representative of the estate that owned the vehicle. As a consequence, Morris was ineligible for PIP benefits under MCL 500.3113(a), according to Progressive.

First, we note that this case is readily distinguishable from *Spectrum Health*, in which the owner of the vehicle "expressly told the end user that he was not allowed to drive the vehicle." *Spectrum Health*, 492 Mich at 510. There was no such statement in this case, where the personal representative of the decedent's estate did not know the end user, and never stated to anyone that the end user was not allowed to drive the vehicle. As the Supreme Court explained in *Rambin*, "Because in *Spectrum* the owners had expressly told each person injured while driving the motor vehicle that they could not use the motor vehicle, we did not have occasion to reach the question whether MCL 500.3113(a) requires the 'person . . . using [the] motor vehicle or motorcycle' to know that such use has not been authorized by the vehicle or motorcycle owner." *Rambin*, 495 Mich at 327. The Supreme Court did expressly address that question in *Rambin*, however, because the insurance carrier in that case argued "that absent express consent from the actual owner, plaintiff is barred from recovering PIP benefits." *Id.* The Supreme Court rejected this argument, holding that a plaintiff could prove that he did not commit an unlawful taking under MCL 750.413, if "he did not knowingly lack authority to take the [vehicle] because he believed that he had authority to do so." *Id.* at 333.

In this case, Progressive makes the same argument that the Supreme Court rejected in *Rambin*. Progressive argues that because Mark never spoke to Morris, and did not know about Morris until after the accident, he did not grant Morris express permission to use the Mercedes Benz. Progressive thus continues to argue, despite the Supreme Court's holding in *Rambin*, "that absent express consent from the actual owner, plaintiff is barred from recovering PIP benefits." *Id.* For the reasons explained by the *Rambin* Court, this argument is without merit.

Progressive further argues that Morris could not rely on Kathy's grant of permission to take the vehicle because the Supreme Court rejected the "chain of permissive use" theory as "inconsistent with the statutory language of the no-fault act." See *Spectrum Health*, 492 Mich at 521. This argument is likewise without merit.

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As stated above, in *Spectrum Health*, the owner of the vehicle "expressly told the end user that he was not allowed to drive the vehicle." *Id.* at 510. The plaintiff in that case argued that the owner's prohibition could be overcome if the owner granted an intermediate user permission to take and use the vehicle, and that intermediate user in turn granted the end user permission to take and use the vehicle. *Id.* at 512-513. The Supreme Court rejected this argument, concluding that when an owner expressly instructed that the end user was not allowed to take and use the vehicle, the end user has taken the vehicle unlawfully for purposes of MCL 500.3113(a). *Id.* at 523-524. As explained earlier, this case is distinguishable from *Spectrum Health* because the owner of the vehicle never prohibited the end user from taking and using the vehicle, and never instructed the intermediate user that she lacked permission to allow others to use it. Notably, the *Spectrum Health* Court did not rule that an intermediate user of a vehicle may never validly grant another permission to take and use a vehicle. Rather, the Court ruled that an intermediate user cannot contradict and overcome the owner's express instructions that an end user may not take and use a vehicle.

Progressive also argues that Morris knowingly lacked authority to take the vehicle, and therefore violated MCL 750.414, because he knew that he could not legally drive the vehicle, given the fact that he did not have a valid driver's license and the fact that he was intoxicated when he drove the vehicle. Progressive's argument was squarely rejected by this Court in *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 741; 896 NW2d 32 (2016), which held that "the phrase 'taken unlawfully,' as employed in MCL 500.3113(a), does not encompass the unlawful *use or operation* of a motor vehicle, just the unlawful *taking* of a vehicle."

C. ATTORNEY'S FEES

Finally, Progressive argues that the trial court erroneously granted plaintiffs their attorney's fees under MCL 500.3148. "The no-fault act provides for attorney fees when an insurance carrier unreasonably withholds benefits." *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). Regarding PIP benefits, the statute provides:

> [A]n attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits that are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, *if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.* [MCL 500.3148(1) (emphasis added).]

When determining whether attorney's fees are warranted for an insurer's refusal to make payments under the no-fault act, the refusal is not unreasonable if it is based on a legitimate question of statutory construction, constitutional law, or factual uncertainty. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 317; 602 NW2d 633 (1999). "When an insurer refuses to make or delays in making payment, a rebuttable presumption arises that places the burden on the insurer to justify the refusal or delay." *Id.* "A trial court's finding of an unreasonable refusal to pay or delay in paying benefits will not be reversed on appeal unless the finding is clearly erroneous." *Id.* at 316-317. "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Kitchen v Kitchen*, 465 Mich 654, 661-662; 641 NW2d 245 (2002).

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Progressive argues that, even if the trial court correctly granted summary disposition to plaintiffs regarding Morris's entitlement to PIP benefits, it erroneously granted attorney's fees without first determining whether Progressive's denial of benefits was unreasonable. Progressive argues that the trial court did not examine the circumstances that existed at the time it denied Morris's claim, and did not decide whether the decision to deny Morris's claim was reasonable at the time. Progressive posits that the trial court "did not engage in any such analysis, and appears to have simply awarded attorney fees based on the (premature) finding that benefits were owed." Progressive's argument is not supported by the record.

At the hearing on the motion for summary disposition, the trial court expressly held that any factual uncertainty about Morris's entitlement to PIP benefits was resolved by the testimony obtained by Progressive during the examinations under oath. The trial court noted that Progressive denied Morris's claim for PIP benefits on three grounds: (1) Morris did not obtain the express permission of Mark before driving the vehicle, (2) Morris lacked a valid driver's license when he drove the vehicle, and (3) Morris was intoxicated when he drove the vehicle. The trial court further held that Morris's intoxication and lack of a driver's license were legally irrelevant to his entitlement to PIP benefits, meaning that the authority granted by Mark, as owner of the vehicle, was the only legitimate factual issue remaining in contention. The trial court explained:

> As I stated earlier, Progressive certainly knew at the time of the examination under oath, specifically of Kathy Montuoro and Mark Montuoro that Kathy reasonably assumed she had permission of Mark, the real true owner of the vehicle as the personal representative of the estate. And further that Kathy acknowledged that Todd, by virtue of her handing him the keys, would have had a reasonable assumption that she had permission to hand the keys off to him. Particularly taking out of the equation Todd's own perspective that he shouldn't be driving the vehicle. He certainly appears to have the authority to take command or control of the vehicle from his live-in girlfriend, under both the Michigan Penal statutes and the no-fault act. Thus, the Court has to find that the refusal to pay was unreasonable and that attorney's fees are applicable in this case.

Contrary to Progressive's argument on appeal, the trial court did not award attorney's fees automatically, based solely on a determination that Morris was entitled to PIP benefits. Rather, the trial court examined the circumstances as they existed at the time Progressive made the decision to deny Morris's claim, and concluded that the decision was unreasonable at the time.

Progressive further argues that the trial court improperly decided a question of fact, i.e., whether the delay was reasonable, in the context of a motion for summary disposition under MCR 2.116(C)(10). "The trial court's decision about whether the insurer acted reasonably involves a mixed question of law and fact. What constitutes reasonableness is a question of law, but whether the defendant's denial of benefits is reasonable under the particular facts of the case is a question of fact." *Ross*, 481 Mich at 7. Progressive argues that a trial court cannot resolve questions of fact on summary disposition.

In its response in opposition to plaintiffs' motion for summary disposition and counter-motion for summary disposition under MCR 2.116(I)(2), as well as in its argument at the hearing on that motion, Progressive chose not to address plaintiffs' request for an award of attorney's fees

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under MCL 500.3148(1). In response to plaintiffs' later motion to establish the amount of attorney's fees awarded, Progressive argued that it had a legitimate factual uncertainty regarding Morris's authority to use the vehicle, making its decision to deny his claim for PIP benefits reasonable. Furthermore, Progressive argued that the amount of attorney's fees requested by plaintiffs was unreasonable. Pointedly, Progressive did *not* argue that the trial court lacked authority to decide whether its actions were unreasonable because a genuine issue of material fact existed.

In fact, although Progressive argues on appeal that a genuine issue of material fact existed that precluded the trial court's grant of summary disposition, this appellate argument is directly contrary to Progressive's argument in the trial court. In its response in opposition to plaintiffs' motion for summary disposition and counter-motion for summary disposition under MCR 2.116(I)(2), Progressive stated, "No question of the existence of a genuine issue of material fact exists in light of all the evidence." Given its argument in the trial court, Progressive cannot now argue that a genuine issue of material fact exists that precluded the trial court from ruling on the parties' cross-motions for summary disposition, including plaintiffs' request for an award of attorney's fees.

Affirmed. Plaintiffs, having prevailed in full, may tax costs under MCR 7.219(F).

/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood
/s/ Brock A. Swartzle

EXHIBIT 7

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

OMAR AKEEM AMOS,

Plaintiff-Appellee,

and

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and ASCENSION ST. JOHN HOSPITAL,

Intervening Plaintiffs-Appellees,

v

PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendant-Appellant,

and

FARMERS INSURANCE EXCHANGE and USAA CASUALTY INSURANCE COMPANY,

Defendants.

UNPUBLISHED
July 13, 2023

No. 360091
Wayne Circuit Court
LC No. 20-012063-NF

OMAR AKEEM AMOS,

Plaintiff-Appellee,

and

MICHIGAN HEAD & SPINE INSTITUTE, P.C., and ASCENSION ST. JOHN HOSPITAL,

Intervening Plaintiffs-Appellees,

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v

No. 360098
Wayne Circuit Court
LC No. 20-012063-NF

PROGRESSIVE MARATHON INSURANCE COMPANY and FARMERS INSURANCE EXCHANGE,

Defendants,

and

USAA CASUALTY INSURANCE COMPANY,

Defendant-Appellant.

Before: RICK, P.J., and SHAPIRO and LETICA, JJ.

PER CURIAM.

In these consolidated interlocutory appeals, in Docket No. 360091, defendant Progressive Marathon Insurance Company appeals by leave granted the trial court's order denying its motion for summary disposition. In Docket No. 360098, USAA Casualty Insurance Company also appeals by leave granted and challenges the order denying Progressive's motion for summary disposition, which USAA had adopted. We affirm.

I. BACKGROUND

On the evening of May 24, 2020, plaintiff Omar Amos took a bus to the home of his mother, Venus Amos, in Detroit. Venus was asleep when Omar arrived. Venus owned two vehicles, a 2011 Dodge Ram, insured by Progressive, and a Ford Edge, insured by USAA. Venus had left the keys to the Dodge Ram sitting out that evening. Omar testified that after entering Venus's house he saw the keys to the Dodge Ram and took them. It is undisputed that Venus did not give Omar express permission to drive her vehicle that night. Omar was driving the pickup truck on 8 Mile Road in Warren when he lost control and crashed into a light pole and a building. Omar was taken to Ascension St. John Hospital, which is an intervening plaintiff in this case. Venus woke up at approximately 9:00 a.m. the morning after the accident, and she discovered the truck was not parked in the driveway where she had left it and her keys were gone. Shortly after, Omar called Venus from the hospital and told her about the accident and that he was about to have surgery. Physicians employed by intervening plaintiff Michigan Head & Spine Institute (MHSI) performed spinal surgery on Omar's neck and upper back.

Venus filed a police report in which she reported the truck as stolen. She testified that she did so only because Progressive agents told her to, and she either withdrew her complaint with the Detroit Police Department or declined to press criminal charges against Omar. Progressive initially treated Venus's claim as a theft claim, but changed the type of claim to a collision after Venus informed Progressive she would not seek charges against Omar.

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Omar sought personal protection insurance (PIP) benefits from Progressive, and Progressive denied the claim. Omar brought suit against Progressive, and the operative complaint also names USAA and Farmers Insurance Exchange[1] as defendants. MHSI also filed a complaint against Progressive, USAA, and Farmers, alleging that they were liable to reimburse MHSI for the services it provided to Omar arising from the accident.

Progressive moved for summary disposition under MCR 2.116(C)(10) (no question of material fact), arguing that Omar was ineligible for benefits under the no-fault act pursuant to MCL 500.3113(a) because Omar had unlawfully taken Venus's vehicle the night of the accident by taking it without Venus's permission. Progressive also argued that Omar unlawfully took Venus's vehicle by illegally driving it while unlicensed, in violation of MCL 257.301(1), and in violation of Michigan's operating under the influence statute, MCL 257.625. USAA also moved for summary disposition of Omar and MHSI's claims, adopting Progressive's arguments.[2] Omar and MHSI argued in response that MCL 500.3113(a) did not bar their claims because Omar had previously driven Venus's truck and she had never denied him permission to do so.

After hearing oral argument, the trial court denied Progressive's and USAA's summary disposition motions on the record. The court ruled that there was a question of fact whether Omar's taking of the vehicle was unlawful for the reasons stated by Omar and MHSI. The trial court denied both Progressive and USAA's motions for reconsideration.[3]

II. ANALYSIS

Progressive and USAA argue that the trial court erred when it denied their motions for summary disposition because there is no question of material fact that Omar unlawfully took Venus's vehicle and his claim for PIP benefits is barred by MCL 500.3113(a). We disagree.[4]

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[1] Omar applied for PIP benefits through the Michigan Automobile Insurance Placement Facility (MAIPF), and the MAIPF assigned his claim to Farmers Insurance Exchange.

[2] Farmers filed a response to Progressive's summary disposition, which also concurred with Progressive's arguments.

[3] Following the denial of Progressive's motion for reconsideration, the trial court entered a stipulated order allowing Ascension to intervene in this case.

[4] We review de novo a trial court's decision on a motion for summary disposition. See *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion brought pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a claim and is properly granted when the proffered evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). A genuine issue of material fact exists when the record leaves open issues of fact over which reasonable minds may differ. *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). A court "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in a light most favorable to the party opposing the motion." *Sanders v Perfecting Church*, 303 Mich App 1, 4; 840 NW2d 401 (2013).

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MCL 500.3113(a) provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

In *Priesman v Meridian Mut Ins Co*, 441 Mich 60; 490 NW2d 314 (1992), a plurality of the Supreme Court held that a fourteen-year-old son did not lose his statutory right to PIP benefits under MCL 500.3113(a) by taking his mother's automobile without her permission while she slept. The Court determined that the Legislature did not intend for MCL 500.3113(a) to preclude recovery of benefits in family "joyriding" situations:

> Legislators generally are also parents and sometimes grandparents. Some may have had experience with children, grandchildren, nephews, nieces, and children of friends who have used a family vehicle without permission. Some may have themselves driven a family vehicle without permission. [*Id.* at 68.]

The Court was therefore not persuaded that the "evil" with which Legislature was concerned with in enacting MCL 500.3113 was

> teenagers who "joyride" in their parents' automobiles, especially automobiles covered by no-fault insurance, [considering] that countless persons would be entitled, under the legislation they were drafting, to no-fault benefits without regard to whether they are obliged to purchase no-fault insurance or, if obliged to insure, do in fact do so. [*Id.*]

20 years later, however, in a 4-3 decision, the Supreme Court overruled *Priesman* and its progeny in *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503; 821 NW2d 117 (2012). In that case, the Court determined that the "the family-joyriding exception is not supported by the text of MCL 500.3113(a)." *Id.* at 533. The Court held "that the use of the phrase 'a person' in MCL 500.3113(a) clearly and plainly includes a family member who has taken a vehicle unlawfully, thereby precluding that person from receiving PIP benefits." *Id.* at 509. The Court also 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 MCL 500.3113(a)." *Id.* Michigan's joyriding statutes, MCL 750.413 and MCL 750.414, both deem it unlawful to take a motor vehicle without authority. *Id.* at 518. "Because a taking does not have to be larcenous to qualify as unlawful, the phrase 'taken unlawfully' in MCL 500.3113(a) applies to anyone who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it." *Id.*

Spectrum Health involved consolidated cases. In *Spectrum Health*, a son was expressly forbidden by his father from driving the father's vehicle. The father allowed the son's girlfriend to drive the vehicle but also instructed her that the son was not allowed to drive the vehicle.

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Nonetheless, the girlfriend gave the son the car keys and he later crashed the vehicle into a tree. *Id.* at 512. In the other case, *Progressive Marathon Ins Co v DeYoung*, a wife had expressly prohibited her husband from driving vehicles owned by the wife given the husband's multiple drunk-driving convictions. Despite these "standing instructions," the husband used the vehicle while intoxicated and crashed the vehicle. *Id.* at 513. Applying its holdings in that case, the *Spectrum Health* Court held that both claimants were barred by MCL 500.3113(a) from recovering PIP benefits because they had been expressly prohibited from driving the respective vehicle. See *id.* at 524-525, 537-538.

Relying on *Spectrum Health*, Progressive and USAA argue that Omar unlawfully took Venus's vehicle contrary to MCL 750.413 and MCL 750.414.[5] There is no dispute in this case that Omar was willingly using the vehicle. The question is whether did so unlawfully, i.e., without authority, and whether he knew or should or have known that it was unlawful.

Omar argues that this case is materially distinguishable from the other family joyriding cases because, unlike the two claimants in *Spectrum Health* for instance, he was not expressly prohibited from using the vehicle. The insurers argue that this is irrelevant because Omar had not obtained express permission from his mother to use the vehicle on the night in question. However, no Michigan court has held that a family vehicle is necessarily taken without authority if a family member uses the vehicle without obtaining express permission. Even though the "family joyriding exception" has been overruled, it remains true that the permissibility of one family member borrowing a vehicle from another is based on the nuances of the particular familial relationship and those relationships, while not dispositive, are highly relevant to the question of implied authority and the driver's understanding . It is not for courts to declare that families may not allow use of a vehicle through implied permission based on the circumstances. The statute's language does not require that a family member obtain express permission each and every time before using another family member's vehicle. Moreover, it is not enough that a family member may have known that they did not have permission. The Legislature could have stated that the driver merely needed to know that he was taking the vehicle "without permission." Instead, it required knowledge that the act was "unlawful." MCL 500.3113(a). It is clear that if an unrelated person takes someone else's vehicle without permission they would know that doing so is unlawful. And the same is true when a person uses a rental vehicle that they have not rented and as to which the rental company has not granted express permission. However, it is not always true in the case of a family member who could reasonably conclude that using a family member's car without explicit permission would be acceptable to the owner. Accordingly, when there has not been an express prohibition by the vehicle's owner, whether there was "authority" to use the vehicle will necessarily turn on the circumstances of each case and generally require a factual determination.

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[5] In relevant part, MCL 750.413 provides that "[a]ny person who shall, wilfully and without authority, take possession of and drive or take away . . . any motor vehicle, belonging to another, shall be guilty of a felony . . . ." MCL 750.414 similarly provides, in relevant part, that "[a]ny person who takes or uses without authority any motor vehicle without intent to steal the same . . . is guilty of a misdemeanor . . . ."

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In this case, Omar testified that he had used his mother's vehicle multiple times and that on each occasion he had asked for permission before doing so. Omar believed that he did need Venus's permission to use the vehicle, but there was never a time when he asked for permission and she denied the request. Further, the record is unclear whether Venus ever expressed any policy regarding the vehicle to Omar, and MCL 500.3113(a) "examines the legality of a taking from the *driver*'s perspective[.]" *Spectrum Health*, 492 Mich at 522. From Omar's perspective, his mother had granted him permission to use the vehicle every time he had asked to do so. When he arrived at his mother's home on May 24, 2020, she was sleeping and therefore he could not ask for her permission without waking her. In that sense, this case presents the question whether Omar should have awoken his sleeping mother to ask for permission to use the vehicle, or whether considering the circumstances and his history with the vehicle, he reasonably believed that he had implied permission to do so. Resolution of familial situations such as this is plainly a matter best left to a jury.

Progressive and USAA argue that a driver may not assume they had permission to use a vehicle under the "should have known" standard as articulated in *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1; 972 NW2d 860 (2021). In that case, the plaintiff was injured while driving his wife's rental car and sought PIP benefits from the defendant. *Id.* at 4-5. Because the plaintiff was an unlicensed driver, he was expressly forbidden by the rental car agreement from driving the car. *Id.* Thus, the plaintiff was expressly unauthorized to drive the car by the vehicle's owner, i.e., the rental car company, but he did not have actual knowledge that he lacked authority. *Id.* This Court concluded that,

> [u]nder the "should have known" standard, plaintiff was obligated to determine the scope of the authorization that the owner, Meade Lexus, had set under the rental agreement for a nonparty such as himself to take and drive the car. Stated another way, plaintiff knew that his wife, who was the party to the contractual agreement with Meade Lexus, was not the owner of the car and that any authority to use the car could only be based on the terms set by the owner. Thus, before simply driving off, plaintiff was obligated to learn the terms of the rental agreement; he "should have known" the terms because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking. The mere assumption or supposition that it must be permissible to take a third party's property, *without more*, does not satisfy the "should have known" standard of MCL 500.3113(a). [*Id.* at 26 (emphasis added).]

Ahmed is materially distinguishable on the ground that there was a legally binding document that, in effect, expressly prohibited the plaintiff from operating the vehicle. As discussed, Omar was not expressly prohibited from driving his mother vehicle's and there was certainly no document he could consult to determine whether she would deny permission on any particular occasion. And his mother was the owner of the vehicle, not a "third party" like the renter in *Ahmed*. Further, Omar's use of the vehicle was based on more than a "mere assumption." *Id.* That decision was informed by his history with the vehicle, including that he each time he had asked to use the vehicle his mother said yes. Progressive and USAA's attempt to import isolated statements from *Ahmed*—decided in the context of rental car agreements—and import them to the present case is unpersuasive. Indeed, the insurers' reliance on *Ahmed* in this manner is simply a different way of arguing that a plaintiff must obtain express permission each time they use a family

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member's vehicle. For the reasons discussed, this position is untenable and it ignores the reality that families often do not articulate hard-and-fast rules that must be followed in all circumstances.

We acknowledge that there are some inconsistencies in Omar and Venus's testimony and that the record allows for reasonable inferences that can be drawn against them. However, at this stage we must view the evidence in a light most favorable to Omar as the nonmoving party. Doing so, we conclude that reasonable minds could differ whether the vehicle was taken unlawfully and whether Omar knew or should have known that the taking was unlawful.

Progressive and USAA alternatively argue that Omar unlawfully took Venus's vehicle by driving while unlicensed in violation of MCL 257.301(1), and in violation of Michigan's operating under the influence statute, MCL 257.625.[6] However, this Court's decision in *Monaco v Home-Owners Ins Co*, 317 Mich App 738; 896 NW2d 32 (2016), makes clear that MCL 500.3113(a) only prohibits PIP benefits on the basis of an unlawful *taking* of a vehicle and not when one unlawfully *operates* the vehicle of another.

Monaco involved a situation where the injured claimant, who was 15 years old, had a permit to drive that would only authorize her to drive if accompanied. She instead drove a family vehicle unaccompanied and was injured. *Id.* at 741-742. Her mother initially testified that the claimant took the car without permission, but then changed her testimony and stated that she had given her daughter permission to take the car. *Id.* at 743. The insurer argued that MCL 500.3113(a) barred recovery of PIP benefits because it was unlawful for the mother the give the daughter permission to drive under the Michigan Vehicle Code (MVC), MCL 257.1 *et seq*. *Id.* at 749. This Court disagreed, observing that

> [t]he distinction between unlawfully taking a motor vehicle and unlawfully using a vehicle was recognized in *Rambin v Allstate Ins Co*, 495 Mich 316, 331; 852 NW2d 34 (2014), wherein the Supreme Court stated that "the unlawful use of a vehicle . . . is not relevant under the unlawful taking language in MCL 500.3113." And this Court has observed that, with respect to the language in MCL 500.3113(a), "[c]learly, the terms 'take' and 'use' are not interchangeable or even synonymous; obtaining possession of an object is very different from employing that object or putting it into service." *Amerisure Ins Co v Plumb*, 282 Mich App 417, 428; 766 NW2d 878 (2009), abrogated in part on other grounds by Rambin, 495 Mich. at 323-324 n 7. [*Monaco*, 317 Mich App at 749.]

Accordingly, this Court held that although it was undisputed that the daughter's use of the vehicle violated the MVC, those violations had no bearing on the daughter's authority to take the vehicle and therefore did not implicate MCL 500.3113(a). *Id.* at 749-750.

Applying *Monaco* to the instant case, that Omar had a suspended license and was intoxicated is not relevant to whether the *taking* of the vehicle was unlawful. While Omar's *use* of the vehicle may have been unlawful, that is distinct from an unlawful taking. Accordingly, Progressive and USAA's argument that Omar's violations of the MVC render the taking of the

[6] Omar's blood alcohol level when taken at the hospital was above the legal limit.

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vehicle per se unlawful is without merit. We acknowledge that the *Ahmed* Court expressed disagreement with *Monaco* and contemplated the need for a conflict panel regarding that decision. See *Ahmed*, 337 Mich App at 19 n 8. However, we do not share those concerns. In *Spectrum Health*, the Supreme Court stated that "the term 'unlawful' can only refer to the Michigan Penal Code[.]" *Spectrum Health*, 492 Mich at 517 n 22. The Supreme Court further explained that a vehicle is taken unlawfully "if it is taken without the authority of its owner." *Id.* at 518 n 25. Accordingly, this Court's holding in *Monaco* that the unlawful use or operation of a vehicle under the MVC has no bearing on the phrase "taken unlawfully" as used in MCL 500.3113(a) appears to be a straightforward application of the Supreme Court's statements in *Spectrum*.[7]

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michelle M. Rick
/s/ Douglas B. Shapiro

[7] Although *Monaco*, 317 Mich App 738, was decided under the previous version of MCL 500.3113(a), the current statute does not lend itself to the *Ahmed* Court's interpretation that driving the vehicle of another in contravention of the MVC constitutes an unlawful taking. There is nothing from the text of 2014 PA 489 to indicate that the Legislature intended to expand the definition of "taken unlawfully" to include using the vehicle of another in violation of the MVC.

EXHIBIT 8

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Caution
As of: May 6, 2025 4:12 PM Z

Court of Appeals of Michigan

March 14, 2024, Decided

No. 364284

Reporter
2024 Mich. App. LEXIS 1988 *; 2024 WL 1129793

TIBURCIO PENA-CRUZ and JONATHAN PENA-GARCIA, Plaintiffs-Appellees, v STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellant. and MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY and JOHN DOE INSURANCE COMPANY, Defendants.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Held in Abeyance at

Prior History: [*1] Wayne Circuit Court. LC No. 21-014679-NF.

Core Terms

drive, unlawfully, motor vehicle, benefits, motorcycle, permission, willingly, driver, unlawful taking, summary disposition, license, time of an accident, express permission, rental agreement, trial court, drove, permitted use, opined, chain, prong, driver's license, joyriding, no-fault, scienter requirement, valid license, entrusted, knowingly, purposes, insurer

Counsel: For PENA-CRUZ TIBURCIO, Plaintiff - Appellee: PATRICK A. ABBO.

For JOHN C W HOHMEIER, For MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, Defendant: RICHARD MARRERO.

Judges: Before: O'BRIEN, P.J., and BORRELLO and HOOD, JJ.

Opinion

PER CURIAM.

Defendant-appellant, State Farm Mutual Automobile Insurance Company, appeals by leave granted[1] the trial court's order denying State Farm's motion for summary disposition, in which State Farm argued that plaintiff Tiburcio Pena-Cruz was barred by *MCL 500.3113(a)* from recovering no-fault benefits.[2] That statute bars a person from receiving no-fault benefits if, at the time of the accident, they were using a vehicle that "was unlawfully taken," and the person claiming the benefits knew or should have known that the vehicle was unlawfully taken. *MCL 500.3113(a)*. The dispute on appeal is whether the F-150 truck that Tiburcio was driving at the time of the accident "was taken unlawfully" in the context of *MCL 500.3113(a)*. The trial court held that this issue presented a question of fact to be resolved at trial. On the basis of recently published caselaw, we disagree, and accordingly reverse and remand for the trial court to enter an order granting State Farm's motion for [*2] summary disposition.

I. BACKGROUND

On December 19, 2020, plaintiffs were involved in a serious car accident. Tiburcio was driving, and his son, Jonathan Pena-Garcia, was a passenger. According to the traffic report of the accident, Tiburcio was stopped on the roadway because of an accident in front of him.

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[1]

[2] The claims by the other plaintiff—Jonathan Pena-Garcia—against State Farm were dismissed with prejudice in a stipulated order.

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The driver of a second vehicle failed to see Tiburcio stopped and consequently rear-ended him. As a result of the accident, Tiburcio had to be airlifted to the hospital.

At the time of the accident, Tiburcio was driving an F-150 owned by his wife, Maria Garcia-Lopez. Despite being married, the two were not living together at the time of the accident; Tiburcio testified that on December 19, 2020, he was living alone. He explained that he and Maria "were having problems for about two years" and "decided to separate to see if [they could] fix stuff." Tiburcio estimated that, as of the date of the accident, he and Maria had not lived together for two years.

Maria purchased the F-150 involved in the accident on March 7, 2020. Tiburcio confirmed that Maria purchased the F-150 after they were no longer living together.

Maria confirmed that she owned [*3] the Ford F-150 involved in the accident, and said that it was titled and registered to only her. When asked whether the F-150 was insured on the date of the accident, Maria testified that it was not because she had cancelled the insurance shortly before the December 19, 2020 accident.[3] When asked who else had access to the F-150, Maria's answer was somewhat unclear; she said that Jonathan "didn't have access" to the F-150 but "sometimes when Jonathan would ask for it, which he would rarely do," she would "let him drive it." But in the next sentence she seemed to say that the first time Jonathan drove the F-150 was on the day of the accident—December 19, 2020. When asked whether she gave Jonathan permission to drive the F-150 on December 19, Maria said, "Yes." But she denied giving Tiburcio permission to drive the F-150 on December 19, and she confirmed that Tiburcio had never driven the F-150 prior to December 19, 2020. When asked if she would have let Tiburcio drive the F-150, she said, "Well, no, he doesn't have a license."

Maria's testimony about why she let Jonathan take the F-150 on the date of the accident is also unclear, but she seemingly testified that she allowed Jonathan to [*4] use the F-150 that day while she used another car that she owned to drive to work. But Jonathan testified that the only vehicle Maria kept at her address on the date of the accident was the F-150 and that Maria primarily drove the F-150, and he denied seeing Maria drive any other vehicles around the time of the accident. Regardless, Jonathan confirmed Maria's testimony that he (Jonathan) rarely used the F-150; when asked if he "ever drove" the F-150," Jonathan said, "No."

With respect to the circumstances surrounding how Tiburcio came to be driving Maria's F-150 on December 19, 2020, Jonathan testified that he was living with his mother, Maria, at that time. Jonathan said that, on the day of the accident, he picked Tiburcio up from his house and, together, they were heading to work when the accident happened. Jonathan testified that, at the time of the accident, Tiburcio was driving the F-150 owned by Maria.

Tiburcio likewise testified that the accident occurred while he was going to work. Tiburcio explained that someone named Francisco usually drove him to work because Tiburcio did not have a license, but on the day of the accident, Francisco was unable to take Tiburcio to work. Usually, [*5] when that happened, Tiburcio would ask his daughter for a ride to work, but Tiburcio's daughter was also unavailable that day. Tiburcio therefore turned to Jonathan for a ride to work on the day of the accident. But when Jonathan arrived at Tiburcio's house in the early morning, Jonathan told Tiburcio that he was tired. So, according to Tiburcio, "it just made sense for [Tiburcio] to drive." Tiburcio testified that he was not licensed to drive because "[he] didn't drive." Nevertheless, Tiburcio took the F-150 and drove it.

Tiburcio said that he knew Maria was the owner of the F-150. But when asked details about Maria's purchase of the vehicle, Tiburcio said that he did not "have any information" about that. Likewise, when asked whether the F-150 was insured, Tiburcio said that he "did not have any information regarding the pickup." And when asked whether the F-150 was ever garaged anywhere other than at Maria's address, Tiburcio again said that he had "no information regarding that." According to Tiburcio, the day of the accident was the first time that he drove the F-150. When asked whether he had to ask permission to drive the F-150, Tiburcio testified, "So, no. No, I didn't ask for [*6] permission. As I've been saying, he came here to pick me up, my son, and he was tired so it just—it was easy for me to just drive to work then." Tiburcio testified that even when he was living with Maria, he did not have keys to any vehicles; only house keys.

[3] In an October 2, 2020 letter sent by State Farm to Maria, State Farm confirmed that Maria's insurance policy for her F-150 was canceled per her request, effective September 2, 2020.

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Tiburcio estimated that the accident occurred "just past 5 o'clock in the morning." He said that it was still dark, but the roads were in normal condition—"no snow, there was nothing like that." According to Tiburcio, the accident occurred after he came to a stop for a truck that was in the road; while Tiburcio was waiting for the truck to clear the road, another car rear-ended him.

On October 25, 2021, after State Farm failed to pay Tiburcio's no-fault benefits, Tiburcio filed the instant action seeking those benefits.

On September 21, 2022,[4] State Farm moved for summary disposition, arguing that Tiburcio's claim for no-fault benefits was barred by *MCL 500.3113(a)*. That statute bars a person from collecting no-fault benefits if the person was willingly using a motor vehicle that was taken unlawfully, and the person knew or should have known that the vehicle was unlawfully taken. State Farm argued that Tiburcio took the F-150 unlawfully because [*7] the vehicle was owned by Maria, Tiburcio never received Maria's permission to drive it, and Tiburcio had no reason to believe that Maria would allow Tiburcio to drive the F-150 in light of the fact that Tiburcio did not have a driver's license and had never used the F-150 before. State Farm acknowledged that Jonathan had asked Tiburcio to drive before the accident, but argued that this could not save Tiburcio's claim for benefits because our Supreme Court had rejected a "chain of permissive use" exception to *MCL 500.3113(a)*. Thus, the fact that Jonathan gave Tiburcio permission to drive Maria's F-150 did not make Tiburcio's taking of Maria's vehicle lawful because the relevant inquiry was whether Tiburcio took the motor vehicle without *Maria's* permission. State Farm further argued that Tiburcio knew or should have known that his taking of the F-150 was unlawful for the same reasons he took the F-150 unlawfully in the first place—he knew that the vehicle belonged to Maria, he had never received Maria's permission to use the vehicle, and he had reason to believe that Maria would not allow him to drive the motor vehicle because he did not have a driver's license and Maria had never allowed Tiburcio [*8] to drive the motor vehicle.

In response, Tiburcio argued that the Supreme Court had not rejected the "chain of permissive use" theory in its entirety; rather, according to Tiburcio, the Supreme Court only held that an intermediate user of a motor vehicle did not have the authority to permit a third person to use the vehicle *if* the owner of the vehicle had expressly prohibited such use by the third person. Plaintiff believed that, otherwise, the "chain of permissive use" theory survived, and plaintiff contended that "a clear chain of permissive use exists" in this case. In support of this assertion, plaintiff relied on the fact that Jonathan had permission to use the F-150, that Jonathan allowed Tiburcio to use the F-150, and that Maria never expressly prohibited Tiburcio from driving the F-150.

The trial court held a hearing on State Farm's motion on October 26, 2022. The parties argued in line with their briefs, after which the trial court delivered its ruling from the bench. After recounting the relevant facts and law, the trial court concluded that there was a question of fact whether Tiburcio unlawfully took the F-150. The trial court reasoned that the "chain or permissive use" theory [*9] was still viable because our Supreme Court "did not rule that an intermediate use of a motor vehicle may never validly grant another permission to take and use a vehicle, rather, the intermediary user cannot contradict or overcome an owner's expressed instructions that the end-user may not take or use the vehicle." And the trial court noted both that a chain of permissive use existed in this case (Jonathan had permission to use the F-150, and Jonathan allowed Tiburcio to drive the vehicle) and that Maria never said that Tiburcio was not permitted to use the F-150 (either directly to Tiburcio himself or to Jonathan). The court accordingly concluded that a question of fact remained as to whether Tiburcio unlawfully took the F-150 and whether he knew or should have known that he had unlawfully taken the F-150.

The day after the hearing, the trial court entered an order denying State Farm's motion for summary disposition "for the reasons stated on the record." This appeal followed.

II. STANDARD OF REVIEW

A grant or denial of summary disposition is reviewed de novo.

. State Farm moved for summary disposition under . Summary disposition under is proper when "there is no genuine issue as to [*10] any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."

[4] The cutoff for discovery was September 5, 2022.

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The initial burden in a motion under
rests with the moving party, who can satisfy its burden by either (1) submitting "affirmative evidence that negates an essential element of the nonmoving party's claim" or (2) demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim."

(quotation marks and citation omitted). In response to a properly supported motion under , the nonmoving party cannot "rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial."

III. ANALYSIS

The statute at issue in this case is *MCL 500.3113(a)*, which currently provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was willingly [*11] operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

The parties' central dispute in this case is the legal effect of certain facts. It is undisputed that Tiburcio took Maria's F-150 without her express permission or authority, Tiburcio made no effort to determine whether Maria (whom Tiburcio knew owned the F-150) authorized his taking of the F-150 despite it being Tiburcio's first time driving that vehicle, and he took the F-150 knowing that it would be illegal for him to drive because he did not have a license. The parties dispute whether, under these facts, Tiburcio is barred by *MCL 500.3113(a)* from receiving PIP benefits. Very recently, this Court in *Swoope v Citizens Ins Co of the Midwest*, __ Mich App __, __;__ NW2d __ (2024) ruled that, under materially identical facts, a user of a motor vehicle was indeed barred by *MCL 500.3113(a)* from receiving PIP benefits. *Swoope* effectively resolved several questions surrounding *MCL 500.3113(a)* that had been left open following this Court's 2021 opinion in

. To explain the holding in *Swoope*, this opinion will walk through the various interpretations [*12] and applications of *MCL 500.3113(a)* that led to *Swoope*.

A. PRE-*SWOOPE* CASELAW

Our Supreme Court first addressed the currently-accepted interpretation of the phrase "taken unlawfully" as used in *MCL 500.3113(a)*[5] in

. There, the Court explained the phrase's meaning as follows:

> In determining the Legislature's intended meaning of the phrase "taken unlawfully," we must accord the phrase its plain and ordinary meaning, and we may consult dictionary definitions because the no-fault act does not define the phrase. The word "unlawful" commonly means "not lawful; contrary to law; illegal," and the word "take" is commonly understood as "to get into one's hands or possession by voluntary action." When the words are considered together, the plain meaning of the phrase "taken unlawfully" readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law. [(citations omitted).]

As examples of statutes that could be violated to establish an unlawful taking under *MCL 500.3113(a)*, our Supreme Court pointed to and , which it referred to as the "joyriding statutes." . The Court explained that these "joyriding statutes make it unlawful to take any motor vehicle without authority, effectively defining an unlawful [*13] taking of a vehicle as that which is unauthorized." . The Court added that "a taking does not have to be larcenous to be unlawful," so "the phrase 'taken unlawfully' in *MCL 500.3113(a)* applies to anyone who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it."

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[5] When was decided, ***MCL 500.3113(a)*** stated:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle. [*MCL 500.3113(a)* as amended by 1986 PA 93.]

Despite significant differences between the current statute and the statute analyzed by the Court, both versions use the phrase "taken unlawfully."

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With this understanding of *MCL 500.3113(a)* in mind, the Court addressed two judicially-created exceptions to the statute (i.e., situations in which a person could take a vehicle unlawfully but not be barred by *MCL 500.3113(a)* from receiving PIP benefits) that had developed over the years—the chain-of-permissive-use theory and the "family joyriding" exception.

The chain-of-permissive-use theory originated in , overruled in part by . In , the injured claimant, Mark Forshee, was injured while driving a car owned by Stanley Pefley. [*14] . Stanley had originally entrusted the vehicle to his son, Thomas Pefley, and specifically forbade Forshee from driving the vehicle. . Through the course of several events, Thomas was arrested and entrusted the car to his friend, William Morrow, and Morrow in turn entrusted the vehicle to Forshee. . Relying on a broad understanding of "consent" as used in the owner's liability statute, *MCL 257.401*, and developed through caselaw interpreting that statute, concluded that "when an owner loans his vehicle to another, it is foreseeable that the borrower may thereafter lend the vehicle to a third party and such further borrowing of the vehicle by the third party is, by implication, with the consent of the owner." . The Court summarized:

> Mark Forshee's use of the vehicle at the time of the accident was with the owner's consent inasmuch as the owner, Stanley Pefley, entrusted the vehicle to his son, Thomas, who in turn entrusted the vehicle to Morrow, who finally entrusted it to Forshee. Given this unbroken chain of permissive use, we cannot say that Forshee's taking of the automobile was unlawful. [*Id.*]

In , our Supreme Court held "that the Court's 'chain of permissive use' theory is inconsistent with [*15] the statutory language of the no-fault act." . The Court explained that the Court erred by failing to consider the language of *MCL 500.3113(a)* when purportedly interpreting it.

. *MCL 500.3113(a)* uses the phrase "taken unlawfully," which "does not appear in the owner's liability statute that considered analogous." . The owner's liability statute also had broader considerations than *MCL 500.3113(a)*; the owner's liability statute considers an owner's consent *and* knowledge, "which is much broader than the focus in *MCL 500.3113(a)* on whether the taking was unlawful."

. Lastly, the owner's liability statute considered "*an owner's* express or implied consent or knowledge," whereas *MCL 500.3113(a)* "examines the legality of the taking from the *driver's* perspective—a perspective that the owner's liability statute lacks."

. On the basis of these considerations, as well as caselaw suggesting that "consent" under the owner's liability statute was more limited than articulated in , see , our Supreme Court "overrule[d] to the extent it is inconsistent with the plain meaning of *MCL 500.3113(a)*,"

. The Court explained that the relevant consideration when addressing whether a taking is unlawful within the meaning of *MCL 500.3113(a)* "is whether the taking was 'without authority' within the meaning of [*16] or ." [6]

then turned to the family-joyriding exception to *MCL 500.3113(a)*. The Court explained that this exception was first announced by the Supreme Court in a plurality opinion in (opinion by LEVIN, J.), overruled in part by , and later adopted by the Court of Appeals in , overruled in part by . As articulated in , the family-joyriding exception provided that *MCL 500.3113(a)* "does not apply to cases where the person taking the vehicle unlawfully is a family member doing so without the intent to steal but, instead, doing so for joyriding purposes."

. In overruling this exception, the Court explained that there was "absolutely no textual basis" for the exception in *MCL 500.3113(a)*.

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[6] In the case before the Court, the plaintiff had been given permission to use a car by an intermediate user, but it was undisputed that the plaintiff knew that the owner had expressly prohibited the plaintiff from using the vehicle. . The Court held that, given the undisputed fact that the plaintiff "took the vehicle *contrary to the express prohibition of the vehicle's owner*," the plaintiff unlawfully took the vehicle within the meaning of , and was thus precluded by ***MCL 500.3113(a)*** from receiving PIP benefits.

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.[7]

Our Supreme Court next had occasion to address *MCL 500.3113(a)* in , although that case focused on "the meaning of , the misdemeanor joyriding statute, in the context of *MCL 500.3113(a)* . . . ." Specifically, the Court in addressed whether was a strict liability crime, and it held that it was not— "contains a *mens rea* element that the taker must intend to take a vehicle 'without authority.'"

The facts of are unusual. The plaintiff was injured while riding a motorcycle owned by Scott Herzog. . [*17] But the plaintiff had never met Herzog; Herzog's motorcycle was stolen on August 4, 2009, and the plaintiff testified that a person named Andre Smith loaned Herzog's motorcycle to the plaintiff. . According to the plaintiff, on August 22, 2009, he met Smith at a house, and Smith "handed plaintiff the keys to the motorcycle and told him that he could use the motorcycle for the club ride."

The broad question before the Supreme Court in was whether the plaintiff had unlawfully taken the motorcycle within the meaning of *MCL 500.3113(a).* This in turn required the Court to consider whether the plaintiff violated , which prohibited a person from taking another's vehicle "without authority." While the plaintiff plainly lacked Herzog's permission to take Herzog's motorcycle, the plaintiff claimed that "he did not knowingly lack authority to take the motorcycle because he believed that the person who gave him access to the motorcycle was the rightful and legal owner of it."

concluded that the plaintiff's defense was a viable one. According to our Supreme Court, "requires a showing of knowingly taking without authority or knowingly using without authority." . The Court explained that 's use of [*18] the words "authority," "take," and "use" "all contemplate voluntary and knowing conduct on the part of the accused." . And because a taking must involve voluntary and *knowing* conduct, "[f]or a person to take personal property without the authority of the actual owner, there must be some evidence to support the proposition that the person from whom he or she received the property did not have the right to control or command the property." *Id.* Applying this rule to the case before it, the Court explained:

> [The] plaintiff may present evidence to establish that he did not run afoul of , and thus did not unlawfully take the motorcycle under *MCL 500.3113*, because he did not knowingly lack authority to take the motorcycle because he believed that he had authority to do so. Stated differently, plaintiff's argument that he did not unlawfully take the motorcycle under *MCL 500.3113* is subject to the criminal statute that prohibits an unlawful taking, , under which plaintiff may present evidence to show that he did not knowingly take the motorcycle without the owner's authority. [.]

Following and , this Court addressed *MCL 500.3113(a)*'s use of the phrase "taken unlawfully" in . There, this Court addressed "the legal question whether [*19] a person injured in a motor vehicle accident is barred from recovering PIP benefits under *MCL 500.3113(a)*—which generally precludes coverage when a person used a vehicle that he or she had 'taken unlawfully'—when the owner of the vehicle permitted, gave consent to, or otherwise authorized the injured person to take and use the vehicle, but the injured person used the vehicle in violation of the law with the owner's knowledge." . In , the plaintiff's 15-year-old daughter, Alison, was injured while driving a car owned by the plaintiff and "customarily driven by plaintiff's partner." . While Alison had her learner's permit, she was only allowed to drive "if accompanied by a licensed parent, guardian, or 21-year old, and she was not so accompanied when the accident occurred." . It was disputed whether Alison took the plaintiff's vehicle with the plaintiff's permission, so the case went to trial, and the jury concluded that the insurer "had failed to meet its burden of showing that Alison took the car without permission[.]" . On appeal, the insurer did not challenge the jury's factual determination that the insurer "failed to

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[7] was a consolidated case, with the plaintiff in the case receiving benefits under the chain-of-permissive-use theory, and the plaintiff in the other case (*Progressive*) receiving benefits under the family-joyriding exception. See . The plaintiff in the *Progressive* case was not only told by the owner that he was expressly prohibited from using the vehicle he was using at the time of the crash, but the plaintiff was listed as an excluded driver on the policy for that vehicle.

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satisfy its burden of showing that Alison took the car without permission," [*20] and instead only challenged whether Alison's illegal use of the car barred her recovery of PIP benefits under *MCL 500.3113(a)*. . This Court held that Alison's unlawful use of the motor vehicle did not render the taking (which was lawful because it was done with the owner's permission) unlawful, explaining that "the unlawful operation or use of a motor vehicle is simply not a concern in the context of analyzing whether the vehicle was taken unlawfully." .

This Court addressed *MCL 500.3113(a)* again five years later in . In that case, the plaintiff was injured while driving a car rented by his wife. . As part of the rental agreement, the plaintiff's wife agreed that only "Authorized Drivers" could operate the rental vehicle, and an individual needed a valid driver's license to be considered an "Authorized Driver." *Id.* The plaintiff did not have a driver's license, however, and, even though he was with his wife when she rented the vehicle, he never read the rental agreement. *Id.* Nevertheless, this Court held that the plaintiff took the vehicle unlawfully in violation of . *Id.*

For its analysis, began by recognizing that *MCL 500.3113(a)* had been amended by 2014 PA 489 since was decided, and that the 2014 amendment "broadened" the statute. [*21] . According to , in its current state, *MCL 500.3113(a)* disqualifies from receiving PIP benefits "any person (1) willingly operating or willingly using a motor vehicle or motorcycle that (2) was unlawfully taken by someone, and (3) the person seeking benefits knew or should have known that the motor vehicle was taken unlawfully." (quotation marks omitted). But observed that, despite the amendment to *MCL 500.3113(a)*, the statute continued to use the phrase "taken unlawfully," so it was presumed that the meaning of the phrase as used in the statute continued to be the same. .

thus reiterated our Supreme Court's construction of the phrase "taken unlawfully" as explained in both , and . . In a footnote, however, opined that did not limit "taken unlawfully" as used in *MCL 500.3113(a)* to only the joyriding statutes, and . . opined that, rather, 's reference to the joyriding statutes was in reference "to the particular illegality" at issue in that case. *Id.* And according to , "The Michigan Vehicle Code defines criminal offenses as well, and violations of its provisions also constitute illegal conduct." *Id.*

This footnote was arguably dicta, however, because analyzed the taking in the case before it under . In doing so, recognized [*22] how our Supreme Court interpreted that statute in . See . Next, applying the three-part test it formulated earlier in the opinion, held that there was "no question" that the first element was satisfied—the plaintiff "was 'willingly using' and 'willingly operating' the car"—and there was "no question that the plaintiff's use and operation of the car was without the authority of . . . the owner, because the rental agreement prohibited an unlicensed person from driving it." . was then left to "determine whether these facts amounted to an unlawful 'taking'" in violation of *MCL 500.3113(a)*. . readily concluded they did, explaining that the plaintiff took the car in violation of the rental agreement when he drove it to his work on the day of the accident, and thus he took the car without authority. . See also ("He took the car by driving it to the gas station where he worked."). noted that, while the requirements in *MCL 500.3113(a)* that a person "take" and "operate" a vehicle "are separate, meaning that each must be established, there is no requirement in the statute that different facts established each of the elements." . The panel summarized the holding from this portion of its opinion as follows:

> [T]he owner [*23] of the car[] placed restrictions in the rental agreement, under which only a licensed driver was authorized to use, operate, or drive the car. Plaintiff's acts of driving the car to work and driving it again after work until his involvement in the accident constituted use, operation, and driving of the car and thus were outside the authorization of the owner. Such acts constituted an "unlawful taking" of the car because they constituted possession of it contrary to the owner's authorization. [.]

next addressed the defendant's argument that the plaintiff's taking of the car was unlawful because he did not have a license and it was thus unlawful for plaintiff to drive. . The plaintiff countered that distinguished between an unlawful taking and

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unlawful use, and that the latter could not be used to establish the former. . explained that 's holding was a narrow one: "in , the analysis was short and straightforward—the taking was with the owner's permission, and therefore Alison did not have the *mens rea* of taking the car contrary to the owner's authorization." . Despite this cabining of 's holding, never held that the plaintiff's taking in the case before [*24] it was unlawful because it amounted to a violation of the Michigan Vehicle Code.

Nevertheless, in a footnote, the panel opined that a violation of the Michigan Vehicle Code could be relevant to determining whether a taking of a vehicle was "unlawful," and expressed misgivings about 's supposed failure to consider whether Alison's taking of the vehicle in that case was unlawful because she did so in knowing violation of the Michigan Vehicle Code. . observed that it was illegal for Alison to drive the plaintiff's car in , so her taking of the car by driving it would constitute an "unlawful taking" because (1) to do so would amount to a violation of the Michigan Vehicle Code and (2) there were "associated criminal penalties" with such a violation. . believed that 's analysis was incomplete because "had considered the question from Alison's perspective, it should have concluded that her driving of the car constituted a taking and that the taking was unlawful because it was illegal under the Michigan Motor Vehicle Code for Alison to drive alone." . But noted that its disagreement was ultimately irrelevant because it read 's holding as a narrow one, applying only to "the situation in [*25] which a car owner tells a person whom the owner knows to be unlicensed under the circumstances that the person nevertheless may drive the car." .

Despite its misgivings about , distinguished the case before it from by explaining that the owner in had expressly prohibited the plaintiff's taking of the car in the rental agreement. . And having already established that plaintiff's taking of the car was unlawful, see , "[t]he only additional issue . . . in determining whether *MCL 500.3113(a)* bars recovery [was] analyzing whether plaintiff 'knew or should have known' that the motor vehicle was taken unlawfully," . began by recognizing that our Supreme Court in and never had occasion to consider the significance of this requirement because it was added by 2014 PA 489 after was decided. See . Thus, believed that it was required to "first address whether and how the amendment altered the standard set forth in ." .

In pertinent part, held that 2014 PA 489 added a scienter requirement to *MCL 500.3113(a)*, which in turn changed the requirement for finding a violation of in the context of *MCL 500.3113(a)*. To explain this holding, began by addressing the significance of the change in *MCL 500.3113(a)*'s language since . When was decided, [*26] *MCL 500.3113(a)* had a "safe harbor" provision that provided a person would not be excluded from receiving PIP benefits even if the person unlawfully took the motor vehicle or motorcycle if "the person reasonably believed that he or she was entitled to take and use the vehicle." *MCL 500.3113(a)*, as amended by 1986 PA 93. After was decided, our Legislature in 2014 PA 489 eliminated the safe-harbor provision of *MCL 500.3113(a)*, so that the statute now includes the "knew or should have known" language. See *MCL 500.3113(a)* (stating that a person is not entitled to PIP benefits if "[t]he person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, *and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.*") (Emphasis added.) opined that this new language imposed "a scienter requirement," and that this "new scienter standard is . . . significantly more restrictive than was the safe-harbor provision."

further opined that, because 2014 PA 489 added a scienter requirement to *MCL 500.3113(a)*, "the amendment . . . modified the scienter requirement under that statute if a violation of is at issue." . To explain why, first noted that, based on and , *MCL 500.3113(a)* and were *in pari materia* [*27], so they must be read together. . elaborated that if the statutes are read together, then the Legislature's adding a scienter requirement to *MCL 500.3113(a)* in 2014 PA 489 necessarily meant that the Legislature also "amended 's scienter standard involving in cases in which disqualification from eligibility for benefits under *MCL 500.3113(a)* is at issue." . Otherwise, according to , "it would be as if 2014 PA 489 had worked no change in the safe-harbor provision or the scienter requirement." *Id.* accordingly held that, when disqualification of PIP benefits under *MCL 500.3113(a)* is at issue, a person acts unlawfully under if the person

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takes a motor vehicle or motorcycle and either knows or should have known that the taking had not been authorized by the vehicle or motorcycle owner.[8]

illustrated how this new rule was different in practice from the rule in . The plaintiff in lacked actual knowledge that he was prohibited from driving the car because he was unaware of the terms of the rental agreement. . Under , this would have meant that the plaintiff's taking was not unlawful "because plaintiff did not knowingly take the car without the owner's authority" *Id.*, citing . But, as explained,

> the "should have known" language imposes a more restrictive standard. Plaintiff knew that the car was rented; he knew that there was a written rental agreement; and, of course, the law requires him to know his driving status, i.e., whether or not he is a licensed driver, because only a licensed driver may drive. . Under the "should have known" standard, plaintiff was obligated to determine the scope of the authorization that the owner, Meade Lexus, had set under the rental agreement for a nonparty such as himself to take and drive the car. Stated another way, plaintiff knew that his wife, who was the party to the contractual agreement with Meade Lexus, was not the owner of the car and that any authority to use the car could only be based on [*28] the terms set by the owner. Thus, before simply driving off, plaintiff was obligated to learn the terms of the rental agreement; he "should have known" the terms because a person may not simply take what he knows to be another's property without taking any steps to determine if the owner authorized the taking. The mere assumption or supposition that it must be permissible to take a third party's property, without more, does not satisfy the "should have known" standard of *MCL 500.3113(a)*. [.]

accordingly held that the plaintiff was barred by *MCL 500.3113(a)* from recovering PIP benefits because the defendant "fully satisfied the standards of *MCL 500.3113(a)* as they relate to in establishing an unlawful taking."

thus made several relevant statements (in arguable dicta) that opened the door about the relevance of certain pieces of evidence, in effect laying the groundwork for the parties' disputes in this case. First, opined that the phrase "taken unlawfully" as used in *MCL 500.3113(a)* was not limited to violations of the Michigan Penal Code; rather, pursuant to , it encompassed any taking "'contrary to Michigan law.'" , quoting . accordingly believed that "any violation of the criminal law that leads to a taking of a motor vehicle will constitute [*29] an 'unlawful taking' for purposes of *MCL 500.3113(a)*," including a violation of the Michigan Vehicle Code. . Second, opined that, while there is a distinction between the unlawful "taking" and the unlawful "use" of a motor vehicle when an owner has given express permission for the person to take the motor vehicle (as in), a person could also "take" a motor vehicle by driving it, such that (at least when an owner has not expressly authorized the use or taking of the motor vehicle) driving the motor vehicle could constitute a taking. See .[9] With this understanding of what constitutes a taking, opined that if a person is legally not allowed to drive a motor vehicle pursuant to the Michigan Vehicle Code, but that person takes a vehicle anyway by driving it (which, again, would only be in situations where the person does not have the owner's express permission to take the vehicle), then the taking would be unlawful because it would be illegal under the Michigan Vehicle Code for the person to drive.

B. *SWOOPE*

Following , it was an open question whether courts were required to follow 's arguable dicta

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[8] Tiburcio argues on appeal that this portion of was wrongly decided, and offers a plausible explanation for why. Yet the panel's interpretation is also plausible, and as a published decision, has precedential effect under the rule of stare decisis, , and we are bound to follow it, .

[9] It seems doubtful that this portion of is dicta. plainly held that the plaintiff in that case "took the car by driving it to the gas station where he worked." . Thus, it is clear that held that driving a car *can* constitute a taking, although did not plainly limit this analysis to situations in which the owner had not expressly authorized the use or taking of the owner's vehicle. Yet that would seemingly be the only plausible reading of in light of 's untouched holdings.

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on these issues. That open question was resolved in the very recently published opinion, *Swoope* **[*30]**. In *Swoope*, the plaintiff was involved in a car accident while driving a car owned by her friend. *Swoope*, __ Mich App at __; slip op at 1. The plaintiff did not ask her friend to use the car, and at the time of the accident, the plaintiff did not have a valid driver's license. *Id.* at __; slip op at 1, 4. On appeal, *Swoope* adopted the (arguable) dicta from in its entirety. First, *Swoope* held that a taking in violation of any criminal law, including a violation of the Michigan Vehicle Code if the violation has criminal penalties, constituted an "unlawful taking" for purposes of *MCL 500.3113(a)*. *Swoope*, __ Mich App at __; slip op at 3. Second, *Swoope* implicitly adopted 's conceptualization of a "taking" when the owner has not given their express permission to be "driving" the vehicle. See *id.* at __; slip op at 3-4.

With these holdings, application of 's three-part test was straightforward. See ("[U]nder current law, the disqualification applies to any person (1) "willingly operating or willingly using a motor vehicle or motorcycle" that (2) was unlawfully taken by someone, and (3) the person seeking benefits "knew or should have known" that the motor vehicle was taken unlawfully."). First, it was uncontested that the plaintiff had willingly operated the vehicle. *Swoope*, __ Mich App at __ n 3; slip op at 3 n 3. As to the second prong, the **[*31]** plaintiff in *Swoope* admitted that she did not have a license and drove the vehicle anyways, which *Swoope* held "satisfied the second prong because operating a vehicle without a valid license is unlawful for purposes of *MCL 500.3113(a)*." *Id.* at __; slip op at 3-4. *Swoope* held that the third prong was also satisfied because (1) the plaintiff knew that she did not have a license and therefore should have understood that her driving the vehicle was unlawful, (2) the plaintiff admitted that she did not have the vehicle's owner's permission to drive the car, and (3) the plaintiff failed to take any steps to determine whether the owner authorized the taking. *Id.* at __; slip op at 4.

This, according to *Swoope*, shifted the burden back to the plaintiff to demonstrate a material fact for trial. *Id.* at __; slip op at 4. *Swoope* held that the plaintiff failed to satisfy that burden because none of her evidence "showed that she had a valid driver's license at the time of the accident" or that "the vehicle's owner authorized [the plaintiff's] use of the vehicle." *Id.* at __; slip op at 4. *Swoope* thus held that the defendant in that case had satisfied its burden, the plaintiff had failed to rebut the same, and accordingly the defendant was **[*32]** entitled to summary disposition. *Id.* at __; slip op at 4.

C. APPLICATION OF *SWOOPE*

Swoope plainly resolves this case. There is no question that Tiburcio willingly operated or willingly used Maria's F-150, so the first prong from is satisfied. As to the second and third prongs, Tiburcio did not have a valid driver's license, he knew he did not have a valid driver's, and he took Maria's F-150 anyway without her permission and without taking any steps to ensure that his taking of the F-150 was authorized.

Because Tiburcio did not have Maria's permission, this case is unlike and is more like and *Swoope*; that is, Tiburcio "took" the F-150 when he drove it. That "taking" was unlawful—and therefore satisfied the second prong from —"because operating a vehicle without a valid license is unlawful for purposes of *MCL 500.3113(a)*." *Id.* at __; slip op at 4.[10] Turning to the third prong, Tiburcio knew or should have known that this taking was unlawful because (1) Tiburcio knew that he did not have a valid license, (2) he should have understood that driving without a valid license was unlawful, (3) he admitted that he did not have Maria's permission to drive the F-150, and (4) he failed to take any steps to ensure **[*33]** that his taking of the F-150 was authorized. In accordance with *Swoope* and , these facts sufficiently satisfied the third prong from . See *Swoope*, __ Mich App at __; slip op at 4.

The parties did not have the benefit of *Swoope* at the time of their briefings, but Tiburcio raises several arguments that were rejected by *Swoope*. We briefly address them.

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[10] As explained by *Swoope*;

> concerns the legality of operating a vehicle without a valid driver's license. It states, in part: "[A]n individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license with the appropriate group designation and indorsements for the type or class of vehicle being driven or towed." . Violations of this statute are considered "unlawful" for purposes of *MCL 500.3113(a)* because there are related criminal penalties. See ; see also ("Violation of [and] was 'unlawful' . . . because there are associated criminal penalties."). [*Swoope*, __ Mich App at __; slip op at 3.] 20 n 8 ("Violation of [and] was 'unlawful' . . . because there are associated criminal penalties."). [*Swoope*, __ Mich App at __; slip op at 3.]

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Tiburcio contends that, based on , only violations of the Michigan Penal Code can constitute an "unlawful taking" under *MCL 500.3113(a)*. Both and *Swoope* rejected this argument, however. [*34] Moreover, contrary to Tiburcio's suggestion, plainly did not limit *MCL 500.3113(a)* to violations of the Michigan Penal Code, nor is it readily apparent that the Court could have done so, considering that the text of *MCL 500.3113(a)* applies to all "unlawful takings," not only to "takings in violation of the Michigan Penal Code."

Tiburcio also repeatedly argues on appeal that the fact he had no license when he took the F-150 is of no consequence because that only rendered his *use* of the F-150 illegal. First, to the extent that Tiburcio relies on , , and in support of this argument, those cases are distinguishable. In , the drivers of the motor vehicle were expressly prohibited from using them, so it was irrelevant whether they had a valid license. In , the driver believed that he had express permission from the owner, so (again) it was irrelevant whether he had a valid license. Likewise, in , Alison had express permission from the plaintiff to use the plaintiff's car, so once again it was irrelevant whether Alison could legally drive alone. Only in (and now *Swoope*) was the driver neither explicitly permitted nor explicitly prohibited (from the driver's perspective) from taking the vehicle. This bleeds into the [*35] second problem with this argument—Tiburcio does not dispute 's conceptualization that, generally speaking, when one does not have permission to use a vehicle, he or she effectuates a "taking" of the vehicle by driving it. continued to recognize the distinction between unlawfully taking a vehicle and unlawfully using a vehicle, but simply noted that there was no requirement that "taking" the vehicle and "using" or "operating" the vehicle be discrete acts.

Lastly, Tiburcio emphasizes that express permission is not required for a taking to be lawful. While this is true, no court has held otherwise. Rather, every court considering an owner's lack of express permission merely considered it as one factor in determining whether the person's taking of the vehicle was unlawful. For instance, *Swoope* did not hold that the plaintiff's taking of the vehicle was unlawful solely because she lacked the owner's express permission; rather, that was merely *one* factor that the Court considered. And that fact was clearly necessary for *Swoope* to reach the conclusion that it did—if the driver in *Swoope* had the owner's express permission to use the vehicle, then under , the driver's taking of the vehicle [*36] was not unlawful.[11]

IV. CONCLUSION

For the reasons explained, we conclude that there is no question of material fact that Tiburcio [*37] is barred by *MCL 500.3113(a)* from receiving PIP benefits, and the trial court should have granted State Farm's motion for summary disposition on this issue. The trial court's order denying State Farm's motion for summary disposition is accordingly reversed, and the trial court on remand shall enter an order granting State Farm's motion for summary disposition.

Reversed and remanded for the trial court to enter an order granting State Farm's motion for summary disposition. We do not retain jurisdiction.

/s/ Colleen A. O'Brien

/s/ Stephen L. Borrello

/s/ Noah P. Hood

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[11] Tiburcio also argues that he may have lawfully taken the F-150 because, when he took it from Jonathan, it would have appeared to Tiburcio that Jonathan had the "right to control or command" the F-150. This argument is, at best, incomplete. The argument is reminiscent of the chain-of-permissive-use theory, and it is unclear to what extent, if any, that theory survived . But to any extent that the chain-of-permissive-use theory did survive , it only survived to the extent that an intermediate user's allowing the driver to take the vehicle would suggest to the driver (because the inquiry is viewed from *the driver's* perspective) that he or she was taking the vehicle with the *owner's* (or perceived owner's) permission. See ; . See also (explaining that "[w]hat is relevant" to determining whether a vehicle was taken in violation of the joyriding statutes "is whether the taking was 'without authority' within the meaning of or "); (MARKMAN, J., concurring) (opining that the lawfulness of a taking depends on whether it was done with the owner's authorization). Unlike in , Tiburcio knew that the person he was receiving the F-150 from was not the vehicle's owner; it is uncontested that Tiburcio knew the F-150 was owned by Maria, not Jonathan. Thus, the pertinent inquiry is whether Tiburcio would have understood that, when Jonathan authorized Tiburcio to take the F-150, the taking was also with Maria's authorization. On this point, Tiburcio offers no explanation as to how or why Tiburcio would have understood that he was taking the vehicle with Maria's authorization when he took it from Jonathan.

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EXHIBIT 9

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

VHS OF MICHIGAN, INC., doing business as DETROIT MEDICAL CENTER,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant,

and

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY and CURRENTLY UNNAMED ASSIGNEE OF THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY,

Defendants-Appellees.

UNPUBLISHED
June 20, 2024

No. 365479
Wayne Circuit Court
LC No. 22-002236-NF

Before: YATES, P.J., and BORRELLO and GARRETT, JJ.

PER CURIAM.

In this action to recover personal protection insurance (PIP) benefits, plaintiff appeals as of right the trial court's order granting summary disposition to defendants Michigan Automobile Insurance Placement Facility (MAIPF) and Currently Unnamed Assignee of the MAIPF under

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MCR 2.116(C)(10) (no genuine issue of material fact).[1] For the reasons set forth in this opinion, we reverse.

I. BACKGROUND

This case arises out of medical treatment plaintiff provided to Michael Dantzler after Dantzler was injured in a motor vehicle accident on February 28, 2021. According to Dantzler, he was self-employed as a "street mechanic" and worked out of his home. Dantzler alleged that a frequent customer named Dee dropped off a 2014 Dodge Charger and the keys to the vehicle at Dantzler's home for repairs on February 26, 2021. Dantzler repaired the vehicle on February 27, 2021. Later that evening, two neighborhood children asked Dantzler to take them for a ride in the Charger. Although Dantzler had consumed alcohol earlier that evening and did not have a valid driver's license, Dantzler agreed to take the children for a ride in the Charger. Just after midnight on February 28, 2021, while driving the children in the Charger, Dantzler crashed into a parked vehicle. He was injured and lost consciousness following the crash. Dantzler was taken by ambulance to plaintiff's hospital, Detroit Medical Center Sinai-Grace Hospital, where he received treatment for his injuries. It was later determined that the vehicle Dantzler was operating when the accident occurred had been stolen from its owner, Anthony Martin, in October or November 2020. Dantzler and Martin did not know each other.

Plaintiff filed this action to recover PIP benefits under the no-fault act, MCL 500.3101 *et seq.*, for the medical treatment and services it provided to Dantzler for his injuries from the accident.

As relevant to this appeal, defendant subsequently filed a motion for summary disposition under MCR 2.116(C)(10). Defendant argued that plaintiff's claim was precluded by MCL 500.3113(a), which provides that a person is not entitled to PIP benefits if, at the time of the accident, the person willingly operated a vehicle that was taken unlawfully and the person knew or should have known that the vehicle was unlawfully taken. Defendant argued that Dantzler unlawfully took the Charger because he was operating the vehicle without a license and while under the influence of alcohol above the legal limit when the accident occurred and, additionally, because he knew that he did not have permission to drive the vehicle at the time of the accident. Because plaintiff's claim was predicated on Dantzler's right to recovery of PIP benefits and if he was precluded from recovery under MCL 500.3113(a), plaintiff's claim was also precluded.

After hearing oral argument on defendant's motion, the trial court ruled that Dantzler unlawfully took the Charger within the meaning of MCL 500.3113(a) when Dantzler operated the Charger while under the influence of alcohol in the early morning hours of February 28, 2021. The trial court, therefore, granted defendant's motion for summary disposition on the basis that MCL 500.3113(a) precluded plaintiff's claim. Plaintiff now appeals.

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[1] State Farm Mutual Automobile Insurance Company (State Farm) was dismissed from the case in the trial court and is not a party to the instant appeal. No appearance was filed on behalf of the Unnamed Assignee of the MAIPF in the trial court or in this Court. Thus, our use of the singular term "defendant" refers only to the MAIPF.

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II. STANDARD OF REVIEW

"A trial court's decision on a motion for summary disposition is reviewed de novo." *Parise v Detroit Entertainment, LLC*, 295 Mich App 25, 27; 811 NW2d 98 (2011). Summary disposition is properly granted under MCR 2.116(C)(10) if "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013) (quotation marks and citation omitted). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* at 139-140 (quotation marks and citation omitted). Questions involving statutory interpretation present issues of law that this Court review's de novo. *Parise*, 295 Mich App at 27.

III. ANALYSIS

Plaintiff argues that the trial court erred by determining that Dantzler unlawfully took the Charger within the meaning of MCL 500.3113(a) and granting summary disposition in defendant's favor, thereby precluding plaintiff from recovering PIP benefits for its treatment of Dantzler's injuries. Plaintiff argues that the exclusion from PIP benefits contained in MCL 500.3113(a) requires an unlawful *taking*, not merely an unlawful use, for the exclusion to apply. Further, plaintiff argues that the relevant inquiry for determining whether an unlawful taking occurred must focus on how the person gained possession of the vehicle rather than how the vehicle was used after obtaining possession. Plaintiff maintains that Dee, the ostensible owner of the Charger, voluntarily gave Dantzler possession of the vehicle for purposes of making repairs and that Dantzler's subsequent use of the vehicle while it was in his possession, even if his use was not authorized, could not somehow transform Dantzler's possession of the vehicle into an unlawful *taking* for purposes of MCL 500.3113(a).

Resolution of this issue involves statutory interpretation. Our task when construing a statute is to discern the Legislature's intent, and we begin with the statutory language. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). "If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted." *Id.*

"The no-fault act permits an insurer to avoid coverage of PIP benefits under certain enumerated circumstances, such as those listed in MCL 500.3113." *Ahmed v Tokio Marine America Ins Co*, 337 Mich App 1, 9; 972 NW2d 860 (2021) (quotation marks and citation omitted). In relevant part, MCL 500.3113 provides as follows:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

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> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully. [MCL 500.3113(a).]

The exclusion in this statutory provision "applies to any person (1) 'willingly operating or willingly using a motor vehicle or motorcycle' that (2) was unlawfully taken by someone, and (3) the person seeking benefits 'knew or should have known' that the motor vehicle was taken unlawfully." *Ahmed*, 337 Mich App at 10. Hence, "a person who willingly operates or willingly uses a motor vehicle that *someone* took unlawfully is disqualified from eligibility for benefits if the person 'knew or should have known' that the taking of the motor vehicle was unlawful; stated differently, such a person is disqualified from eligibility for benefits unless the person had no reason to know that the taking was unlawful." *Id.* at 23 (emphasis added). " 'The first level of inquiry when applying MCL 500.3113(a) always concerns whether the taking of a vehicle was unlawful, and if the taking was lawful, the inquiry ends because the statute is inapplicable.' " *Id.* at 19, quoting *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 747; 896 NW2d 32 (2016).

In *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515-517; 821 NW2d 117 (2012), our Supreme Court construed MCL 500.3113(a) and specifically ascertained the Legislature's intended meaning of the phrase "taken unlawfully." The Court held:

> In determining the Legislature's intended meaning of the phrase "taken unlawfully," we must accord the phrase its plain and ordinary meaning, and we may consult dictionary definitions because the no-fault act does not define the phrase. The word "unlawful" commonly means "not lawful; contrary to law; illegal," and the word "take" is commonly understood as "to get into one's hands or possession by voluntary action." When the words are considered together, the plain meaning of the phrase "taken unlawfully" readily embraces a situation *in which an individual gains possession of a vehicle contrary to Michigan law*.
>
> The Michigan Penal Code contains several statutes that prohibit "takings," including two that prohibit "joyriding," MCL 750.413 and MCL 750.414. MCL 750.413 states that "[a]ny person who shall, wilfully and without authority, take possession of and drive or take away . . . any motor vehicle, belonging to another, shall be guilty of a felony . . . ." Similarly, MCL 750.414 provides in pertinent part that "[a]ny person who takes or uses without authority any motor vehicle without intent to steal the same, or who is a party to such unauthorized taking or using, is guilty of a misdemeanor . . . ." Thus, both joyriding statutes make it unlawful to take any motor vehicle without authority, effectively defining an unlawful taking of a vehicle as that which is unauthorized.
>
> Because a taking does not have to be larcenous to be unlawful, the phrase "taken unlawfully" in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it. [*Spectrum Health*, 492 Mich at 515-518 (citations omitted; first emphasis added; alterations and ellipses in original).]

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The Court in *Spectrum Health* further explained that "[t]he 'authority' referred to in the joyriding statutes is obviously the authority of the owner of the vehicle" and that "[a]ccordingly, for purposes of MCL 500.3113(a), a vehicle is 'unlawfully taken' if it is taken without the authority of its owner." *Id.* at 518 n 25. As the Supreme Court recognized, there must be *both* an unlawful act *and a taking* for the vehicle to have been "taken unlawfully." *Id.* at 516-517. The Court defined the phrase "taken unlawfully" to "embrace[] a situation in which an individual *gains possession* of a vehicle *contrary to Michigan law*." *Id.* at 517 (emphasis added). Accordingly, there must be a nexus between the unlawful act and the attainment of possession. As the Court recognized in *Spectrum Health*, a mere *use* of the vehicle that is unlawful but that is unconnected to attaining possession does not satisfy the definition of "taken unlawfully" for purposes of MCL 500.3113(a):

> MCL 750.414 contains disjunctive prohibitions: it prohibits someone from "tak[ing]" a motor vehicle "without authority" and, alternatively, it prohibits someone from "us[ing]" a motor vehicle "without authority." Thus, it is possible to violate MCL 750.414 without unlawfully *taking* the vehicle and, as a result, not all violations of MCL 750.414 necessarily constitute unlawful *takings* within the meaning of MCL 500.3113(a). Nevertheless, a taking that violates MCL 750.414 qualifies for the exclusion under MCL 500.3113(a) because it is an *unlawful* taking. [*Spectrum Health*, 492 Mich at 517 n 24.]

Although MCL 500.3113(a) has been amended since the Supreme Court issued its opinion in *Spectrum Health*, this Court has already held that "the key term, 'taken unlawfully,' has the same meaning under the present version as it had under the old version." *Ahmed*, 337 Mich App at 10.

In accord with this Court's obligation to follow holdings of our Supreme Court, *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016), this Court has continued to recognize the distinction between *using* and *taking* for purposes of MCL 500.3113(a), *Ahmed*, 337 Mich App at 5, 11-13 (stating that although there was no question that the plaintiff was unlawfully using and operating the rented vehicle at the time of the accident when he drove the vehicle without holding a valid license, contrary to the express prohibition in the rental agreement between the car rental company that owned the vehicle and the plaintiff's spouse who rented the vehicle, it was nonetheless necessary to "determine whether these facts amounted to an unlawful 'taking,' in other words, that plaintiff got the [vehicle] 'into one's hands or possession by voluntary action' "). This Court observed in *Ahmed*, "as *Spectrum Health* noted generally, any violation of the criminal law that *leads to a taking* of a motor vehicle will constitute an 'unlawful taking' for purposes of MCL 500.3113(a)." *Ahmed*, 337 Mich App at 11 n 5 (emphasis added); accord *Swoope v Citizens Ins Co of the Midwest*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364924); slip op at 3. "MCL 500.3113(a) examines the legality of the taking from the driver's perspective[.]" *Ahmed*, 337 Mich App at 12 (quotation marks and citations omitted; alteration in original). Again, because an "unlawful taking" for purposes of MCL 500.3113(a) occurs when a violation of the criminal law "leads to a taking of a motor vehicle," there must be a nexus between the particular illegal act and obtaining possession of the vehicle.

Here, the record reflects that when Dantzler drove the Charger on the night of the accident, he did not have a valid driver's license and had consumed alcohol earlier in the evening. The

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traffic crash report indicates that his blood-alcohol content was .133. Plaintiff does not appear to contest this evidence. Undisputedly, these facts support a conclusion that Dantzler's *use* of the vehicle was unlawful. See MCL 257.301(1) (stating in relevant part that "an individual shall not drive a motor vehicle on a highway in this state unless that individual has a valid operator's or chauffeur's license");[2] MCL 257.625(1)(b), as amended by 2017 PA 153 (generally prohibiting, at the time of the accident in this case, the operation of a vehicle by a person with "an alcohol content of 0.08 grams or more per 100 milliliters of blood"). Thus, to determine whether Dantzler was disqualified from eligibility for PIP benefits under MCL 500.3113(a), the issue becomes whether there was any *taking* of the Charger and whether there was a nexus between any taking—i.e., how Dantzler *gained possession*—of the Charger and the unlawful acts committed by Dantzler. *Spectrum Health*, 492 Mich at 17; *Ahmed*, 337 Mich App at 10, 11 n 5. Hence, we must consider whether Dantzler's particular violations of the criminal law actually led "to a taking of [the] motor vehicle" such that an "unlawful taking" for purposes of MCL 500.3113(a) occurred. *Ahmed*, 337 Mich App at 11 n 5; *Swoope*, ___ Mich App at ___; slip op at 3.

It is undisputed in this case that the Charger had been stolen from Martin, who was the actual owner. There is no evidence or allegation in this case that Dantzler was involved in the theft or that Dantzler and Martin knew each other. The current version of MCL 500.3113(a) requires a showing that the vehicle was unlawfully taken by *someone*; disqualification from PIP benefits under this statutory provision is not limited only to the person who actually took the vehicle unlawfully. *Ahmed*, 337 Mich App at 10. The undisputed evidence thus reflects that there was an unlawful taking by *someone* because the Charger was taken from its owner, Martin, without Martin's authority. *Spectrum Health*, 492 Mich at 518 ("[T]he phrase 'taken unlawfully' in MCL 500.3113(a) applies to *anyone* who takes a vehicle without the authority of the owner, regardless of whether that person intended to steal it."); *Ahmed*, 337 Mich App at 12 (citing *Spectrum Health* for the proposition that there must be a threshold determination that the vehicle was taken from its owner without the owner's authority).

However, that does not end the analysis, because the statute also requires that the person who was operating the vehicle "knew or should have known that the motor vehicle . . . was taken unlawfully" in order for that person to be disqualified from PIP benefits. MCL 500.3113(a); *Ahmed*, 337 Mich App at 10. This Court discussed this scienter requirement in *Ahmed*, concluding that "a person who willingly operates or willingly uses a motor vehicle that someone took unlawfully is disqualified from eligibility for benefits if the person 'knew or should have known' that the taking of the motor vehicle was unlawful" and that such a person is *not* disqualified from benefits if "the person had no reason to know that the taking was unlawful." *Id.* at 23. Here, there is no contention and we cannot find within the record any evidence that Dantzler knew that the Charger had been stolen or that he had any indication to suspect that it could have been stolen. It is the insurer's burden to establish the requirements of MCL 500.3113(a) in order to disqualify a person from eligibility for PIP benefits. *Monaco v Home-Owners Ins Co*, 317 Mich App 738, 746; 896 NW2d 32 (2016). Thus, because there is no evidence that Dantzler had "reason to know" that the Charger had been taken unlawfully from Martin at the time that the Charger was given to

[2] Although MCL 257.301 has been amended since the date of the accident at issue in this case, there were no changes to the language in Subsection (1). 2021 PA 71.

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Dantzler by Dee to have repairs performed, Dantzler cannot be disqualified from eligibility for PIP benefits under MCL 500.3113(a) on the basis of the initial unlawful taking from Martin. *Ahmed*, 337 Mich App at 23.

The next question becomes whether, as the trial court concluded, Dantzler's unlawful *use* of the Charger—driving it without a license and while intoxicated—after the Charger had already come into his possession constitutes an unlawful taking for purposes of MCL 500.3113(a) that could disqualify Dantzler from eligibility for benefits.[3] Defendant argues that there was an unlawful taking because, in addition to the obvious fact that Dantzler did not have permission from Martin—the true owner—to use the Charger, Dantzler also did not have permission from Dee—the Charger's ostensible owner—to drive the vehicle in the middle of the night while intoxicated, unlicensed, and carrying two minor passengers.

In *Landon v Titan Ins Co*, 251 Mich App 633, 635; 651 NW2d 93 (2002), the plaintiff was involved in a motor vehicle accident while driving a vehicle owned by her friend. The friend had left the vehicle parked in the plaintiff's yard, with the plaintiff's permission, while advertising the vehicle for sale. *Id.* The friend left the vehicle unlocked, with the keys under the floor mat, so the plaintiff could let potential buyers test drive the vehicle, but the friend did not expressly permit or prohibit the plaintiff's use of the vehicle. *Id.* at 636. When the plaintiff drove the vehicle on the day of the accident, she believed that her friend would not have objected, but the plaintiff later conceded that her friend probably did not expect the plaintiff to drive the vehicle. *Id.*

This Court concluded that the plaintiff could not have taken possession of the vehicle without authority, in violation of MCL 750.413, because the plaintiff's friend had voluntarily placed the vehicle in the plaintiff's possession and had therefore made the plaintiff a bailee of the vehicle. *Id.* at 641-643. Furthermore, this Court also held that after being given lawful possession of the vehicle, subsequent use of the vehicle that exceeded the authority granted by the owner did not constitute an unlawful taking for purposes of 500.3113(a), even if it may have been a violation of MCL 750.414. *Id.* at 643-646. The Court reasoned that "it is the unlawful nature of the *taking*, not the unlawful nature of the *use*, that forms the basis of the exclusion under subsection 3113(a)." *Id.* at 646 (quotation marks and citation omitted). We concluded that the trial court had erred as a matter of law by ruling that the plaintiff had unlawfully taken the friend's vehicle for purposes of MCL 500.3113(a). *Id.* at 650.

Similarly, in *State Farm Mut Auto Ins Co v Hawkeye-Security Ins Co*, 115 Mich App 675, 677; 321 NW2d 769 (1982), an employee was injured in a motor vehicle accident while he was using a vehicle that was owned by his employer. Although the employer had provided the vehicle to the employee to use "on company business during regular business hours" and did not authorize the employee to use the vehicle for personal reasons, the employee was using the vehicle for his own personal use and outside the scope of his employment when the accident occurred. *Id.* at 677-678. This Court held that the exclusion in MCL 500.3113(a) was inapplicable because "the original taking of the motor vehicle in which [the employee] was injured was not unlawful. *Id.* at 682. The Court explained that the employee "took the vehicle lawfully and within the scope of his

[3] The trial court appeared to focus only on Dantzler's unlawful act of driving while intoxicated.

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employment" but "continued to use the vehicle for his own purposes after working hours, and was injured while doing so." *Id.* In reaching this conclusion, the Court rejected the insurance company's argument that the employee was ineligible for benefits under MCL 500.3113(a) because his use of the vehicle for personal reasons was unauthorized and, thus, unlawful. *Id.* at 681-682.

In *Monaco*, 317 Mich App at 741, this Court held that "the phrase 'taken unlawfully,' as employed in MCL 500.3113(a), does not encompass the unlawful *use or operation* of a motor vehicle, just the unlawful *taking* of a vehicle." In that case, a 15-year-old was injured when she lost control of the vehicle she was driving. *Id.* She was driving alone, even though she only had a permit allowing her to drive "if accompanied by a licensed parent, guardian, or 21–year–old." *Id.* at 741-742. The vehicle was owned by the 15-year-old's mother, and there was evidence that the 15-year-old had been given permission to drive the vehicle unaccompanied at the time of the accident. *Id.* at 742-743. This Court framed the issue presented on appeal as follows:

> There is but one issue in this appeal that we must resolve. It concerns the legal question whether a person injured in a motor vehicle accident is barred from recovering PIP benefits under MCL 500.3113(a)—which generally precludes coverage when a person used a vehicle that he or she had "taken unlawfully"—when the owner of the vehicle permitted, gave consent to, or otherwise authorized the injured person to take and use the vehicle, but the injured person used the vehicle in violation of the law with the owner's knowledge. [*Id.* at 741.]

This Court answered that question in the negative. *Id.* at 748-749. Citing *Spectrum Health*, 492 Mich at 518 n 25, this Court stated that "the unlawful operation or use of a motor vehicle is simply not a concern in the context of analyzing whether the vehicle was taken unlawfully" for purposes of MCL 500.3113(a). *Id.* Accordingly, this Court concluded that there was not an unlawful taking under MCL 500.3113(a) because the 15-year-old driver only used the vehicle unlawfully but did not " 'gain[ ] possession of [the] vehicle contrary to Michigan law.' " *Id.* at 750, quoting *Spectrum Health*, 492 Mich at 517 (alterations in original). The Court in *Monaco* further reasoned that, "with respect to the language in MCL 500.3113(a), '[c]learly, the terms "take" and "use" are not interchangeable or even synonymous; obtaining possession of an object is very different from employing that object or putting it into service.' " *Monaco*, 317 Mich App at 749 (citation omitted; alteration in original).

Reading *Landon*, *State Farm*, and *Monaco* together, the rule that emerges is that the pertinent question in determining whether there was an unlawful taking under MCL 500.3113(a) is whether there was a voluntary transfer of possession of the vehicle, even if for a temporary period of time, and not whether the subsequent use of the vehicle by the person seeking PIP benefits exceeded the scope of the use authorized by the owner. This is consistent with the well-settled principle that there is a distinction between a "use" and a "taking" in this context. *Spectrum Health*, 492 Mich at 517 n 24; *Monaco*, 317 Mich App at 749; accord *Ahmed*, 337 Mich App at 13. When possession has been transferred voluntarily, even if temporarily, there has been no

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"taking."[4] Thus, in those circumstances, a person's subsequent use, even if not authorized by the owner or if otherwise unlawful, does not constitute an unlawful taking under MCL 500.3113(a) because there is no nexus between that unlawful conduct and how the person gained possession of the vehicle. *Landon*, 251 Mich App at 641-646; *State Farm*, 115 Mich App at 681-682; *Monaco*, 317 Mich App at 748-750.

Here, Dantzler received the Charger from Dee to perform repairs on the vehicle. It was only after Dantzler had gained possession that he committed the unlawful acts of driving without a license and while intoxicated. However, those unlawful acts had no connection to the manner in which Dantzler gained possession of the Charger. Therefore, there was no "unlawful taking" for purposes of MCL 500.3113(a). The trial court erred by concluding to the contrary and granting summary disposition in favor of defendant.

This Court's recent decisions in *Ahmed* and *Swoope* do not require a different conclusion. In *Ahmed*, there was evidence that the vehicle's owner had expressly prohibited the plaintiff driver from taking and operating the vehicle and that the driver knew or should have known about the prohibition. *Ahmed*, 337 Mich App at 5-6, 13-15. The vehicle had been rented by the plaintiff's wife, and the terms of the rental agreement prohibited operation of the vehicle by a person without a driver's license. *Id.* at 5-6. The plaintiff did not have a valid driver's license, and he never read the rental agreement even though he knew that the car was rented and knew that the rental agreement existed. *Id.* at 5, 13. Nonetheless, the plaintiff drove the rental car and was involved in an accident. *Id.* at 5, 13-14. This Court held that the plaintiff took voluntary action to gain possession of the vehicle, drove the vehicle contrary to the owner's authorization as stated in the written terms of the rental agreement, and unlawfully took the vehicle within the meaning of MCL 500.3113(a). *Id.* at 13-15, 21. This Court further concluded that although the plaintiff was actually unaware of the terms of the rental agreement, he should have been aware of the term prohibiting unlicensed drivers such as himself from operating the vehicle because the plaintiff knew that the vehicle was rented, knew that a written rental agreement existed, should have known his driving status, and therefore was obligated to determine whether the rental agreement authorized a nonparty such as himself to take and operate the vehicle. *Id.* at 26.

In *Swoope*, the plaintiff was injured in an automobile accident while driving a car owned by the plaintiff's friend. *Swoope*, ___ Mich App at ___; slip op at 1. The plaintiff did not have a valid driver's license. *Id.* The vehicle's owner did not give the plaintiff permission to drive the

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[4] In *Ahmed*, the panel stated that "while it is possible to possess or 'take' a car without 'operating' or driving it, such as by placing it on a flatbed truck and moving it, or by using a tow truck," then held: *"it is not possible to drive it without also taking it; the act of driving a car can only be accomplished by someone who is in possession of it and operating the controls." Ahmed*, 337 Mich App at 14. (emphasis added). Here, Dantzler received possession of the vehicle from Dee before he drove it and without "taking" it. When Dantzler drove the vehicle, he already had possession of the vehicle. " '[P]ossession' is not an act of limited duration; possession continues as long as someone exercises control over the thing possessed." *Id.* Hence, when Dantzler drove the vehicle in this case, there was not a "taking" because he already had possession and did not need to "gain" possession. *Spectrum Health*, 492 Mich at 517.

vehicle. *Id.* at ___; slip op at 4. The plaintiff knew that her license was suspended, and she did not take any steps to seek authorization from her friend to take the car. *Id.* This Court held that the plaintiff therefore unlawfully took the vehicle and should have known the taking was unlawful for purposes of MCL 500.3113(a). *Id.* at ___; slip op at 3-4.

Here, unlike the factual circumstances in *Ahmed* and *Swoope*, defendant has not cited any evidence that suggested Dantzler taking of possession of the Charger when it was left with him by Dee, was somehow unauthorized or unlawful. Defendant also does not claim that there were any factual indications that should have alerted Dantzler to the possibility that he had not been legitimately entrusted with possession of the Charger by the Charger's actual owner. Accordingly, the factual circumstances of this case are distinguishable from those in *Ahmed* and *Swoope*, and our conclusions in this case are consistent with the holdings in *Ahmed* and *Swoope*.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff having prevailed is entitled to costs. MCR 7.219(A).

/s/ Christopher P. Yates
/s/ Stephen L. Borrello
/s/ Kristina Robinson Garrett

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EXHIBIT 10

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As of: May 6, 2025 4:08 PM Z

Court of Appeals of Michigan

January 16, 2025, Decided

No. 367792

Reporter
2025 Mich. App. LEXIS 918 *

MARC WITT, Plaintiff-Appellee, v SHAWN MICHAEL SMITHSON and SHAWN MARIE BOGGESS, Defendants, and AUTO-OWNERS INSURANCE COMPANY, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: [*1] Macomb Circuit Court. LC No. 2022-002613-NF.

Core Terms

motorcycle, unlawfully, summary disposition, permission, reconsideration motion, benefits, license, trial court, motor vehicle, driver, drive, no-fault, collision, insurer, rental

Counsel: For WITT MARC, Plaintiff - Appellee: SLAGER DREW.

For SMITHSON SHAWN MICHAEL, BOGGESS SHAWN MARIE, Defendants: AVERY ALFRED A JR.

For AUTO-OWNERS INSURANCE COMPANY, Defendant - Appellant: CRAMER KAITLYN ADELL.

Judges: Before: RIORDAN, P.J., and O'BRIEN and GARRETT, JJ.

Opinion

PER CURIAM.

In this action to recover no-fault benefits, defendant-appellant, Auto-Owners Insurance Company, appeals by leave granted[1] the trial court's orders denying Auto-Owners' motions for summary disposition and reconsideration. We affirm.

I. BACKGROUND

This case arises out of a July 11, 2021 collision between a motorcycle driven by plaintiff and a motor vehicle driven by defendant Shawn Michael Smithson. The motor vehicle was owned by defendant Shawn Marie Boggess and insured by Auto-Owners. Plaintiff's significant other, Cheryl Vaughn, owned the motorcycle that plaintiff was using, but plaintiff testified that he considered the motorcycle his own. It is undisputed that plaintiff primarily used the motorcycle, that Vaughn allowed plaintiff to use the motorcycle, and that plaintiff did not need Vaughn's permission to use the motorcycle. It is also undisputed that plaintiff [*2] did not have a license when the accident occurred, that he had not had a license for years, and that Vaughn knew that plaintiff did not have his license but allowed him to use the motorcycle anyway.

Plaintiff suffered injuries as a result of the collision and brought suit against Auto-Owners to recover unpaid no-fault benefits. As relevant to this appeal, Auto-Owners moved for summary disposition under , arguing that *MCL 500.3113(a)* barred plaintiff from collecting no-fault benefits. That statute precludes a person who willingly operates a motorcycle that was taken unlawfully from collecting no-fault benefits if the person knows or should know that the motorcycle was taken unlawfully. *MCL 500.3113(a)*. Auto-Owners contended that this statute precluded plaintiff's claim for benefits because plaintiff unlawfully took Vaughn's motorcycle when he drove the

[1] See *Witt v Smithson*, unpublished order of the Court of Appeals, entered February 15, 2024 (Docket No. 367792).

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motorcycle without a license in violation of Michigan law, and that plaintiff knew or should have known that the taking was unlawful because he knew that he was unlicensed.

In response, plaintiff argued that, regardless of whether his *use* of the motorcycle was unlawful, he did not unlawfully take the motorcycle because he took it with Vaughn's permission. Auto-Owners [*3] replied that the taking could not have been lawful because plaintiff was not legally allowed to operate the motorcycle. This meant, according to Auto-Owners, that when plaintiff drove off with the motorcycle, he necessarily took it unlawfully. Auto-Owners added that it was unlawful under for Vaughn to allow someone without a license like plaintiff to "operate" her motorcycle, which made it unlawful for plaintiff to take the motorcycle.

Denying Auto-Owners' motion, the trial court explained that plaintiff did not unlawfully take the motorcycle because he had Vaughn's permission to take it. Auto-Owners filed a motion asking the trial court to reconsider this ruling, but the court denied the motion.

This appeal followed.

II. MOTION FOR SUMMARY DISPOSITION

On appeal, Auto-Owners principally challenges the trial court's decision denying Auto- Owners' motion for summary disposition under . A trial court's decision on a motion for summary disposition is reviewed de novo.

. "A motion under tests the factual sufficiency of the complaint."

. When evaluating a motion under this subrule, the reviewing court is to consider "the pleadings, admissions, and other evidence submitted by the parties in [*4] the light most favorable to the nonmoving party."

(quotation marks and citation omitted). A trial court should grant summary disposition under "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law."

Auto-Owners' argument in its motion for summary disposition centered around *MCL 500.3113(a)*, which provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> (a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

Our Supreme Court in , explained that "the plain meaning of the phrase 'taken unlawfully' readily embraces a situation in which an individual gains possession of a vehicle contrary to Michigan law."[2]

In , this Court addressed whether a vehicle could be "taken unlawfully" for purposes of *MCL 500.3113(a)* "when the owner of the vehicle permitted, gave consent to, or otherwise authorized the injured person to take and use the vehicle, but the injured person used [*5] the vehicle in violation of the law with the owner's knowledge." The issue in arose after the plaintiff's 15-year-old daughter, Alison, was injured while driving a car owned by the plaintiff. . Alison had her learner's permit, so she was only allowed to drive "if accompanied by a licensed parent, guardian, or 21-year old, and she was not so accompanied when the accident occurred." . It was initially disputed whether Alison took the plaintiff's vehicle with the plaintiff's permission, so the case went to trial, and the jury concluded that the insurer "had failed to meet its burden of showing that Alison took the car without permission[.]" . On appeal, the insurer did not challenge the jury's factual determination that the insurer "failed to satisfy its burden of showing that Alison took the car without permission," and instead only challenged whether Alison's illegal use of the car barred her recovery of PIP benefits under *MCL 500.3113(a)*. . This Court held that Alison's unlawful use of the motor vehicle did not render the taking (which was lawful because it was done with the owner's permission) unlawful, explaining that "the unlawful operation or use of a motor vehicle is simply

[2] ***MCL 500.3113(a)*** was amended in 2019, but the statute continues to use the phrase "taken unlawfully," which "has the same meaning under the present version as it had under the old version."

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not a concern in [*6] the context of analyzing whether the vehicle was taken unlawfully." .

controls the outcome of this case. It is undisputed that Vaughn owned the motorcycle involved in the collision and allowed plaintiff to take it. This means that plaintiff's taking of the motorcycle was not unlawful, even if his subsequent use of the motorcycle was. See

(explaining that there is no unlawful taking for purposes of *MCL 500.3113(a)* when an owner voluntarily transfers a vehicle to another, even if the other's subsequent use of the vehicle is "not authorized by the owner or if otherwise unlawful").

This Court's recent opinion in

, does not require a different result. The driver in *Swoope* "admitted during her deposition that the vehicle's owner did not give her permission to drive the car" and "failed to take any steps to ensure the taking was authorized." .[3] This Court concluded that these admissions by the driver, combined with the fact that the driver was not legally allowed to drive the owner's vehicle, required concluding that the driver's taking of the owner's vehicle was unlawful.

. While this case is similar to *Swoope* in that plaintiff here was not legally allowed to drive the motorcycle, this case is distinguishable [*7] from in that plaintiff took the motorcycle with Vaughn's permission.[4] See

(distinguishing *Swoope* on the basis that the driver in that case took the vehicle without the owner's permission).

Nor is a different result required by this Court's decision in . The car involved in the collision in was rented by the plaintiff's wife, and as part of the rental agreement, the wife agreed that only "Authorized Drivers" could operate the rental car.

. To be an "Authorized Driver," a person had to be licensed, and the plaintiff driving the rental car at the time of the collision was unlicensed. *Id.* This Court held that, under these facts, the taking of the car was unlawful because the owner of the car—the rental company—explicitly denied unlicensed drivers like the plaintiff permission to use the car, and the plaintiff knew or should have known this because it was stated in the rental agreement. [*8] . While heavily criticized , it recognized that controls when "a car owner tells a person whom the owner knows to be unlicensed under the circumstances that the person nevertheless may drive the car." . That is, recognized that controls in cases like this one.[5]

Auto-Owners contends that, even under 's reasoning, plaintiff's taking of the vehicle in this case was unlawful because it was not permitted by . That statute provides:

> A person shall not knowingly permit a motor vehicle owned by the person to be operated on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act. [.]

Auto-Owners [*9] contends that this statute made it

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[3] This Court's recent statement in , that "[t]he facts of *Swoope* cannot be meaningfully distinguished from the facts of " is puzzling. The *Bradley* Court apparently misread *Swoope*, because *Bradley* stated that the vehicle in *Swoope* "was operated with the owner's permission," *id.*, which is clearly incorrect, see .

[4] For the same reason, this case is distinguishable from this Court's unpublished opinion in , which Auto-Owners cites on appeal.

[5] Auto-Owners contends that the instant case is like this Court's unpublished opinion in , but that is incorrect. *Cyrus* was controlled by because it involved a rental car, and the rental agreement stated that unlicensed drivers like the plaintiff were not allowed to use the rented vehicle. . In other words, the owner of the car in *Cyrus* did not give the plaintiff permission to take the car.

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illegal for Vaughn to allow plaintiff to "take" Vaughn's motorcycle because it made it illegal for Vaughn to allow plaintiff to "operate" her motorcycle, and "operate" under the Michigan Vehicle Code means "[b]eing in actual physical control of a vehicle." . This argument is incorrect insofar as does not speak to whether Vaughn could allow plaintiff to "take" the motorcycle; the statute only made it illegal for Vaughn to allow plaintiff to "operate" the motorcycle. As this Court has recognized, there is a distinction between "taking" a vehicle and "operating" one. See (explaining that "it is possible to possess or 'take' a car without 'operating' or driving it"). In other words, "operating" a vehicle is not synonymous with "taking" a vehicle. Compare ("[T]he word 'take' is commonly understood as 'to get into one's hands or possession by voluntary action.') with (defining the word "operate" as "[b]eing in actual physical control of a vehicle."). Auto-Owners' argument attempting to use the words interchangeably is unpersuasive.

Auto-Owners more generally argues that the permission of the owner of a vehicle should not matter at all when analyzing [*10] *MCL 500.3113(a)* because the statute says nothing about whether a taking must be with the vehicle owner's permission. That is true but unpersuasive. A vehicle owner's permission is relevant under *MCL 500.3113(a)* because the statute concerns whether a vehicle was "taken unlawfully," and whether a vehicle was "taken unlawfully" concerns whether the vehicle was taken "without the authority of the owner." .

III. MOTION FOR RECONSIDERATION

Auto-Owners alternatively argues that the trial court erred by denying Auto-Owners' motion for reconsideration. We disagree.

A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. . A trial court abuses its discretion if its decision falls outside the range of reasonable and principled outcomes. *Id.*

In its motion for reconsideration, Auto-Owners contended that the trial court misapplied and to conclude that plaintiff did not unlawfully take the motorcycle for purposes of *MCL 500.3113(a)*. Auto-Owners additionally argued that Vaughn and plaintiff engaged in fraud because Vaughn acted as a strawman purchaser/owner of the motorcycle for plaintiff, as both Vaughn and plaintiff knew that plaintiff was not legally permitted to own the motorcycle. Auto-Owners further [*11] argued that plaintiff was a statutory owner of the motorcycle and, as such, needed to be insured when riding the motorcycle or he was precluded from recovering no-fault benefits.

Denying this motion, the court opined that it correctly applied and . It further stated:

> Inasmuch as defendant Auto-Owners' prior motion for summary disposition did not raise arguments regarding fraud and a straw man purchase, the *Opinion and Order* dated June 20, 2023 could not have possibly erred in failing to address those arguments. Defendant Auto-Owners may not raise these arguments for the first time in a motion for reconsideration. [Citation omitted.]

provides:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Under this rule, "a trial court has discretion on a motion for reconsideration to decline to consider new legal theories [*12] or evidence that could have been presented when the motion was initially decided." .

Auto-Owners contends that the trial court erred to the extent it stated that, as a matter of law, Auto-Owners could not raise new arguments in a motion for reconsideration. It is true that the court's statement that "Auto-Owners may not raise these arguments for the first time in a motion for reconsideration" was overly broad, but before it made that statement, the court sensibly reasoned that it "could not have possibly erred in failing to address" arguments that were not raised in Auto-Owners' motion for summary disposition. This statement clearly demonstrates that the court was not inclined to consider Auto-Owners' new arguments. It is thus clear that, regardless of some of the phrasing it used, the trial court chose not to consider Auto-Owners' new arguments, and that decision was not an abuse of discretion. See *id.*

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Auto-Owners alternatively contends that it did not actually raise any new arguments in its motion for reconsideration, and that the arguments were actually just more-developed versions of the arguments it raised in its motion for summary disposition, such that this Court can address the [*13] more-developed arguments on appeal. We disagree. Auto-Owners' motion for summary disposition that is the subject of this appeal addressed solely whether *MCL 500.3113(a)* precluded plaintiff from collecting no-fault benefits because he unlawfully took the motorcycle. This argument is plainly distinct from Auto-Owners' strawman and statutory-owner arguments.[6] Whether plaintiff and Vaughn engaged in fraud, and whether plaintiff is precluded from collecting benefits because he was a statutory owner of the motorcycle without proper insurance, are not merely more developed or sophisticated arguments related to *MCL 500.3113(a)*. Rather, they are wholly new arguments raised for the first time in Auto-Owners' motion for reconsideration. For that reason, the arguments are unpreserved, and we decline to consider them. See

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Affirmed.

/s/ Michael J. Riordan

/s/ Colleen A. O'Brien

/s/ Kristina Robinson Garrett

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[6] Auto-Owners argued in its motion for reconsideration and continues to argue on appeal that, based on the prior version of *MCL 500.3113(a)* and the interpretation of the amended version of the statute in and similar cases, the Legislature intended that someone who illegally "uses" a vehicle be disqualified from receiving no-fault benefits. This argument appears related to Auto- Owners' *MCL 500.3113(a)* argument, but, as explained earlier [*14] in this opinion, clearly rejects this argument, and is controlling under the facts of this case, as itself recognized.

[7] To be clear, neither the trial court's refusal to consider these arguments in its denial of Auto- Owners' motion for reconsideration nor this Court's refusal to consider the arguments on appeal constitutes a ruling on the merits. Auto-Owners is free to raise these arguments later in the proceedings on remand if it so desires.