STATE OF MICHIGAN

COURT OF APPEALS

DAVID RICHARD DION,

Plaintiff/Counter-Defendant-Appellant,

v

WILLIAM MELVIN CHILDERS,

Defendant-Appellee,

and

MUTUAL SERVICE CASULATY INSURANCE COMPANY OF ST. PAUL,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
December 26, 2000

No. 215958
Macomb Circuit Court
LC No. 96-002402-NI

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting Mutual Service's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's uninsured car stalled out while he was driving. Before he could move it off the road, defendant Childers' came upon it. As he swerved to avoid it, he hit plaintiff. The trial court granted judgment in favor of Childers' no-fault insurance company, finding that plaintiff was not entitled to personal injury protection benefits because his uninsured vehicle was involved in the accident. MCL 500.3113(b); MSA 24.13113(b).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must

* Circuit judge, sitting on the Court of Appeals by assignment.

consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

The owner of a motor vehicle is generally required to maintain no-fault insurance on the vehicle. MCL 500.3101(1); MSA 24.13101(1). A no-fault insurer "is 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); MSA 24.13105(1). A person is not entitled to first-party "benefits for accidental bodily injury if at the time of the accident … [t]he person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or section 3103 was not in effect." MCL 500.3113(b); MSA 24.13113(b).

Plaintiff argues that his car was not involved in the accident because he was not an occupant of the vehicle at the time he was injured. However, occupancy is relevant to determining the priority of claims against insurers as provided in MCL 500.3114(4); MSA 24.13114(4) and MCL 500.3115(1); MSA 24.13115(1), see, e.g., *Hackley v State Farm Mutual Auto Ins Co,* 147 Mich App 115, 118-119; 383 NW2d 108 (1985); *Winters v Nat'l Indem Co,* 120 Mich App 156, 159-160; 327 NW2d 423 (1982), and the priority of claims does not become relevant until it is established that plaintiff is entitled to no-fault benefits. *Winters, supra*. In this case, priority is not even an issue because plaintiff was not insured and thus Childers' insurer is the only insurance company potentially liable for payment of benefits. Thus, plaintiff has failed to prove his claim of error due to the failure to cite relevant authority. *Delta Twp v Eyde,* 40 Mich App 485, 490; 198 NW2d 918 (1972), aff'd in part 389 Mich 549 (1973). Considering the merits nonetheless, we find no error in the trial court's ruling.

"A vehicle may be 'involved in the accident' even though the damage cannot be said to have arisen out of the ownership, operation, maintenance, or use of *that* vehicle." *Turner v Auto Club Ins Ass'n,* 448 Mich 22, 35; 528 NW2d 681 (1995) (emphasis in original). "For a motor vehicle to be involved in an accident, it must actively contribute to the accident. In other words, there must be an 'active link' between the injury and the use of the motor vehicle as a motor vehicle for the vehicle to be deemed 'involved in the accident.'" *Witt v American Family Ins Co,* 219 Mich App 602, 606-607; 557 NW2d 163 (1996) (citations omitted). However, "physical contact is not required to establish that the vehicle was 'involved in the accident' . . . ." *Turner, supra* at 39.

In this case, plaintiff had been driving his car, which he knew was not in good working order, it having stalled out before. He exited the car in order to push it off the road. Because it did not have any lights, Childers didn't see it until the last minute and swerved to avoid the obstruction, which resulted in plaintiff's being injured. Thus, while plaintiff was not injured by his vehicle, the accident was caused by his vehicle, which therefore constituted an "active link" in the events which led to his injury. See *Wright v League Gen'l Ins Co,* 167 Mich App 238,

246; 421 NW2d 647 (1988). Therefore, the trial court did not err in concluding that plaintiff was disqualified from receiving benefits under MCL 500.3113(b); MSA 24.13113(b).

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber