STATE OF MICHIGAN

COURT OF APPEALS

LEAGUE GENERAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and MICHIGAN MILLERS MUTUAL INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
January 16, 2001

No. 216519
Oakland Circuit Court
LC No. 98-003488-NF

Before: McDonald, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm.

This appeal involves a priority dispute among no-fault insurers. Plaintiff paid no-fault benefits to an individual after the individual was injured in an accident involving a vehicle driven by plaintiff's insured. Plaintiff seeks to recover pro rata contribution from defendants pursuant to MCL 500.3115(1); MSA 24.13115(1), arguing that vehicles insured by defendants were involved in the accident within the meaning of the no-fault act.

After all parties moved for summary disposition, the trial court ruled that no genuine issue of material fact existed with regard to whether defendants' insureds' vehicles were in use as motor vehicles, MCL 500.3105(1); MSA 24.13105(1), because defendants' insureds' vehicles were parked at the time of the accident. The trial court also ruled that defendants' insureds' vehicles were not involved in the accident because they did not substantially contribute to its occurrence.

We review de novo the grant or denial of summary disposition to determine whether the moving party was entitled to judgment as a matter of law. *Spencer v Citizens Ins Co*, 239 Mich App 291, 299; 608 NW2d 113 (2000). In evaluating a motion brought pursuant to MCR 2.116(C)(10), this Court reviews the affidavits, pleadings, depositions, admissions and other evidence in a light most favorable to the non-moving party. *Id*. When the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id*.

At issue in this appeal is whether defendants' insureds' vehicles were involved in the accident within the meaning of MCL 500.3115(1); MSA 24.13115(1), which provides in pertinent part:

> (1) Except as provided in [MCL 500.3114(1); MSA 24.13114(1)], a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.
>
> (b) Insurers of operators of motor vehicles involved in the accident.

Our Supreme Court interpreted the phrase "involved in the accident" in *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 37-39; 528 NW2d 681 (1995). In *Turner*, the Court concluded that for a vehicle to be "involved in the accident," the vehicle must be in use as a motor vehicle, and must actively contribute to the happening of the accident. *Id*. Although *Turner* interpreted the phrase "involved in the accident" as it appears in MCL 500.3125; MSA 24.13125, the Court's reasoning is instructive here because the phrase should be construed uniformly throughout the no-fault act. *Michigan Mut Ins Co v Farm Bureau Ins Co*, 183 Mich App 626, 636; 455 NW2d 352 (1990); *Wright v League General Ins Co*, 167 Mich App 238, 245; 421 NW2d 647 (1988).

After a review of the record, we conclude that the trial court properly determined that no factual dispute existed with regard to whether defendants' insureds' vehicles were parked. The issue whether defendants' insureds' vehicles were parked is relevant because injuries involving parked cars do not typically involve the motor vehicle in its use as a motor vehicle. *Miller v Auto-Owners Ins Co*, 411 Mich 633, 639; 309 NW2d 544 (1981). Injuries that arise out of the use of a parked vehicle are usually not covered under the no-fault act. MCL 500.3106(1); MSA 24.13106(1); *Yost v League Gen'l Ins Co*, 213 Mich App 183, 184; 539 NW2d 568 (1995).

Here, the driver of defendant State Farm's insured's vehicle testified that he placed his vehicle in park before getting out to remove the towing strap from between the two vehicles. The driver of defendant Michigan Millers' insured's vehicle also indicated that his vehicle was not moving at the time of the accident, and that he had his foot on the brake. Testimony from an eyewitness to the accident and the investigating officer also established that both vehicles were parked when the accident occurred. We are satisfied that the trial court correctly concluded that both vehicles were parked when this accident occurred. *United Southern Assurance Co v Aetna Life & Casualty Ins Co*, 189 Mich App 485, 489; 474 NW2d 131 (1991).

We also conclude that the unreasonably parked exception to the parking exclusion is not applicable here. MCL 500.3106(1); MSA 24.13106(1) provides in pertinent part:

(1) Accidental injury does not arise out of the ownership, operation, maintenance or use of parked vehicle as a motor vehicle unless any of the following occur:

* * *

(c) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.

A vehicle is unreasonably parked within the meaning of MCL 500.3106(1); MSA 24.13106(1) where its obstruction of traffic results in injury. See e.g., *Wills v State Farm Ins Co*, 437 Mich 205, 214-215; 468 NW2d 511 (1991); *Williams v Allstate Ins Co*, 144 Mich App 178, 181; 375 NW2d 8 (1985); *Braun v Citizens Ins Co*, 124 Mich App 822, 823, 828; 335 NW2d 701(1983). Because the evidence is clear that defendants' insureds' vehicles were not obstructing the roadway on which plaintiff's insured's vehicle was traveling, we agree with the trial court that defendants' insureds' vehicles were not unreasonably parked.

Furthermore, even if we were to agree with plaintiff's assertions that the vehicles were not parked, or that they were engaged in maintenance within the meaning of MCL 500.3105(1); MSA 24.13105(1), we are satisfied that summary disposition was properly granted because defendants' insureds' vehicles did not actively contribute to this accident. *Turner*, *supra* at 39-40. The presence of these vehicles at the scene of the accident does not constitute involvement in the accident in light of our Court's clear statement that "but for" causation will not sustain a finding of involvement. *Id*.; *Heard v State Farm Mut Automobile Ins Co*, 414 Mich 139, 147; 324 NW2d 1 (1982).

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald