

STATE OF MICHIGAN
COURT OF APPEALS

LINDA LOU GALBREATH, Personal
Representative of the ESTATE OF DUWARD
GALBREATH,

Plaintiff-Appellant,

v

TIG INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
August 10, 2001

No. 223947
Muskegon Circuit Court
LC No. 99-039496-NF

Before: Collins, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting summary disposition in favor of defendant. We affirm.

Duward Galbreath, plaintiff's husband, was killed when his motorcycle flipped over as he was exiting US 31 at Sternberg Road. Plaintiff filed a complaint against defendant alleging that a vehicle driven by Kimberly Rathsburg and insured by defendant was involved in the accident, and that defendant wrongfully denied plaintiff personal injury protection insurance benefits. The circuit court granted summary disposition to defendant, finding no evidence that Rathsburg's vehicle was involved in the accident.

In deciding a motion for summary disposition brought under MCR 2.116(C)(10), the trial court considers the affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists. *Ritchie-Gamestar v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The applicable section of Michigan's no-fault act provides, in pertinent part, as follows:

(5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle

while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident. [MCL 500.3114(5).]

Thus, under MCL 500.3114(5), a motorcyclist who suffers accidental bodily injury arising from a motor vehicle accident may claim benefits from the insurers of the motorists and vehicle owners who were “involved in the accident.” *Greater Flint HMO v Allstate Ins Co*, 172 Mich App 783, 786; 432 NW 2d 439 (1988).

Even though the phrase “involved in the accident” appears many times throughout the no-fault act, it is not defined in the act. *Turner v Auto Club Ins Ass’n*, 448 Mich 22, 37; 528 NW2d 681 (1995). However, in *Hastings Mutual Ins Co v State Farm Ins Co*, 177 Mich App 428, 434; 442 NW2d 684 (1989), this Court held that in order for a vehicle to be considered “involved” in an accident for purposes of § 3114(5), that vehicle must be an “active link contributing to the accident,” and “there must be ‘evidence’ which ‘shows’ the involvement of a motor vehicle.” Further, citing *Hastings*, *supra*, as well as other Court of Appeals cases interpreting the phrase “involved in the accident” in the no-fault act, the Supreme Court held in *Turner*, *supra* that

for a vehicle to be considered “involved in the accident” under § 3125, the motor vehicle, being operated or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident. Showing a mere “but for” connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle was “involved in the accident.” Moreover, physical contact is not required to establish that the vehicle was “involved in the accident,” nor is fault a relevant consideration in the determination whether a vehicle was “involved in the accident.” [*Turner*, *supra* at 39.]

Rathsburg testified at her deposition that as Galbreath entered US 31, Rathsburg moved over to the passing lane to allow him to enter the highway. Galbreath accelerated and passed Rathsburg on the right. Rathsburg then moved over to the driving lane where she maintained her speed. A short time later, she passed Galbreath because his speed had slowed. After Rathsburg returned to the driving lane, Galbreath sped up and passed her. Once back in front of Rathsburg, Galbreath again slowed down, and Rathsburg, who was maintaining a constant speed, entered the left lane and passed him. As Rathsburg neared her exit, Galbreath once again accelerated and passed her, this time leaving approximately a car’s length between them as he returned to the driving lane. At that point, Rathsburg dropped back and slowed down because she had entered the exit lane. Rathsburg testified that Galbreath also moved from the driving lane to the exit lane. When both Galbreath and Rathsburg were on the exit ramp, the distance between them increased because Rathsburg was slowing down and Galbreath was not. When the distance between them was more than seventy-five yards, Rathsburg saw Galbreath flip end over end off the ramp.

Plaintiff relies on Rathsburg’s deposition testimony to support her claim that the Rathsburg vehicle interfered with and influenced Galbreath’s operation of his vehicle, and her specific assertions that Rathsburg and Galbreath actively pursued each other, that when

Rathsburg approached the Sternberg exit, she squeezed Galbreath out of his lane and forced him to leave the highway at a high rate of speed, and that Rathsburg and Galbreath exchanged hand gestures. However, we find nothing in Rathsburg's deposition or any other evidence presented by plaintiff to support these assertions or otherwise create a genuine issue of fact regarding whether Rathsburg's vehicle was involved in the accident.

In her deposition, Rathsburg stated that she believed she was a nonparticipant in a "cat and mouse" game with Galbreath. Rathsburg also stated that she was in the exit lane before Galbreath moved into it, and Galbreath was ahead of her truck at first by only a car's length and then by an expanding distance when he moved into the exit lane and she began to slow down. At the point Galbreath left the pavement, Rathsburg believed she was more than three-quarters the length of a football field behind him. Although Rathsburg testified that just before Galbreath entered the exit ramp, he made a hand gesture, she also testified that she did not know what the gesture meant, and she did not respond.

Because plaintiff presented no documentary evidence to show that the Rathsburg vehicle actively contributed to the motorcycle accident, the circuit court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage