

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

UNPUBLISHED  
September 30, 2003

Plaintiff-Appellee,

v

JOHN FRY,

No. 240645  
Mecosta Circuit Court  
LC No. 01-014390-NZ

Defendant,

and

GEICO GENERAL INSURANCE COMPANY,

Defendant-Appellant.

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Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant Geico General Insurance Company appeals as of right the trial court's order granting summary disposition in favor of plaintiff State Farm Mutual Automobile Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Paul Cass and Robert Schoenlein were riding motorcycles southbound on M-66. They were following a van being driven by Sharon Schaening. Schaening activated her left turn signal and slowed her van in order to make a left turn onto Taft Road. Schaening's van never stopped moving. At the same time, four motorcycles, including one driven by defendant John Fry, were traveling northbound on M-66. Cass waved at the northbound riders. As he was doing so, he failed to notice that Schaening had slowed her van and was waiting to turn left. Cass swerved his motorcycle to the right to avoid the van and in turn struck Schoenlein's motorcycle. Cass then hit the rear of Schaening's van. The impact caused Cass' motorcycle to careen into the northbound traffic, striking Fry's motorcycle. Fry was thrown from his motorcycle and sustained serious injuries.

Plaintiff, Fry's automobile insurer, paid Fry personal injury protection (PIP) benefits, and filed suit to recoup the benefits from defendant on the ground that Schaening's van was involved in the accident. Plaintiff and defendant moved for summary disposition pursuant to MCR

2.116(C)(10). In granting plaintiff's motion, the trial court reasoned that Schaening's van was involved in the accident because it was on the road and because the impact of Cass's motorcycle against the van caused the motorcycle to veer into oncoming traffic, where it struck Fry's motorcycle.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). A motion under MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. We review the record evidence and all reasonable inferences drawn from it in order to decide whether a genuine issue of material fact exists. *Id.* Questions involving statutory interpretation are also reviewed de novo by this Court. *Smith v Globe Life Ins Co*, 460 Mich 446, 458; 597 NW2d 28 (1999).

An insurer is liable to pay PIP benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.<sup>1</sup> MCL 500.3105(1). A motorcycle is not a motor vehicle. MCL 500.3101(2)(e). However, a motorcyclist may collect PIP benefits if he is injured in an accident where a motor vehicle is "involved in the accident." MCL 500.3114(5).

Recently, in *Amy v MIC Gen Ins Corp*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2003) (Docket Nos. 237055, 237056, 237379, 237380, issued 8/14/03), this Court addressed the meaning of "involved in the accident" as it pertains to a motor vehicle. The Court first noted that the phrase "involved in the accident" is used in three other sections of the no-fault act and thus should be consistently construed.<sup>2</sup> Slip op at 7. After an in-depth review of past cases interpreting this phrase, the Court announced several general principles to be used when assessing whether a motor vehicle was involved in the accident under the no-fault act. Pertinent to our analysis, the *Amy* Court proffered the following:

1. If the motor vehicle was moving at the time of the accident, a vehicle that actively contributes to either the accident or injuries is involved in the accident. [*Id.* at 15.]

Expanding on the "active contribution" requirement on the part of the motor vehicle, our Supreme Court has stated,

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 is "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 is "involved in an accident." [*Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995) (construing the phrase "involved in the accident" as used in MCL 500.3125).]

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<sup>1</sup> The parties do not dispute that Schaening's van was being used as a motor vehicle at the time of the accident.

<sup>2</sup> Therefore, it is irrelevant that other cases do not involve the interpretation of the phrase in MCL 500.3114(5).

With these principles as guidance, we hold that Schaening's van was "involved in the accident." The combination of Schaening's van slowing down and Cass' inattentiveness resulted in Fry's injuries. The fact that Schaening may have appropriately decelerated is irrelevant. This action directly caused Cass to swerve to avoid hitting Schaening's van. Additionally, the determination of whether Schaening's van was "involved in the accident" does not hinge on whether Cass' hitting the van directly caused him to veer into oncoming traffic and hit Fry. The motor vehicle "need not be the proximate cause" of the accident. *Greater Flint HMO v Allstate Ins Co*, 172 Mich App 783, 787; 432 NW2d 439 (1988). The chain of events that resulted in Fry's injuries was already set in motion when Schaening's van decelerated. *Hastings Mutual Ins Co v State Farm Ins Co*, 177 Mich App 428, 435; 442 NW2d 684 (1989).

Contrary to defendant Geico's assertion, this is not a case where the motor vehicle at issue was "merely there," as in *Brasher v Auto Club Ins Ass'n*, 152 Mich App 544; 393 NW2d 881 (1986), *Bachman v Progressive Casualty Ins Co*, 135 Mich App 641; 354 NW2d 292 (1984), and *Stonewall Ins Group v Farmers Ins Group*, 128 Mich App 307; 340 NW2d 71 (1983). In these cases, the motor vehicles determined not to be "involved in the accident" were stopped at intersections when hit. Therefore, the motor vehicles only passively contributed to the accident. *Turner, supra* at 39. As the *Brasher* Court stated, "[T]here must be some activity, with respect to the vehicle, which somehow contributes to the happening of the accident." *Brasher, supra* at 546. Thus, this case is distinguishable because of one important fact; Schaening's van had been traveling at the normal rate of speed and then slowed in order to make a left turn. Cf *Dep't of Social Services v Auto Club Ins Ass'n*, 173 Mich App 552, 556-557; 434 NW2d 419 (1988). Accordingly, we conclude that the trial court properly granted summary disposition in favor of plaintiff.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder