STATE OF MICHIGAN

COURT OF APPEALS

LESLIE SHANKSTER,

Plaintiff-Appellee,

v

FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
September 22, 2009

No. 284850
St. Clair Circuit Court
LC No. 07-001562-NF

Before: Jansen, P.J., and Fort Hood and Gleicher, JJ.

PER CURIAM.

The trial court issued an order granting plaintiff's motion for partial summary disposition and declaring that defendant was liable to plaintiff for no-fault personal protection insurance (PIP) benefits under Michigan's no-fault act (the Act), MCL 500.3101 *et seq*. Our Supreme Court has remanded this case for consideration as on leave granted. *Shankster v Farm Bureau Mut Ins Co of Michigan*, 483 Mich 1044 (2008). We now affirm.

Defendant first argues that plaintiff is not entitled to no-fault coverage for his off-road vehicle (ORV) accident because, as a single-vehicle accident, there was no "motor vehicle" involved as required under the Act. We disagree. We review de novo a trial court's decision on a motion for summary disposition, as well as questions of statutory interpretation. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003); *In re MCI Telecommunications*, 460 Mich 396, 413; 596 NW2d 164 (1999).

Under the Act, a person who suffers bodily injury in a motor vehicle accident is entitled to PIP benefits payable by an insurer without regard to fault. MCL 500.3105; *Allstate Ins Co v Dep't of Management & Budget*, 259 Mich App 705, 710; 675 NW2d 857 (2003). At the time of plaintiff's accident, the Act defined a motor vehicle as follows:

> "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws. Motor vehicle does not include a farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan vehicle code pursuant to section 216 of

> the Michigan vehicle code, Act. No. 300 of the Public Acts of 1949, being section 257.216 of the Michigan Compiled Laws. [MCL 500.3101(2)(e)[1].]

Notably, the definition of "motor vehicle" did not specifically include or exclude ORVs, although it limited the definition based on the number of wheels, the power source, and whether the vehicle could be driven on a public highway. Michigan law does, however, specifically state that ORVs are exempt from MCL 500.3101 to 500.3179, the provisions of the no-fault act. MCL 324.81106.

In arguing that no motor vehicle was involved in plaintiff's accident, defendant relies on *Nelson v Transamerica Ins Services*, 441 Mich 508; 495 NW2d 370 (1992), which involved an accident between an uninsured motorcycle and a pickup truck. The *Nelson* Court recognized that there are two types of motorcycles—those intended for on-road use, and those intended for off-road use—and noted that only on-road-use motorcycles were required to carry insurance. *Id.* at 515. The Court looked to the 1986 amendments to the Act, which provided that the penalty for a motorcyclist failing to insure his or her vehicle would be the forfeiture of PIP benefits. But the Court also concluded that the Legislature did not abrogate the distinction between on-road and off-road motorcycles, and that there was still no requirement for off-road motorcyclists to carry insurance. *Id*. at 516-517. The Court stated that "[a]lthough ORV motorcycles are exempt from the no-fault act, an injured motorcyclist is entitled to personal injury protection benefits if the injury occurred in a collision involving a motor vehicle." *Id*. at 517. Thus, the *Nelson* Court concluded that even though the plaintiff was driving an off-road-use motorcycle, which did not require insurance under the Act, he was still entitled to coverage. *Id*. at 519.

Defendant points to the reasoning of *Nelson* for the proposition that an ORV is only entitled to PIP benefits *if the injury occurred in a collision involving a motor vehicle*. However, the *Nelson* Court stated that even though ORVs are exempt from the no-fault act *insurance requirement*, a failure to carry insurance does not cause a forfeiture of PIP benefits. Moreover, in cases following *Nelson*, this Court has ruled that an ORV may still qualify as a "motor vehicle" for purposes of the Act, and that an ORV owner may be entitled to no-fault coverage even where the ORV is not specifically covered by an insurance policy. *Morris v Allstate Ins Co*, 230 Mich App 361, 370-371; 584 NW2d 340 (1998).

In *Morris*, the defendant insurance company appealed a decision providing PIP benefits to the passenger of an ORV that was involved in a two-ORV collision. The defendant insurance company argued, in part, that the ORVs were not "motor vehicles" under the Act, and also that the defendant was entitled to seek reimbursement from the owners of the uninsured ORVs for any money that it was required to pay out. *Id.* at 364, 368, 370-371. This Court found that the ORVs *were* "motor vehicles" based on the definition in the Act, and that the two terms were not mutually exclusive. *Id.* at 364-365, 369. This Court confirmed this position in *Allstate*, *supra* at 715, stating that "when an ORV is operated upon a public highway . . . it is a 'motor vehicle' under the statute for purposes of determining the applicable priority of payment provision."

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[1] This statute was amended, effective July 17, 2008, to expressly provide that the term "motor vehicle" "does not include an ORV." See 2008 PA 241.

The *Morris* Court also held that the defendant was not entitled to reimbursement from the uninsured ORV owners because the Act exempted ORV owners from being insured under the existing law, MCL 257.1603, which is now codified at MCL 324.81106. *Morris*, *supra* at 368-370. MCL 324.81106 states:

> An ORV is exempt from the motor vehicle accident claims act, Act No. 198 of the Public Acts of 1965, being sections 257.1101 to 257.12133 of the Michigan Compiled Laws, and from sections 3101 to 3179 [the No-Fault Act provisions] of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3101 to 500.3179 of the Michigan Compiled Laws.

Although the above exemption releases an ORV owner from the obligation to insure an ORV, it does not preclude recovery of benefits. *Michigan Millers v Farm Bureau Gen Ins Co*, 156 Mich App 823, 829; 402 NW2d 96 (1987). As pointed out by the *Morris* Court, the Legislature intended that, on occasion, a party injured while riding in an ORV will be paid no-fault benefits even though the ORV was not required to be registered or insured. *Morris*, *supra* at 371.

Prior to the 2008 amendment enacted by way of 2008 PA 241, this Court had clearly established that an ORV was a "motor vehicle" under the Act. Therefore, the issue in this case turns specifically on whether plaintiff's ORV was exempt from the no-fault act, and the result of that possible exemption. Defendant argues that plaintiff's ORV was exempt from coverage, meaning that he was not entitled to receive PIP benefits. On the contrary, plaintiff argues that he was exempt from the requirement of purchasing ORV insurance, but he was not precluded from obtaining PIP benefits from his insurer. But in light of this Court's prior rulings, defendant's argument is unpersuasive. "The general rule is that 'exemptions in a statute are carefully scrutinized and not extended beyond their plain meaning.'" *Michigan Millers*, *supra* at 829, quoting *Grand Rapids Motor Coach Co v Pub Service Comm*, 323 Mich 624, 634; 36 NW2d 299 (1949). Moreover, "'exemption' implies a release from some burden, duty or obligation." *Michigan Millers*, *supra* at 829, quoting *Maine Water Co v City of Waterville*, 93 Me 586; 45 A 830 (1900). When two statutes can be reconciled and the purpose of each is served, the courts are required to reconcile and enforce them. *Michigan Millers*, *supra* at 829. Here, the statutes were reconciled in *Michigan Millers* by concluding that the exemption applies only to the obligation to purchase ORV insurance and does not apply to preclude the motor vehicle owner from obtaining insurance benefits.

Defendant next argues that the 2008 amendment should be applied retroactively as merely a clarification of legislative intent. We disagree. The 2008 amendment to the Act modified the definition of "motor vehicle" and added a definition for "ORV," effective July 17, 2008. See 2008 PA 241. Importantly, the new definition states explicitly that the term "motor vehicle" "does not include an ORV." See 2008 PA 241. Defendant argues that this amendment should be viewed as confirming the legislative intent of the old statute, and not as presenting a change in the law. However, the first case that generally considered the exemption to the Act was heard and decided by this Court in 1986. See *Michigan Millers*, *supra* at 829. There, an individual driving a motorcycle/ORV was involved in an accident with a pickup. *Id*. at 825. The motorcycle driver resided at his parent's home, and his parents held an automobile insurance policy from the plaintiff. *Id*. at 826. The driver of the pickup held an automobile insurance policy with the defendant. *Id*. This Court considered whether the motorcycle driver was exempt from no-fault protection under the ORV exemption, MCL 257.1603 (now codified at MCL

324.81106). The Court emphasized that exemptions in a statute must be carefully scrutinized and should not be extended beyond their plain meaning. The Court concluded that the motorcycle driver was not exempt from no-fault coverage, and ordered that the defendant, the pickup driver's insurance company, pay the necessary benefits. *Id*. at 830.

We conclude that the 2008 amendment to the Act was not merely a clarification of legislative intent. First, the language in *Michigan Millers* outlined the Court's perspective and interpretation of the legislative intent underlying MCL 257.1603 (now codified at MCL 324.81106) in 1988. Given that 20 years have passed since this Court's initial interpretation, and the Legislature chose not to amend or clarify the legislative intent of the Act, it appears that the modification in the law is a change in the law and not merely a clarification of the law. Even considering the more recent interpretation in *Allstate*, which was issued in 2003, the Legislature had years to react and failed to do so.

However, we conclude for the following reasons that the 2008 amendment to the Act must be applied prospectively only. Generally, a statutory amendment is presumed to operate prospectively unless the Legislature has either expressly or impliedly indicated an intention to give the statute retroactive effect. *White v Gen Motors Corp*, 431 Mich 387, 391; 429 NW2d 576 (1988). It is true that an exception to the general rule is recognized when a statute is remedial in nature. *Id*. But our Supreme Court has "rejected the notion that a statute significantly affecting a party's substantive rights should be applied retroactively merely because it can also be characterized in a sense as 'remedial.'" *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 585; 624 NW2d 180 (2001). "Substantive rights," as defined by Black's Law Dictionary, are rights that can be protected or enforced by law.

Here, the amendment to the Act would have an effect on substantive rights. Under the former statute, as interpreted, plaintiff had a right to the payment of no-fault PIP benefits. However, under the amended statute, plaintiff would have no substantive right to PIP benefits. Because this amendment would therefore affect a plaintiff's substantive rights, and because the Legislature did not clearly state that the amendment should be applied retroactively, the amendment must be enforced as written and applied prospectively only from July 17, 2008.

Defendant's final argument is that the former provisions of the Act, as interpreted here, are unconstitutional on due process and equal protection grounds. We disagree. We review questions of law, including constitutional issues, de novo. *In re Petition of Wayne Co Treasurer*, 478 Mich 1, 6; 732 NW2d 458 (2007). In determining whether a law is constitutional, "'[e]very reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity.'" *Phillips v Mirac, Inc*, 470 Mich 415, 423; 685 NW2d 174 (2004), quoting *Cady v Detroit*, 289 Mich 499, 505; 286 NW 805 (1939).

"'The test to determine whether legislation enacted pursuant to police power comports with due process is whether the legislation bears a reasonable relation to a permissible legislative objective.'" *O'Donnell v State Farm Mut Auto Ins Co*, 404 Mich 524, 541; 273 NW2d 829 (1979) (citation omitted). "The test to determine whether a statute enacted pursuant to the police power comports with equal protection is essentially the same," and generally requires the government to treat similarly situated people in a similar manner. *Id*.; see also *Heidelberg Bldg,*

LLC v Dep't of Treasury, 270 Mich App 12, 17; 714 NW2d 664 (2006). One of three tests can be applied to test an equal protection violation depending on the type of classification made by the statute and the nature of the interest affected. *Dawson v Secretary of State*, 274 Mich App 723, 738; 739 NW2d 339 (2007); see also *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 469; 639 NW2d 332 (2001). Classifications that are not based on a suspect class, but instead relate to social or economic legislation, are examined under the traditional rational basis test. *Phillips*, *supra* at 434.

"Under the rational basis test, a statute is constitutional if it furthers a legitimate government interest and if the challenged classification is rationally related to achieving that interest." *Boulton v Fenton Twp*, 272 Mich App 456, 467; 726 NW2d 733 (2006). "The legislation is presumed to be constitutional, and is valid if any state of facts known or reasonably assumed supports it." *Id*. The rational basis test does not consider the wisdom, need, appropriateness, or the effects of the legislation. *O'Donnell*, *supra* at 541.

Here, defendant challenges the classification made between vehicles that require insurance (i.e., automobiles), and vehicles that are exempt (i.e., ORVs). The legitimate government interest behind the Act is to ensure that motorists driving on Michigan roads obtain prompt payment for economic losses in exchange for some limitation of tort liability, even if those motorists are driving exempt vehicles. Indeed, as our Supreme Court has specifically stated, "it is the policy of the no-fault act that persons, not motor vehicles, are insured against loss." *Lee v Detroit Auto Inter-Ins Exch*, 412 Mich 505, 509; 315 NW2d 413 (1982).

The distinction between motor vehicles in general and the subclass of motor vehicles, consisting of ORVs, that do not require insurance can be attributed to the normal use intended for the vehicle, understanding that automobiles are consistently and almost exclusively driven on public roads, whereas ORVs are not. However, because ORVs are on occasion used on public roadways, the statute allows coverage for motorists who drive and occupy ORVs under that scenario to ensure that they are also provided prompt payment of economic losses in the case of accident on a public highway. See *Shavers v Attorney General*, 402 Mich 554, 623-624; 267 NW2d 72 (1978). This has been contemplated by the Legislature and the courts, and is in furtherance of the legitimate government purpose of providing payment to individual drivers and avoiding tort liability.

Although defendant argues that it did not contemplate the risk involved with insuring the operator or occupant of an ORV, this argument is unconvincing. The coverage required for the operator or occupant of an uninsured ORV is similar to the coverage that would be required for the operator or occupant any other uninsured vehicle. In either case, defendant would still have to provide coverage, regardless of the particular type of vehicle involved.

Defendant has not overcome the presumption of constitutionality of the no-fault act. See *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 638; 506 NW2d 920 (1993).

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher