STATE OF MICHIGAN

COURT OF APPEALS

ALEX GAMBLE, a minor, by and through his Next Friend, DENA GAMBLE, Plaintiff, and DENA GAMBLE, Plaintiff-Appellant,	UNPUBLISHED February 23, 2010
v FARMERS INSURANCE EXCHANGE, Defendant-Appellee, and CURTIS ELLINGTON, Defendant.	No. 290119 Wayne Circuit Court LC No. 07-720176-NI

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff Dena Gamble ("plaintiff")[1] appeals as of right, challenging the circuit court's order granting partial summary disposition for defendant Farmers Insurance Exchange ("defendant")[2] under MCR 2.116(C)(10), and thereby dismissing her claim for no-fault personal

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[1] Because this appeal involves only Dena Gamble's individual claim against Farmers Insurance Exchange, all references to "plaintiff" shall refer to Dena Gamble only.

[2] Because defendant Curtis Ellington is not participating in this appeal, all references to "defendant" shall refer to Farmers Insurance Exchange only.

injury protection ("PIP") benefits. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that the trial court erroneously granted partial summary disposition for defendant based on its determination that she was ineligible for PIP benefits under MCL 500.3113(b). We disagree. We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id.* at 31.

MCL 500.3105(1) entitles an injured person to PIP benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." This Court has previously recognized that injuries stemming from an accident involving a moving vehicle and a parked vehicle necessarily arise out of the operation of a motor vehicle, i.e., the moving vehicle, as a motor vehicle. See *Davis v Auto-Owners Ins Co*, 116 Mich App 402, 408; 323 NW2d 418 (1982); *Kalin v Detroit Automobile Inter-Ins Exch*, 112 Mich App 497, 501-502; 316 NW2d 467 (1982). Thus, the requirement in § 3105(1) has been satisfied in this case.

Notwithstanding, § 3113(b) precludes PIP benefits to the owner or registrant of a vehicle who failed to maintain required insurance coverage. *Auto-Owners Ins Co v Hoadley*, 201 Mich App 555, 557; 506 NW2d 595 (1993). Section 3113 states, in relevant part:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
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> * * *
>
> (b) The 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 3103 was not in effect. [Emphasis added.]

It is undisputed that plaintiff owned the vehicle and did not maintain insurance coverage as required under MCL 500.3101. Thus, the issue presented is whether plaintiff's vehicle was "involved in the accident" within the meaning of § 3113(b).

"A parked vehicle is not 'involved in the accident' for purposes of § 3113(b) unless one of the statutory exceptions to the parked-vehicle provision, MCL 500.3106; MSA 24.13106, is applicable." *Mack v Travelers Ins Co*, 192 Mich App 691, 694; 481 NW2d 825 (1992). Section 3106(1) provides, in pertinent part:

> (1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
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> * * *
>
> (c) Except as provided in subsection (2),[3] the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

Here, plaintiff was "occupying" the vehicle at the time that she sustained her injuries. Although she concedes that she was occupying the vehicle, she argues that § 3106(1)(c) is inapplicable because she did not occupy the vehicle incident to its use as a motor vehicle, but rather merely as a structure for shelter. Plaintiff's argument lacks merit. In *Heard v State Farm Mut Automobile Ins Co*, 414 Mich 139, 153; 324 NW2d 1 (1982), our Supreme Court stated that

> a parked vehicle is deemed to be involved in the accident where the injury was sustained by a person while 'occupying' a vehicle. § 3106(1)(c). In such a case, the injury is sustained as a result of the use of the vehicle as a motor vehicle.

This reasoning is consistent with the plain language of § 3106(1)(c), which states that "[a]ccidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle *unless*" "the injury was sustained by a person while occupying . . . the vehicle." (Emphasis added.)

Because plaintiff was occupying the vehicle at the time that she suffered her injuries, the vehicle was "involved in the accident" within the meaning of § 3113(b). Therefore, plaintiff is precluded from collecting PIP benefits under § 3113 as well as assigned-claim benefits. "If a person is excluded from benefits under § 3113 of the act, [s]he is precluded from assigned-claim benefits as well." *Lewis v Farmers Ins Group*, 154 Mich App 324, 327; 397 NW2d 297 (1986).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis

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[3] It is undisputed that subsection (2), regarding worker's disability compensation benefits, is inapplicable.