STATE OF MICHIGAN

COURT OF APPEALS

EARLVIN WALKER, Plaintiff-Appellant, and POH REGIONAL MEDICAL CENTER, Intervening Plaintiff-Appellee,	UNPUBLISHED March 27, 2014
v	No. 313886 Oakland Circuit Court
BRIDGET RUTOWSKI, and TITAN INSURANCE COMPANY OF MICHIGAN, Defendant-Appellees.	LC No. 2011-119558-NF

Before: BECKERING, P.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

In this action for personal protection insurance (PIP) benefits under the No Fault Insurance Act, MCL 500.3101 et seq., plaintiff Earlvin Walker appeals as of right the trial court's final order in the case, dismissing, based on a stipulation, defendant Bridget Rutowski. Previously, the trial court granted summary disposition under MCR 2.116(C)(10) in favor of defendant Titan Insurance Company of Michigan and denied Walker's motion for reconsideration. On appeal, Walker only raises issues related to the grant of summary disposition in favor of Titan. We affirm the trial court's grant of summary disposition, but do so under a different analysis.

The facts are undisputed. Walker's inoperable vehicle was being towed from a mechanic's business to the home of Walker's mother, when the tow chain broke and left Walker's uninsured vehicle wholly within a travelling lane of the road. A passerby stopped to assist Walker in moving the vehicle out of the road. As they initiated the process to move the automobile to the side of the road, Walker's car was struck by Rutowski's car, causing Walker's injuries. Walker sought PIP benefits from Titan, Rutowski's no-fault insurer. After being unable to collect, Walker filed the instant suit against Titan and Rutowski. Titan moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that under MCL 500.3113(b) Walker was barred from receiving PIP benefits because his uninsured vehicle was involved in

the accident. The trial court granted that motion, denied Walker's motion for reconsideration, and this appeal followed.

We review a trial court's decision regarding a motion for summary disposition de novo. *Jimkoski v Shupe*, 282 Mich App 1, 4; 763 NW2d 1 (2008) (citation omitted). A motion for summary disposition pursuant to MCR 2.116(C)(10) "tests the factual sufficiency of the complaint." *Joseph v Auto Club Ins Assoc*, 491 Mich 200, 206; 815 NW2d 412 (2012). Summary disposition is proper where there is no "genuine issue regarding any material fact." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). To the extent resolution of the issue requires this Court to interpret sections of the no-fault act, it involves "an issue of statutory interpretation that this Court reviews de novo." *Petipren v Jaskowski*, 494 Mich 190, 201; 833 NW2d 247 (2013).

The question in this case is whether Walker is entitled to PIP benefits under the No Fault Insurance Act. We first look to MCL § 500.3105.

> MCL § 500.3105 states:
>
> (1) Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.
>
> (2) Personal protection insurance benefits are due under this chapter without regard to fault.
>
> (3) Bodily injury includes death resulting therefrom and damage to or loss of a person's prosthetic devices in connection with the injury.
>
> (4) Bodily injury is accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself.

Analysis under § 500.3105 involves two steps:

> First, it is necessary to determine "whether the injury at issue is covered," i.e., whether it is "accidental," "bodily," and arises out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. Second, it is necessary to determine whether the injury is excluded under other provisions in the no-fault act and whether an exception to an exclusion would save the claim.

Drake, 270 Mich App at 25; (brackets, quotation marks, and citation omitted).

It is undisputed that Walker suffered bodily injury and property damage as a result of the incident. It is also uncontested that those injuries were not the result of an intentional act. Therefore, Walker's injuries were of the type covered under § 500.3105 if they arose from the use of automobile as an automobile. *Thornton v Allstate Inc Co*, 425 Mich 643, 660 n 7; 391 NW2d 320 (1986).

No-fault PIP benefits are limited "to injuries arising out of the use of a motor vehicle as a motor vehicle." *Thornton*, 425 Mich at 659; MCL § 500.3105. "[W]hether an injury arises out of the use of a motor vehicle 'as a motor vehicle' under § 3105 turns on whether the injury is closely related to the transportational function of motor vehicles." McKenzie v Auto Club Ins, Ass'n, *458 Mich 214, 225-226; 580 NW2d 424 (1998).* The "vehicle need not be in motion at the time of an injury in order for the injury to arise out of the use of a motor vehicle as a motor vehicle." *Drake* at 26; (citation and internal quotation marks omitted). However, "the phrase as a motor vehicle does require a general determination of whether the vehicle in question was being used, maintained, or operated for transportational purposes." *Id.*; (citation and internal quotation marks omitted). It is undisputed that the inoperable vehicle was being towed from a mechanic whose price Walker thought was excessive. Although the vehicle was not being 'operated' for transportational purposes, its condition of being left on the road was however, related to its maintenance. "While the term 'maintenance' suggests the servicing or repairing of a motor vehicle, this Court has expanded the term to include persons injured during preparations for towing . . . and to nonoccupants injured awaiting a tow truck at the side of the road." Amy v MIC Gen Ins Corp, *258 Mich App 94, 126; 670 NW2d 228 (2003),* rev'd in part on other grounds Stewart v Michigan, *471 Mich 692; 692 NW2d 376 (2004).*

Under MCL § 500.3105 this Court must also consider whether any other provisions of the no fault act would preclude relief for Walker. *Drake*, *supra,* at 25. Defendant Titan argues that because Walker's vehicle was uninsured at the time of the accident, MCL 500.3113 supports the trial court's finding that Walker was not entitled to PIP benefits. We agree.

MCL 500.3113(b) states in pertinent 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:
>
> > (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 . . . was not in effect.

MCL § 500.3101(1) requires the owner or registrant of a motor vehicle to maintain an automobile insurance policy "during the period the motor vehicle is driven or moved upon the highway." The deposition testimony in this case supported the fact that Walker was not driving his vehicle. It was in fact inoperable. The same testimony also provided that Walker's vehicle was being moved, albeit by the means of another vehicle, upon the highway. According to Walker, the distance from the mechanic's shop to the relative's home where Walker was having his vehicle towed could be traveled in fifteen minutes. Even taking into consideration the

specific circumstances of this case, the Insurance Code grants no exception to Walker's obligation to maintain insurance on a vehicle that was moved upon the highway.

MCL 257.216 discusses the exceptions to registration. In the case of *Einerwold v Completer Auto Transit, Inc*, 145 Mich App 521; 377 NW2d 890 (1985), the plaintiff, in seeking PIP benefits, asserted that no-fault insurance was not required on the vehicle he was driving in between properties of his employer. *Einerwold*, 145 Mich App at 524-525. The plaintiff argued the exception found in MCL 257.216(b), which would be most applicable to the instant case, where "[a] vehicle that is driven or moved on a street or highway only for the purpose of crossing that street or highway from 1 property to another" would exempt from registration and from having to maintain insurance. *Einerwold* at 523-524. The court rejected that argument focusing on both the distance that the inoperable vehicle was being moved and the method of transport. Rather than crossing a single street, the vehicle in *Einerwold* was moved 3 1/2 miles. Walker's vehicle was also transported on public highways for a significant distance. Neither *Einerworld* nor any of the cases cited by defendant compel us to the result of requiring all motor vehicles that are transported over public highways be registered and, therefore insured. However, Walker's inoperable vehicle was moved on the public highways in accordance with MCL § 500.3101(1) where the vehicle's wheels were in contact with that highway, albeit not on its own power. Had the car been moved on a trailer or flatbed or in an enclosed conveyance the exception from registration would have been applicable. In this case Walker was required to have insurance on the vehicle. Since the vehicle was not insured Walker cannot recover PIP benefits.

Summary disposition was appropriate under MCR 2.116(C)(10). "[W]e will not reverse the court's order when the right result was reached for the wrong reason." *Taylor v. Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan