

STATE OF MICHIGAN
COURT OF APPEALS

MARY L. KALO,

Plaintiff-Appellee,

v

HOME OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
September 9, 2014

No. 316442
Genesee Circuit Court
LC No. 12-097757-NO

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right an order granting summary disposition to plaintiff in this no-fault action. We reverse and remand for proceedings consistent with this opinion.

This action arises out of injuries suffered by plaintiff on September 13, 2011. On that day, plaintiff was helping her daughter, Ashley MacDonald, move her belongings into a rented U-Haul truck in preparation for MacDonald's move to Chicago. After all of MacDonald's items were packed, MacDonald approached the U-Haul and observed plaintiff standing on an aluminum ladder at the rear of the U-Haul. Plaintiff told MacDonald that the latch on the rear door of the U-Haul was stuck, and that she was attempting to fix the latch so the door would close. MacDonald saw plaintiff pulling on a fabric strip that was attached to the door with one hand, while attempting to free the latch with the other hand, as she was standing on the ladder. As plaintiff pulled on the fabric strip, she lost her balance and fell off the ladder. Plaintiff requested no-fault benefits and defendant denied her request. She brought suit against defendant, and filed a motion for summary disposition. The trial court granted summary disposition in favor of plaintiff, and defendant now appeals.

Defendant argues that the trial court erred when it granted plaintiff's motion for summary disposition because plaintiff was not eligible for no-fault benefits pursuant to MCL 500.3105 and MCL 500.3106. We agree.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10). This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews a "motion brought under MCR

2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is properly granted “if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.* A genuine issue of material fact exists when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party. *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

MCL 500.3105 of the No-Fault Act, MCL 500.3101 *et seq.* “sets forth the parameters of personal protection insurance coverage.” *Frazier v Allstate Ins Co*, 490 Mich 381, 384; 808 NW2d 450 (2011). MCL 500.3105(1) provides:

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.

MCL 500.3106 “explains when such liability attaches in the case of a parked vehicle.” *Frazier*, 490 Mich at 384. MCL 500.3106(1) provides:

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:

- (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
- (b) . . . the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
- (c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle. [MCL 500.3106(1).]

In *Frazier*, our Supreme Court discussed the relationship between MCL 500.3105 and MCL 500.3106. The Court stated:

MCL 500.3106 expressly delineates when “accidental bodily injury aris[es] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle” if the vehicle is parked. Therefore, in the case of a parked motor vehicle, a claimant must demonstrate that his or her injury meets one of the requirements of MCL 500.3106(1) because unless one of those requirements is met, the injury does not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1). [*Frazier*, 490 Mich at 384.]

Based on *Frazier*, the appropriate analysis when considering whether a person is entitled to personal protection insurance in relation to a parked vehicle is first to consider whether the injury

meets one of the requirements provided by MCL 500.3106, and then to consider whether plaintiff is entitled to benefits pursuant to MCL 500.3105.

The holding in *Frazier* was inconsistent with earlier decided cases, such as *Miller v Auto-Owners Ins Co*, 411 Mich 633; 309 NW2d 544 (1981). In *Miller*, the Court held that in cases involving a claimant performing maintenance on a parked vehicle, compensation is required pursuant to MCL 500.3105 without regard to MCL 500.3106(1) and the general parked vehicle exceptions. *Id.* at 641. *Frazier* never specifically overruled *Miller* or related cases. However, the Supreme Court later made clear that the *Frazier* holding controlled over *Miller* in *LeFevers v State Farm Mut Auto Ins Co*, 493 Mich 960; 828 NW2d 678 (2013). In *LeFevers*, the Court reversed a Court of Appeals decision that relied on *Miller*, holding, “[t]he Court of Appeals erred by failing to recognize that the decision in *Frazier* [], effectively disavowed *Miller* [], and *Gunsell v Ryan*, 236 Mich App 204; 599 NW2d 767 (1999), to the extent those decisions are inconsistent with *Frazier*.” *LeFevers*, 493 Mich at 960. *LeFevers* made clear that, to the extent *Miller* is inconsistent with *Frazier*, *Frazier* must be followed.

Here, plaintiff cannot recover pursuant to MCL 500.3105 alone.¹ Any analysis of plaintiff’s claim involving her injury required a complementary analysis of MCL 500.3106(1), because plaintiff’s injury arose out of her contact with a parked vehicle. See *LeFevers*, 493 Mich at 960; *Frazier*, 490 Mich at 384, 387. Accordingly, we reject plaintiff’s argument on appeal that plaintiff can collect no-fault benefits for her vehicle pursuant to MCL 500.3105(1) without consideration of MCL 500.3106.

It is undisputed that plaintiff’s vehicle was parked at the time of plaintiff’s injuries. Therefore, to determine whether plaintiff was entitled to no-fault personal protection benefits as a matter of law pursuant to MCL 500.3105(1) and MCL 500.3106(1), we first look to whether plaintiff’s injury meets one of the requirements of MCL 500.3106(1). Plaintiff did not argue that MCL 500.3106(1)(a) was applicable in this case. Accordingly, this issue hinges on the applicability of MCL 500.3106(1)(b) and MCL 500.3106(1)(c) to plaintiff’s injuries.

MCL 500.3106(1)(b) requires plaintiff to show that “the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used.” Our Supreme Court has stated, “MCL 500.3106(1)(b) centers on the distinction between ‘equipment’ and ‘the vehicle.’ ” *Frazier*, 490 Mich at 384-385. The Court defined “equipment” as “the articles, implements, etc., used or needed for a specific purpose or activity.” *Id.* at 385. The Court defined “vehicle” as “any means in or by which someone or something is carried or conveyed: a *motor vehicle*,” or “a conveyance moving on wheels, runners, or the like, as an automobile.” *Id.* at 385 (emphasis in original). The Court observed that the constituent parts of a vehicle are not equipment for the purposes on MCL 500.3106(1)(b). *Id.* In *Frazier*, the Court held that the passenger door of a vehicle was not

¹ The trial court held that plaintiff was entitled to benefits pursuant to MCL 500.3105 and MCL 500.3106. It is unclear whether the trial court was granting plaintiff’s relief under the statutes alternatively or together. To the extent the trial court was granting plaintiff’s motion based on MCL 500.3105 alone, the decision constituted legal error.

equipment for the purposes of MCL 500.3106(1)(b); rather, the door was a constituent part of the vehicle. *Id.* at 386. Conversely, this Court has held that a grain delivery truck's auger system, used for unloading grain from the truck, constituted permanently mounted equipment for the purposes of MCL 500.3106(1)(b). *Drake v Citizens Ins Co of America*, 270 Mich App 22, 27; 715 NW2d 387 (2006).²

At issue here is a latch and leather strap that were attached to the rear door of the U-Haul. The door was located on the rear cargo box of the U-Haul. Plaintiff argues, and the trial court held, that the latch and strap were permanently mounted equipment that were used or needed for a specific purpose or activity, which was carrying cargo in the U-Haul. We disagree. Based on our review of the record, we hold that the latch and strap were components of the rear door of the vehicle, not permanently mounted equipment. The strap was intended for use when pulling the door open or closed, and the latch was intended to secure the door in the closed position. Therefore, the latch and strap were constituent parts of the U-Haul. Additionally, it would be impracticable to drive the U-Haul with the rear door unsecured by the latch, and the rear cargo box of the U-Haul would be difficult to open and close without the strap. Further, the latch and strap are physically part of the sliding rear door, and vehicle doors are considered constituent parts. See *Frazier*, 490 Mich at 386. Therefore, the trial court erred when it granted plaintiff's motion for summary disposition pursuant to MCL 500.3106(1)(b). We further hold that summary disposition in favor of defendants is appropriate on this issue because, in viewing the evidence in a light most favorable to plaintiff, there is no genuine question of fact whether the latch and strap constituted permanently mounted equipment.

MCL 500.3106(1)(c) is another potential avenue for a plaintiff to demonstrate eligibility for benefits in the context of a parked vehicle. Pursuant to MCL 500.3106(1)(c), plaintiff must show that "the injury was sustained by a person while occupying, entering into, or alighting from the vehicle."³ Plaintiff asserts that she was entering into the vehicle at the time of her injury. This Court has held that a person who places her hand on a passenger vehicle door, opens the door, and takes a small step towards the open door, enters into the vehicle for the purposes of MCL 500.3106(1)(c). *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 628, 632-633; 552 NW2d 671 (1996). Here, plaintiff was attempting to close the U-Haul door at the time she fell. There was no evidence presented that plaintiff was attempting to enter the cargo box at the time of her fall. Therefore, there is no evidence that plaintiff was entering into the vehicle. On appeal, plaintiff argues that she may have incidentally reached inside the cargo box of the U-Haul as she attempted to close the rear door, but there was no evidence presented to support that assertion. Accordingly, there was no genuine issue of material fact regarding whether plaintiff was entering into the U-Haul at the time she fell, and summary disposition on that basis would be erroneous.

² We note that in *Gunsell*, 236 Mich App at 210 n 5, the Court found that a rear door of a semitrailer constituted equipment. However, *LeFevers* expressly abrogated that holding as it related MCL 500.3106(1)(b). *LeFevers*, 493 Mich at 960.

³ We note that the trial court did not specifically address MCL 500.3106(1)(c) as a ground for its decision. On appeal, plaintiff argues that MCL 500.3106(1)(c) applies as an alternative theory for recovery.

To recover no-fault benefits, plaintiff must next show that her injury arose from the ownership, operation, maintenance, or use of the vehicle. MCL 500.3105(1). However, because we hold that plaintiff cannot establish that her injury meets one of the requirements of MCL 500.3106(1), plaintiff's injury did not arise out of the use of a vehicle as a motor vehicle, under MCL 500.3105(1). *Frazier*, 490 Mich at 384. Therefore, we do not consider whether plaintiff was maintaining the vehicle for the purposes of MCL 500.3105(1).

In summary, the trial court erred when it granted plaintiff's motion for summary disposition. First, we note that case law clearly establishes that in order to recover no-fault benefits for injuries relating to a parked car pursuant to MCL 500.3105, plaintiff must demonstrate that her injury meets one of the requirements of MCL 500.3106(1). *Id.* Second, the trial court erred in granting summary disposition in favor of plaintiff on the basis of MCL 500.3106(1) because the strap and latch at issue did not constitute equipment that was permanently mounted to the vehicle and plaintiff was not occupying, entering, or alighting from the vehicle at the time of her injuries. MCL 500.3106(1). Further, because there is no genuine issue of material fact regarding plaintiff's ability to recover pursuant to MCL 500.3106(1), summary disposition should be granted in favor of defendant. Finally, plaintiff cannot demonstrate that her injury meets one of the requirements of MCL 500.3106(1), so we do not consider whether plaintiff's injury arose from the ownership, operation, maintenance, or use of the vehicle.

Reversed and remanded for proceedings consistent with this opinion. Defendant, the prevailing party, may tax costs. MCR 7.219. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood