Order

Michigan Supreme Court
Lansing, Michigan

October 10, 2014

Robert P. Young, Jr.,
Chief Justice

148784

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

BETTY WILLIAMS,
Plaintiff-Appellee,

v

SC: 148784
COA: 311008
Genesee CC: 11-096948-NF

PIONEER STATE MUTUAL
INSURANCE COMPANY,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the February 6, 2014 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REINSTATE the June 7, 2012 order of the Genesee Circuit Court granting defendant summary disposition under MCR 2.116(C)(10).

Plaintiff in this case was getting into her car when a tree branch fell from above, hitting her on the head. The litigation that has ensued over plaintiff's entitlement to personal protection insurance benefits from her no-fault automobile insurer centers on whether plaintiff's injuries had "a causal relationship to the motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635 (1997). In *Putkamer*, this Court held that a plaintiff seeking coverage for injuries relating to a parked vehicle under MCL 500.3106(1) (as plaintiff is in this case) must establish three elements:

> [The plaintiff] must demonstrate that (1) his [or her] conduct fits one of the three exceptions of [MCL 500.3106(1)]; (2) the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle; and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for. [Id. at 635-636.]

We hold that the Court of Appeals clearly erred by holding that defendant was not entitled to judgment as a matter of law under the third *Putkamer* element. Unlike the undisputed facts of *Putkamer*, in which "[t]he act of shifting the weight onto one leg created the precarious condition that precipitated the slip and fall on the ice," *id.* at 636, there is no evidence in this case that plaintiff's act of opening her car door caused the tree branch to fall—it would have fallen whether plaintiff was entering her car or not. Therefore, as the dissenting judge below stated, "If there is any causal relationship between plaintiff's injury and the parked car, the relationship is surely incidental. An incidental or unfortunate causal relationship does not create a question of fact within the *Putkamer* requirements." *Williams v Pioneer State Mut Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued February 6, 2014 (Docket No. 311008), p 2 (O'CONNELL, J., dissenting). Without evidence of a sufficient causal connection between plaintiff's injury and her use of the parked motor vehicle as a motor vehicle, defendant is entitled to judgment as a matter of law.

CAVANAGH, J., would deny leave to appeal.