STATE OF MICHIGAN

COURT OF APPEALS

HOME-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF AMERICA and FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN,

Defendants,

and

GREAT WEST CASUALTY COMPANY,

Defendant-Appellant.

UNPUBLISHED
July 13, 2010

No. 291166
Eaton Circuit Court
LC No. 08-000215-NF

HOME-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF AMERICA and GREAT WEST CASUALTY COMPANY,

Defendants,

and

FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant.

No. 291257
Eaton Circuit Court
LC No. 08-000215-NF

Before: MURRAY, P.J., and SAAD and M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals,[1] defendant Great West Casualty Company and defendant Farm Bureau Mutual Insurance Company of Michigan appeal as of right the trial court's order entering judgment in favor of plaintiff Home-Owners Insurance Company in Home-Owner's suit for recoupment and declaratory relief. On appeal, the primary question is whether the trial court correctly determined that the vehicles insured by Great West and Farm Bureau were involved in the accident at issue such that Home-Owners could recoup from Great West and Farm Bureau a pro rata share of the personal protection insurance (PIP) benefits that it paid to a pedestrian injured in the accident. See MCL 500.3115(2). We conclude that the trial court did not err when it determined that the vehicles were involved in the accident and that Great West and Farm Bureau were obligated to reimburse Home-Owners for their pro rata share of the benefits paid to the injured pedestrian. For these reasons, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Matthew Gillem testified at his deposition that in February 2007 he was assisting Timothy Ashley in towing an Astro semi-tractor that needed repairs. Gillem drove a Freightliner semi-tractor to the Astro's location in Muskegon, Michigan. After arriving in Muskegon, Gillem helped Ashley attach a wrecking unit to the Freightliner and then helped to secure the Astro to the Freightliner. Ashley drove the Freightliner and Gillem rode as a passenger. Gillem said they towed the Astro backwards with the two back axles lifted off the ground and the front axle still on the ground. Gillem stated that, although he and Ashley were relocating the Astro for a trucking company owned by Gillem's mother, Melissa Gillem, he was not being paid for his work.

Gillem testified that after they got underway, everything seemed to be going well—there were no vibrations. He said they stopped at a rest stop at about the 30-mile marker on I-96 and checked the chains. They then continued east on I-96. At some point near Lowell, Gillem "felt a vibration" and saw a "tire come off of the driver side steering axle of the truck being towed." The tire came off the Astro and rolled away from the shoulder of the highway. He told Ashley about the tire and Ashley immediately pulled over onto the shoulder. Gillem said he got out of the Freightliner, called his father on his cell phone, and began walking down the shoulder while waving at oncoming traffic. He said he was trying to warn the oncoming traffic about the tire in the highway.

As Gillem was walking down the shoulder, Allison Rariden was driving her truck eastbound on I-96. Rariden was in the passing lane and was advancing past a car driven by Richard Schuler. Rariden struck the tire that had come off the Astro, lost control of her truck,

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[1] This Court ordered these appeals to be consolidated for administrative efficiency. See *Home Owners Ins Co v Citizens Ins Co*, unpublished order of the Court of Appeals, entered April 24, 2009 (Docket Nos. 291166 and 291257).

and sideswiped Schuler. Rariden's truck began to roll as Schuler also lost control of his car, slid off the highway, and struck Gillem. Gillem testified that he saw "a black SUV kind of do a little squirrelly, go to the left, and then I saw—I believe it was a green car coming right at me." Gillem tried to get out of the way, but was hit by Schuler's car and suffered injuries to his leg. Gillem was not covered by a no-fault insurance policy at the time of the accident.

Home-Owners insured Schuler's car and paid PIP benefits to Gillem for the injuries he sustained in the accident. In February 2008, Home-Owners sued Citizens Insurance as the insurer of Rariden's truck and sued Great West as the insurer of the Freightliner and Astro semi-tractors. In its complaint, Home-Owners alleged that Rariden's truck and both semi-tractors were involved in the accident within the meaning of MCL 500.3115(1)(a) and, as a result, the insurers of those vehicles were in the same priority as Home-Owners for the payment of PIP benefits to Gillem. For this reason, Home-Owners sought recoupment of a portion of the PIP benefits that it paid to Gillem from Citizens Insurance and Great West and a declaration that those insurers were obligated to pay a pro rata share of Gillem's PIP benefits. After Home-Owners learned that Gillem's mother was the owner of the semi-tractors and had her personal automobiles insured through Farm Bureau, Home-Owners amended its complaint to include Farm Bureau as an insurer of the owner of motor vehicles involved in the accident.

In July 2008, Great West moved for summary disposition of Home-Owners' claims under MCR 2.116(C)(10). In its motion for summary disposition, Great West argued that both the Freightliner and Astro were parked at the time of the accident. As such, they could not be deemed to be involved in the accident unless one of the statutory exceptions for parked vehicles applied. See MCL 500.3106. Because none of the parked vehicle exceptions applied, Great West argued it was not liable to pay PIP benefits. Great West also argued that, even if the parked vehicle exception did not apply, the Freightliner and Astro were not involved in the accident at issue within the meaning of MCL 500.3115(1)(a).

In September 2008, Farm Bureau also moved for summary disposition of Home-Owners' claims under MCR 2.116(C)(10) for reasons substantially similar to those proffered by Great West.

The trial court rejected the arguments made by Great West and Farm Bureau in an October 20, 2008, opinion and order. The court explained that the fact that the semi-tractors were parked at some point during the course of the accident did not preclude it from considering the role that the semi-tractors played in the accident prior to becoming parked. When considering the accident as a whole, the trial court concluded that the semi-tractors actively contributed to the accident prior to being parked and, therefore, were involved in the accident within the meaning of MCL 500.3115(1)(a). For these reasons, the trial court denied both Great West and Farm Bureau's motions for summary disposition and granted partial summary disposition in favor of Home-Owners on the issue as to whether the semi-tractors were involved in the accident. See MCR 2.116(I)(2).

The trial court entered judgment in favor of Home-Owners on March 10, 2009. As part of the judgment, the trial court ordered Citizens Insurance, Great West, and Farm Bureau to each pay Home Owners $2,493.79.

This appeal followed.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

On appeal, both Great West and Farm Bureau argue that the trial court erred when it granted summary disposition in favor of Home-Owners as to whether the Freightliner and Astro were involved in the accident. This Court reviews de novo a trial court's decision whether to grant summary disposition. *Barnard Mfg, Inc v Gates Engineering Co, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo the proper interpretation of a statute. *Taylor v Kent Radiology*, 286 Mich App 490, 515; 780 NW2d 900 (2009).

B. NO-FAULT INSURANCE COVERAGE

An insurer who issues a policy under Michigan's no-fault act 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 . . . ." MCL 500.3105(1). No-fault insurance policies generally apply to accidental bodily injury "to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident." MCL 500.3114(1). Thus, a pedestrian who suffers an injury in a motor vehicle accident will normally receive PIP benefits from his or her own no-fault insurer notwithstanding that he or she was not operating a vehicle at the time of the accident. However, where a pedestrian does not have coverage through a policy described under MCL 500.3114(1), the pedestrian "shall claim personal protection insurance benefits" from the insurers of the owners or registrants "of motor vehicles involved in the accident." MCL 500.3115(1)(a). Further, where multiple insurers are at the same level of priority to provide PIP benefits, "an insurer paying benefits due is entitled to partial recoupment from the other insurers . . . in order to accomplish equitable distribution of the loss among such insurers." MCL 500.3115(2).

In this case, it is undisputed that Gillem's injuries arose out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. Further, it is undisputed that Gillem did not own a car and, for that reason, was not covered under his own no-fault policy. He also did not have coverage through a spouse or someone with whom he was domiciled. As such, the "[i]nsurers of owners or registrants of motor vehicles involved in the accident" were obligated to pay PIP benefits to Gillem. See MCL 500.3115(1)(a). Home-Owners, as the insurer of the owner of the vehicle that physically struck Gillem, paid PIP benefits to Gillem. And, to the extent that there were other motor vehicles involved in the accident at issue, Home-Owners would be entitled to recoup a share of its payments to Gillem from the insurers of the owners of the other vehicles involved in the accident. MCL 500.3115(2). On appeal, Great West and Farm Bureau challenge the trial court's determination that the Freightliner driven by Ashley, and the Astro being towed by the Freightliner, were involved in the accident within the meaning of MCL 500.3115(2).[2]

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[2] Citizens Insurance, which was the insurer of Raridan's truck, did not apparently contest whether it was obligated to pay a pro rata share of the PIP benefits paid to Gillem.

C. INVOLVED IN THE ACCIDENT

The Legislature defined motor vehicle accident to mean "a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle . . . ." MCL 500.3101(2)(f). However, as our Supreme Court noted in *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 37; 528 NW2d 681 (1995), although the phrase "involved in the accident" appears in several provisions of the no-fault act, it is not defined in the act. Instead, what constitutes sufficient involvement to trigger liability has been developed through case law. See *id.* at 37-39.

In *Turner*, our Supreme Court examined whether the municipality that owned a police car and the insurer of a stolen car were liable to pay property claims under MCL 500.3121(1) because the vehicles were "involved in the accident" that led to the property damage.[3] In that case, a police officer signaled for the driver of a suspected stolen car to pull over. *Turner*, 448 Mich at 25. The driver of the car ignored the signal and accelerated away from the officer, who pursued him for about a half mile. *Id.* The driver of the stolen car proceeded through an intersection against the traffic signal and struck a truck and another vehicle. *Id.* at 26. The truck split in two and the rear portion smashed into a nearby building. After the truck's gas tank exploded, the building caught fire and burned to the ground. *Id.* Before the lower court, the insurer of the stolen vehicle argued that the damage did not arise out of the ownership, operation, maintenance, or use of the motor vehicle as a motor vehicle because the car was being driven by a thief and the municipality argued that the vehicle it insured was not "involved in the accident" within the meaning of MCL 500.3125. For these reasons, they argued that they had no obligation to pay a share of the property loss. *Turner*, 448 Mich at 26-27.

In examining the issue, the Court in *Turner* noted that a consistent theme in the cases construing the phrase "involved in the accident" was "the requirement that an 'active link' exist between the injury and the use of the motor vehicle as a motor vehicle in order for the vehicle to be deemed 'involved in the accident.'" *Id.* at 39. The Court agreed that a vehicle must actively contribute to the accident:

> [W]e hold that for a vehicle to be considered "involved in the accident" under § 3125, the motor vehicle, being operated or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident. Showing a mere "but for" connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle is "involved in the accident." [*Id.* at 39.]

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[3] Although our Supreme Court construed the phrase "involved in the accident" from a different statutory section than is at issue here, this Court must construe this phrase consistently throughout the no-fault act. See *Wright v League General Ins Co*, 167 Mich App 238, 245; 421 NW2d 647 (1988).

The Court also specifically stated that the phrase "'involved in the accident'" "encompasses a broader causal nexus between the use of the vehicle and the damage" than what is required to show "that the damage arose out of the ownership, operation, maintenance, or use of the motor vehicle as a motor vehicle." *Id.*

Turning to the accident at issue, the Court in *Turner* concluded that both the police car and the stolen car were involved in the accident. *Id.* at 42. The Court stated that the fact that neither car actually made physical contact with the damaged building was not dispositive. *Id.* Rather, because the thief's use of the stolen car directly led to the collision with the truck that damaged the building, it clearly made an active contribution to the accident. *Id.* Likewise, the Court determined that the police car was involved because its "use perpetuated the stolen vehicle's flight, which, in turn, resulted in the collision with the other cars and the damage to the nearby property." *Id.*

1. THE PARKED VEHICLE EXCEPTION

In this case, Great West and Farm Bureau argue that the Freightliner and Astro were not involved in the accident because they were parked at the time of the accident. Specifically, they argue that a parked vehicle cannot be deemed involved in an accident unless one of the exceptions stated under MCL 500.3106 apply and it is undisputed that none of those exceptions apply under the facts of this case.

For purposes of no-fault coverage, the Legislature differentiated between accidents arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle and accidents arising out of the ownership, operation, maintenance, or use of a parked motor vehicle as a motor vehicle. See MCL 500.3105(1); MCL 500.3106(1). Under MCL 500.3106(1), accidental bodily injury "does not arise out of the ownership, maintenance, or use of a parked vehicle as a motor vehicle" unless one of the exceptions stated under MCL 500.3106(1)(a) to (c) applies. Accordingly, if none of the exceptions applies to the parked vehicle, the parked vehicle cannot be said to be in use as a motor vehicle. See *Heard v State Farm Ins*, 414 Mich 139, 148; 324 NW2d 1 (1982) ("When a vehicle is parked, it is deemed not to be in use as a motor vehicle, and, for purposes of the act, it is like a gasoline pump, the wall of a service station, or a tree."); see also *Miller v Auto-Owners Ins*, 411 Mich 633, 639; 309 NW2d 544 (1981) ("Injuries involving parked vehicles do not normally involve the vehicle *as a motor vehicle*."). And, if a parked vehicle is not in use as a motor vehicle, then it cannot be deemed "involved in the accident." *Turner*, 448 Mich at 39 (stating that, in order to be deemed involved in an accident, a motor vehicle must be used as a motor vehicle and must actively contribute to the accident).

In this case, the Freightliner and Astro were indeed parked at some point during the events at issue. And, were their involvement limited to their status as parked vehicles, the determination as to whether the Freightliner and Astro were "involved in the accident" would depend solely on whether one of the exceptions stated under MCL 500.3106(1) applied to the facts of this case. *Heard*, 414 Mich at 153-154 (noting that when an exception under MCL 500.3106 applies, "the injury is sustained as a result of the use of the vehicle as a motor vehicle."); *Turner*, 448 Mich at 40 (clarifying that the holding in *Heard* "was that a parked vehicle is considered 'involved in the accident' only if one of the exceptions under § 3106(1) applies."). But their involvement was not limited to their status as parked vehicles—they were

also involved as moving vehicles. The tests stated under our Supreme Court's decisions in *Turner* and *Heard* are not mutually exclusive. That is, the fact that a vehicle became parked during the events at issue does not preclude the vehicle from being considered "involved in the accident" on the basis of its earlier status as a moving vehicle. Rather, a motor vehicle can be "involved in the accident" as either a motor vehicle used as a motor vehicle or as a parked vehicle used as a motor vehicle. See MCL 500.3105; MCL 500.3106. In either case, an insurer might be obligated to pay PIP benefits under MCL 500.3115(2). For this reason, we reject Great West and Farm Bureau's contention that the trial court erred when it refused to apply MCL 500.3106 as the sole test for determining whether the Freightliner and Astro were "involved in the accident" at issue.

We also do not agree that the Freightliner and Astro must be considered parked vehicles because they were parked at the *exact* moment in time when Schuler struck Gillem. A vehicle's involvement in an accident does not depend on the status of the vehicle at the time when the specific loss at issue occurred. Rather, the test for determining whether a vehicle was "involved in the accident" depends on the causal relationship between the vehicle and the injury at issue. See *Turner*, 448 Mich at 42-43 (holding that the stolen car and police car were involved in the accident because their use as motor vehicles had an active link with the damage to the property at issue); *Brasher v Auto Club Ins*, 152 Mich App 544, 546; 393 NW2d 881 (1986) (stating that, in order for a vehicle to be deemed involved in the accident, "there must be some activity, with respect to the vehicle, which somehow contributes to the happening of the accident."); *Wright v League General Ins Co*, 167 Mich App 238, 246; 421 NW2d 647 (1988) (stating that whether a vehicle was involved in the accident depends on whether the vehicle was an "active link" in the chain of circumstances causing the injury). And this relationship must be determined on the basis of the totality of the circumstances giving rise to the accident. See *Hastings Mutual Ins Co v State Farm Ins Co*, 177 Mich App 428, 435; 442 NW2d 684 (1989) (stating that the trial court correctly viewed the "chain-reaction collisions" as a single accident).

2. ACTIVE INVOLVEMENT

Great West and Farm Bureau also argue that the Freightliner and Astro did not "actively" contribute to the accident at issue and, for that reason, were not "involved in the accident." Specifically, they argue that the involvement, if any, of the Freightliner and Astro was too far removed from the sequence of events leading to the accident to satisfy the active contribution requirement stated under *Turner*.

In this case, the use of the Freightliner and Astro as motor vehicles actively contributed to the accident at issue. Ashley and Gillem were using the Freightliner to relocate the Astro, which involved traveling on the expressway. While being towed down the expressway, the Astro's front tire came loose and separated from the Astro. The separation of the tire from the Astro onto the highway directly led to Rariden's initial collision, which in turn caused her to lose control of her vehicle and strike Schuler. Rariden's collision with Schuler then caused Schuler to lose control and strike Gillem. Thus, the loss of the tire from the Astro initiated the chain of events that culminated in Gillem's injuries. The initiation of a series of events that culminate in a crash constitutes a sufficiently active contribution to trigger liability as a vehicle "involved in the accident." See *Turner*, 448 Mich at 42-43 (holding that the police car was involved because it actively contributed to the accident by initiating the flight of the driver of the stolen car that in turn caused a third party's truck to split apart, crash, explode, and burn down a building); see

also *Greater Flint HMO v Allstate Ins Co*, 172 Mich App 783, 788; 432 NW2d 439 (1988) (stating that the evidence supported a finding that every vehicle that made an emergency stop after a trucker's lane change was involved in the accident); *Wright*, 167 Mich App at 246 (stating that a stalled vehicle was involved in the accident because it was an active link in the chain of circumstances leading to the injury). The trial court did not err when it concluded that the Freightliner and Astro were involved in the accident at issue and, for that reason, denied Great West and Farm Bureau's motions for summary disposition and granted summary disposition in favor of Home-Owners. See MCR 2.116(I)(2).

Affirmed in both dockets. As the prevailing party, Home-Owners may tax costs under MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Michael J. Kelly