STATE OF MICHIGAN

COURT OF APPEALS

ROBERT HENRI LARA,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
November 14, 2006

No. 271198
Muskegon Circuit Court
LC No. 05-044142-CK

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. Because plaintiff has created a justiciable question of fact on defendant insured's active contribution to the accident, we reverse the trial court's grant of summary disposition and remand for further proceedings consistent with this opinion. We decide this case without oral argument pursuant to MCR 7.214(E).

Defendant's insured was driving a van when she suddenly and unexpectedly stopped her vehicle in order to avoid hitting one or more squirrels. Plaintiff was riding his motorcycle 25 mph or less three car lengths behind her, with his wife as a passenger. Plaintiff testified, "[w]ell, I hit the brakes, I tried to avoid her. I tried to go around her and when I was going around I leaned the bike too much, you know, just leaned it, and then the sand [on the pavement] kind of slid me under." Plaintiff did not collide with defendant's insured, but lost control of his motorcycle because of the necessary lean of the motorcycle to maneuver the motorcycle in avoidance of defendant's insured. And, that maneuver in combination with the sand on the pavement, resulted in a toppling of the motorcycle that caused fatal injuries to his wife. Plaintiff sought first-party no-fault benefits from defendant, in the form of survivor's benefits, plus compensation for his own medical and recovery expenses. Defendant moved for summary disposition, on the ground that its insured's van was not "involved" in the accident for purposes of the no-fault act. The trial court agreed, and granted the motion.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the

nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor,* 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 500.3114(5) provides that "[a] person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits," with subsection (5)(b) assigning the highest priority for such obligations to "[t]he insurer of the owner or registrant of the motor vehicle involved in the accident." Accordingly, plaintiff's entitlement to no-fault benefits depends on establishing that defendant's insured's van was "involved" in the accident in question.

Plaintiff argues that any kind of involvement on the part of the van implicates it in the accident for purposes of the no-fault act, and states that "it was the *action* of the van (in slowing or stopping unexpectedly) that forced the motorcycle to take evasive action." But "involve," or "involvement," taken to their logical extremes, could include extremely indirect connections. Accordingly, "'[w]hether a vehicle is "involved" cannot be determined by abstract reasoning or resort to dictionary definitions. It depends on the meaning derived from the purpose and structure of the no-fault act'" *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 37-38; 528 NW2d 681 (1995). Our Supreme Court elaborated,

> a vehicle does not fit within the category of vehicles "involved in the accident" merely on a showing of a "but for" connection between the functional use of the motor vehicle and the injury—even where a "but for" standard is narrowed by interposing a requirement of physical proximity between the use of the vehicle as a vehicle and the injury or damage. [*Id.* at 38.]

The Court concluded, "for a vehicle to be considered 'involved in the accident' . . . , the motor vehicle . . . must actively, as opposed to passively, contribute to the accident. Showing a mere 'but for' connection . . . is not enough . . . ." *Id.* at 39.

Plaintiff urges this Court to disregard this language as dicta. Assuming without deciding that this is a fair characterization, we nonetheless note that the *Turner* Court clearly turned its judicial mind to the issue, and so regard the attendant analysis as binding authority. See *Foreman v Foreman*, 266 Mich App 132, 140; 701 NW2d 167 (2005). Plaintiff also argues that *Turner*, *supra*, and related cases are no longer good law, on the ground that "beginning in 2000, the Supreme Court has rejected the reasonable construction rule." But neither *Turner*, *supra*, nor its and related cases' construction of "involved," have been expressly overruled. We decline to regard our Supreme Court's recent statements of preferences among canons of statutory interpretation as impliedly overturning such well established authority.

The trial court cited *Utley v Michigan Muni Risk Mgt Auth*, 454 Mich 879; 562 NW2d 199 (1997). In that case, the driver of a city-owned truck was required to stop upon approaching an intersection, and the plaintiff-motorcyclist behind the truck looked up from his speedometer, noticed the stopped truck, applied his brakes, and lost control of the motorcycle, but without striking the truck. The pickup truck's stop for traffic was in the normal course of driving. In its dispositional order, on the application for leave to appeal, reversing this Court's decision in the matter, the Supreme Court stated, "On the facts of the case, the truck owned by the City of Sterling Heights was not 'involved' in the accident," citing MCL 500.3114(5).

Plaintiff attempts to distinguish *Utley*, *supra*, first arguing that, in that case, "[r]ather than proceeding down an open road, the truck was at a full stop at a place where one would expect to find stopped vehicles." Plaintiff continues that, in *Utley*, *supra*, "The motorcyclist took his eyes off the truck (whereas Plaintiff in the case at bar testified to having his eyes on the van at all times)." Here plaintiff argues the sudden and unexpected stopping by defendant's insured created a situation of sudden emergency and that abrupt stopping actively contributed to the resultant accident. Hence, defendant's insured motor vehicle was involved in the accident on these facts within the meaning of MCL 500.3114(5).

Rather than *Utley*, *supra*, this case is controlled by *Greater Flint HMO v Allstate Ins Co,* 172 Mich App 783; 432 NW2d 439 (1988), and following that precedent is not inconsistent with *Turner v Auto Club Ins Ass'n,* 448 Mich 22; 578 NW2d 681 (1995). The facts of *Greater Flint HMO* are quite analogous to the instant case. In that case a truck switched lanes on a highway, causing the vehicle behind the truck to stop. *Greater Flint HMO, supra* at 785. Another driver was unable to timely respond to the stopping vehicle, resulting in a multiple car accident. *Id.* Defendant's insured stopped before hitting the vehicles in front of him, but two motorcyclists (plaintiffs) collided when attempting to stop. The trial court dismissed part of the claims because there was no contact between the two vehicles, but we reversed:

> In this case, the court granted summary disposition as to the third-party defendants, Mid-Century and National Ben Franklin, based on the absence of physical contact between the vehicles of their insureds, Grossman and Hull, and the vehicle of Buda or the motorcycles. However, the court's reliance on a requirement of "physical contact" is inconsistent with the *Kangas* test. Moreover, it is not difficult to imagine a situation in which there may be a causal nexus between a motorist's conduct and an accidental injury quite apart from any physical contact between the insured vehicle and the other vehicles involved. See *Bromley v Citizens Ins Co of America,* 113 Mich App 131, 135; 317 NW2d 318 (1982) (the fact that insured's car did not actually touch plaintiff's motorcycle held irrelevant as long as the causal nexus between the accident and the car is established).
>
> The relevant inquiry then is whether a causal nexus can be established that would link the injuries incurred in the accident to a motor vehicle. Here, the deposition testimony supports a reasonable inference that a sudden lane change of the lead vehicle, the semi-trailer truck, caused every driver in the chain of traffic, which included Grossman and Hull, to make an emergency stop which contributed to plaintiffs' injuries. [*Id.* at 787-788.]

The same material facts are present in this case. Defendant's insured, driving down the road at approximately the posted speed limit, quickly stopped to avoid hitting a squirrel or squirrels. Plaintiff, in order to avoid this quick maneuver, swerved and eventually crashed. Thus, although there was no contact between the vehicles, there was certainly enough evidence of a causal nexus for a jury to determine whether plaintiff's vehicle was "involved" in the accident. *Id.*

Nothing in *Turner* detracts from this holding. Certainly *Greater Flint HMO* was not reversed by *Turner,* and in *Turner* the Court held that physical contact was not required for a vehicle to be "involved" in the accident. *Turner, supra* at 39. And, unlike those cases where a

vehicle is merely lawfully stopped along the road (and thus "passively" involved), here defendant's quick maneuver arguably created a situation of sudden emergency for the plaintiff. Certainly, defendant's insured felt compelled to come to an abrupt stop because of the squirrel or squirrels that unexpectedly came into the road. It is reasonably argued that defendant's insured actively contributed to plaintiff's accident. Whether, defendant's insured's actions were abrupt so as to create a situation of sudden emergency or so certain as to diminish plaintiff's assured clear distance ahead resulting in plaintiff's maneuvers and evasive actions are all questions of fact for the trier of fact in determining the question of the involvement of a motor vehicle as required by MCL 500.3114(5) and the entitlement of plaintiff to the receipt of Michigan no fault benefits.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio