STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY, Plaintiff-Appellee, v HARLEYSVILLE INSURANCE, Defendant-Appellant.	UNPUBLISHED March 13, 2007 No. 272561 Macomb Circuit Court LC No. 05-003558-NF

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Harleysville Insurance appeals by right from a final order and grant of summary disposition in favor of Allstate Insurance Company pursuant to MCR 2.116(C)(10). We reverse and remand for entry of summary disposition in favor of Harleysville. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the grant or denial of a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion brought under MCR 2.116(C)(10), we consider all the evidence in a light most favorable to the nonmoving party to determine whether the moving party is entitled to judgment as a matter of law. *Koenig v South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999).

On June 5, 2004, Steven Morris was driving a Cadillac Escalade west on 23 Mile Road. The Escalade belonged to Morris' girlfriend, and was insured by Harleysville. As Morris neared the intersection with Dequindre Road, he was stopped in a long line of traffic on the two-lane pavement. Morris left space between the Escalade and the vehicle in front of him where a driveway exit at an apartment complex exited onto 23 Mile Road. When Morris stopped, there was no car in the apartment complex driveway.

A short time later, a Mercury car driven by John Myszkowski and insured by Allstate came out of the apartment complex and, using the empty space left by Morris, inched forward, beginning a left turn in front of the Escalade onto 23 Mile Road. The two drivers looked at each other, with Morris acknowledging Myszkowski's presence. Myszkowski's vision to the east, toward Dequindre Road, was blocked by a van in front on the Escalade. As Myszkowski pulled into the eastbound lane of 23 Mile Road, his vehicle was struck near the right front tire by a motorcycle. Another motorcycle went into the ditch to avoid a collision. Two motorcyclists and a passenger were injured.

Allstate paid more than $166,000 in first party benefits to the injured motorcyclists. Allstate then sued Harleysville for recoupment of half of the funds it had paid. Allstate claimed that pursuant to MCL 500.3114(5)(a), the two insurers were in the same order of priority under Michigan's no-fault act because the Escalade was "involved in the accident."

Allstate moved for summary disposition pursuant to MCR 2.116(C)(10), claiming that there were no issues of fact and that it was entitled to judgment as a matter of law. Harleysville also moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court concluded that Morris' decision to leave a gap in traffic led to the chain of events resulting in the accident. The trial court ruled that the Escalade was thus "involved in the accident" under the terms of the Act:

> "THE COURT: Okay. Well, I do think it's a bit more than a but for situation. It's hard to not use the words, but had the gap not been there, which, again, is a but for, this accident would not have happened, probably, because there would be no space to squeeze through. But I—I think that **Amy** does control in that it—it—it was an active participation to the extent that the—the set up for the accident was—was actually caused by the Harleysville driver. And that, to me, was an active participation."

The statutory term "involved in the accident" is found in several places in the no-fault act, including MCL 500.2114(5)(a). It is a statutory term of art with a long history going back more than twenty years. Our review of that consistent precedent leads us to conclude that it was error to grant summary disposition to the plaintiff on these facts.

Vehicles stopped or standing in traffic, that are not parked vehicles under MCL 500.3106, and waiting for a signal or stopped to turn at an intersection are not "involved in the accident" unless there is some "active" as opposed to "passive" link to a chain of occurrences contributing to the accident. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995); *Michigan Mut Ins Co v Farm Bureau Ins Co*, 183 Mich App 626, 635-636; 455 NW2d 352 (1990); *Brasher v Auto Club Ins Ass'n*, 152 Mich App 544, 546; 393 NW2d 881 (1986); *Bachman v Progressive Casualty Ins Co*, 135 Mich App 641, 643; 354 NW2d 292 (1984); *Stonewall Ins Group v Farmers Ins Group*, 128 Mich App 307, 309; 340 NW2d 71 (1983).

The Escalade insured by Harleysville remained stopped in traffic, without any active role in this accident. Thus, it was not "involved in the accident." MCL 500.3114(5)(a). Harleysville, and not Allstate, was therefore entitled to summary disposition.

Both parties rely on *Amy v MIC Gen Ins Corp*, 258 Mich App 94; 670 NW2d 228 (2003), rev'd on other grounds *Stewart v Michigan*, 471 Mich 692; 692 NW2d 376 (2004), but that case is not applicable here. *Amy*, *supra* concerned parked vehicles, and is not relevant to the circumstances presented by this case. Moreover, the trial court employed the kind of "but for" rationale forbidden by Supreme Court precedent in *Turner*, *supra* at 40, and *Heard v State Farm Mut Auto Ins Co*, 414 Mich 139, 147-178; 324 NW2d 1 (1982).

Reversed and remanded for entry of summary disposition in favor of Harleysville. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette