STATE OF MICHIGAN

COURT OF APPEALS

SHERRY WEBSTER,

Plaintiff-Appellant,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 2, 2010

No. 288971
Kalamazoo Circuit Court
LC No. 08-000012-NF

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

In this action for no-fault benefits in connection with a parked car, plaintiff appeals by right the circuit court's order granting summary disposition to defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On January 15, 2007, plaintiff drove herself, a granddaughter, and a great-granddaughter to the home of a friend. Upon her arrival, she parked and left the vehicle. Then, on a slippery driveway, she approached the rear door on the driver's side and touched its handle, intending to retrieve a diaper bag from inside. Plaintiff slipped, fell, and sustained injuries. Plaintiff sought personal protection insurance (PIP) benefits from defendant, her insurer, but defendant denied the claim. Plaintiff brought suit, and defendant moved for summary disposition pursuant to MCR 2.116(C)(10), on the ground that plaintiff's injuries did not have a sufficient causal connection with the automobile. In granting the motion, the trial court held that plaintiff's version of events indicated that she was in the process of entering the vehicle when she fell, citing MCL 500.3106(1)(c), "because she was in physical contact with the vehicle and intended to retrieve some personal belongings from the interior," but that even so, plaintiff's injuries bore only incidental, fortuitous, or otherwise "most limited causal relationships to the parked motor vehicle." The court added, "plaintiff . . . did not slip while trying to enter the car; she slipped before she had opened or attempted to open the door."

This Court reviews 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). Statutory interpretation likewise presents a question of law, calling for review de novo. *Ardt*, *supra* at 690.

To recover PIP benefits in connection with an accident involving a parked car, the plaintiff must establish that one of the exceptions to the parking exclusion of MCL 500.3106(1) applied, that the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle, and that "the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer v Transamerica Ins Corp*, 454 Mich 626, 636; 563 NW2d 683 (1997).

Section 3105(1) of the no-fault act[1] states, "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 . . . ." Section 3106(1) in turn defines coverage in connection with parked vehicles:

> 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) Except as provided in subsection (2),[2] 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) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

We conclude that the trial court erred in holding that plaintiff satisfied MCL 500.3105(1)(c) in the first instance.

In *King v Aetna Casualty & Surety Co*, 118 Mich App 648; 325 NW2d 528 (1982), the plaintiff had parked his car in a grocery store's parking lot, shopped in the store, and then returned to his car while carrying a bag of groceries. *Id.* at 649. The plaintiff slipped on an icy surface and fell as he removed his car keys from his pocket and reached to unlock the door. *Id.* at 650. The plaintiff's hand was about two inches from the car when he fell, but the plaintiff could not remember whether his key ever touched the car. *Id.* This Court held that "plaintiff was not entering his vehicle when he slipped and fell, but was merely preparing to enter it," and thus concluded, "Because none of the three subsections of the parked vehicle exclusion (§ 3106)

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[1] MCL 500.3101 *et seq.*

[2] Subsection (2) concerns worker's disability compensation, which is not here at issue.

is applicable, plaintiff's injuries are not compensable under the no-fault act." *Id.* at 651 (parenthetical in the original).

Indeed, the intent of the injured person is not part of the inquiry concerning whether that person was entering the car. *McCaslin v The Hartford Accident & Indemnity*, 182 Mich App 419, 422; 452 NW2d 834 (1990). Accordingly, the issue hinges on the physical act of entering the car, not the sundry things a person might do while merely intending to enter a car.

Our Supreme Court has expressly approved the reasoning in *King* pertaining to what constituted entering, as opposed to merely preparing to enter, a car. *Putkamer*, *supra* at 637 n 10. The instant case is nearly on all fours with *King*, in that they both involved persons approaching their vehicles to enter them, but fell before they succeeded in engaging any of their vehicles' opening mechanisms.

A distinction is that in this case, plaintiff maintains that she had her hand on a door handle as she fell, whereas the plaintiff in *King* was understood to have his hand two inches from the car when he fell. But this Court, and our Supreme Court, deemed it of no significance whether the *King* plaintiff had touched key to car before he fell. Similarly, the instant plaintiff reports touching the door handle, but that she cannot remember if she had begun to pull up on it. In both cases, then, the cars were and remained completely closed as their respective drivers fell.

Plaintiff thus failed to satisfy the parked vehicle exception set forth in MCL 500.3106(1)(c), and the trial court erred in concluding otherwise. But, this Court will not reverse when the trial court reaches the correct result regardless of the reasoning employed. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997). Because we conclude that plaintiff's claim did not fall under any exception to the parked vehicle exclusion of the no-fault act, we affirm the trial court's decision to grant summary disposition to defendant for that reason.

We concede that this result is not entirely consistent with *Hunt v Citizens Ins Co*, 183 Mich App 660, 664; 455 NW2d 384 (1990) (a person who was struck by a moving vehicle while touching his car door with keys in hand was attempting to enter his car for purposes of the parked-vehicle exception). Nonetheless, we merely acknowledge that the caselaw predating November 1, 1990, and thus not binding on this Court, see MCR 7.215(J)(1), was not entirely consistent in this particular. The approval our Supreme Court expressed for this Court's differentiation between entering and preparing to enter a car in *King* compels us to follow *King* in that regard in this case.

Because we affirm on the ground that plaintiff failed to satisfy MCL 500.3106(1)(c), or any other exception to the parked vehicle exclusion of the no-fault act, we need not address the trial court's determination that plaintiff failed to show a sufficient causal connection between her car and her fall.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Stephen L. Borrello

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SHERRY WEBSTER, Plaintiff-Appellant,	UNPUBLISHED March 2, 2010
v	No. 288971 Kalamazoo Circuit Court
AUTO CLUB GROUP INSURANCE COMPANY, Defendant-Appellee.	LC No. 08-000012-NF

Before: Beckering, P.J., and Markey and Borrello, JJ.

BECKERING, J. (*concurring*).

This case arises out of an injury plaintiff sustained when she fell outside her parked vehicle on an icy driveway on January 15, 2007. Plaintiff seeks to recover no-fault benefits from defendant, her no-fault automobile insurer, in connection with the incident. The trial court granted summary disposition to defendant, finding that while plaintiff's version of events indicated she was in the process of entering her vehicle when she fell, thus satisfying the parked motor vehicle exception set forth in MCL 500.3106(1)(c), summary disposition was warranted because plaintiff failed to prove that her injuries bore a causal relationship to the parked motor vehicle that was more than incidental, fortuitous, or but for. The majority affirms the trial court's grant of summary disposition on different grounds, finding that summary disposition is warranted because plaintiff was not entering the vehicle when she fell, and thus, failed to satisfy the parked motor vehicle exception set forth in MCL 500.3106(c)(1), rendering unnecessary an analysis of the causal relationship. I respectfully disagree with my colleagues, and would affirm summary disposition for the same reason as the trial court.

As briefly described by the majority, plaintiff drove herself, her granddaughter, and her great-granddaughter to the home of a friend because the power was out in her own residence due to an ice storm. Upon her arrival, plaintiff parked her 2004 Trail Blazer on the driveway just outside the garage, exited through the driver's side door, and carefully stepped to the rear door on the driver's side in order to retrieve a diaper bag from inside. Plaintiff testified that at the time she fell, she had outstretched her left arm and placed her left hand on the door handle. She could not recall, however, whether she had flipped up the door handle. Plaintiff testified that her feet went out from under her and she fell, letting go of the door handle as she fell. She could not recall which foot slipped.

MCL 500.3106 governs no-fault coverage of injuries that arise out of the use of a parked motor vehicle.[1] MCL 500.3106 states in pertinent part:

> (1) 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:
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> * * *
>
> (c) Except as provided in subsection (2)[2], the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

In *Putkamer v Transamerica Ins Corp*, 454 Mich 626; 563 NW2d 683 (1997), abrogated in part as recognized in *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 33-34; 651 NW2d 188 (2002), our Supreme Court engaged in a statutory interpretation of the no-fault act and coverage analysis in circumstances similar to the case before us. The plaintiff in *Putkamer* lost her footing and slipped on ice as she was shifting her weight in the process of entering the driver's side door of her vehicle. *Id*. at 628. The plaintiff sought insurance relief for her medical expenses from her no-fault carrier, which her carrier refused to pay. *Id*. at 628-629.

In undertaking to determine whether the incident was covered by the no-fault act, the *Putkamer* Court recognized that "[t]he no-fault act is remedial in nature and is to be liberally construed in favor of the persons who are intended to benefit from it." *Id*. at 631, citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 28; 528 NW2d 681 (1995). With respect to parked motor vehicles and coverage provided under MCL 500.3106(1)(c), the Court acknowledged the rationale articulated in *Miller v Auto-Owners Ins Co*, 411 Mich 633, 640; 309 NW2d 544 (1981) that MCL 500.3106(1)(c) "'represents a judgment that the nexus between the activity resulting in injury and the use of the vehicle as a motor vehicle is sufficiently close to justify including the cost of coverage in the no-fault system of compensating motor vehicle accidents.'" *Putkamer*, 454 Mich at 634, quoting *Miller*.

The *Putkamer* Court articulated a three-pronged test for determining whether a claimant is covered under the no-fault act with respect to injuries involving parked motor vehicles:

> (1) his [or her] conduct fits one of the three exceptions of subsection 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 (emphasis omitted).]

In *Putkamer*, there was no dispute that the plaintiff satisfied the first prong of the test and was entering the vehicle when she slipped on ice and was injured. In this case, defendant

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[1] MCL 500.3015 applies as well, but is not at the forefront of this case.

[2] Subsection (2) is not applicable under the circumstances of this case.

contends, and the majority agrees, that plaintiff was not entering her vehicle, but was instead merely preparing to enter her vehicle when she fell. I respectfully disagree. Case law supports a finding that because plaintiff had placed her hand on the handle of the door she was undertaking to open, she was no longer merely preparing to enter the vehicle, but rather, engaged in the process of entering the vehicle within the meaning of MCL 500.3106(1)(c). See, e.g., *McCaslin v Hartford Accident & Indemnity*, 182 Mich App 419, 422; 452 NW2d 834 (1990) (holding that the plaintiff was not entering the vehicle when he was walking between the back of his truck and the front of another car and "had not crossed the plane or threshold of the truck's door [or] made physical contact with the truck's door when the accident occurred"); *King v Aetna Cas & Surety Co*, 118 Mich App 648; 325 NW2d 528 (1982) (holding that the plaintiff was not entering the vehicle when he had taken his car keys from his pocket, was reaching to unlock his car door, and had his hand about two inches away from the car when he fell, but could not recall whether his key ever touched the car);[3] cf. *Shanafelt v Allstate Ins Co*, 217 Mich App 625; 552 NW2d 671 (1996) (holding that the plaintiff was entering the vehicle when she placed her hand on the door handle, opened the door, took a small step, and then slipped and fell on ice); *Hunt v Citizens Ins Co*, 183 Mich App 660; 455 NW2d 384 (1990) (holding that the plaintiff was entering the vehicle when he had his car keys in his hand and one hand on the car door and was struck by another vehicle); *Teman v Transamerica Ins Co*, 123 Mich App 262, 265; 333 NW2d 244 (1983) (holding that the plaintiff was entering the vehicle when attempting to open a rear trailer door of a tractor-trailer because "opening the door is part of the process of 'entering into' the vehicle"). The above cases and others indicate that the act of touching the vehicle door is a distinguishing factor between merely preparing to enter a vehicle and actually engaging in the process of entering the vehicle. Here, plaintiff was not only in very close proximity to the door she intended to enter, but she had her hand on the door handle when she fell. Thus, I would hold that for purposes of MCL 500.3106(1)(c), plaintiff was entering the vehicle.

Because I would find that plaintiff was entering the vehicle when she fell, further review of the other prongs set forth in *Putkamer* is necessary. I will start with the third prong, as did the trial court.

In *Putkamer*, the Supreme Court held that the plaintiff's injury bore a substantial causal relationship to her use of the parked motor vehicle because she fell while lifting her right leg into the vehicle and shifting her weight to her left leg, wherein "[t]he act of shifting the weight onto one leg created the precarious condition that precipitated the slip and fall on the ice." *Putkamer*, 454 Mich at 636. The Court concluded that "[t]his injury appears to be exactly the kind of injury

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[3] Although unpublished opinions are not binding on this Court, it is worth noting that in *Dearie v Farm Bureau Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued March 29, 2007 (Docket No. 274102), this Court focused on the plaintiff's contact with the vehicle in the course of opening the van door. In finding that the plaintiff was merely preparing to enter the vehicle when he fell on ice after unlocking the door using a remote control device (keyless entry fob) and reaching for the door handle, the Court noted that the plaintiff had not yet touched the door handle and was not touching any part of the van. *Id.*, unpub op at 3.

that the Legislature decided should be covered when it established an exception to the parked vehicle exclusion for entering a parked vehicle in subsection 3106(1)(c)."[4] *Id*.

In this case, plaintiff presented no evidence regarding whether the act of entering into the vehicle had anything to do with her fall. In a surprisingly short 15-page deposition, plaintiff made no mention of whether she had shifted her weight, pulled on the handle, or moved her body in such a way that might signify a potential causal relationship between her fall on the ice and the act of entering into the vehicle that is anything more than incidental, fortuitous, or but for. Because plaintiff has failed to establish a genuine issue of material fact regarding the third prong of the *Putkamer* analysis, the trial court's grant of summary disposition should be affirmed.[5]

/s/ Jane M. Beckering

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[4] Recently, in a concurring opinion in *Scott v State Farm Mut Automobile Ins Co*, 483 Mich 1032; 766 NW2d 273 (2009), Justice Kelly analyzed *Putkamer* and other cases addressing the causal nexus required in a no-fault case involving injury. She found that such cases uphold the standard that "an injury requires more than a fortuitous, incidental, or 'but for' causal connection, but does not require proximate causation," and that the "almost any causal connection or relationship will do" standard also remains valid. *Id*. at 1034-1035. Although the concurring opinion is not binding on this court, it is instructive.

[5] In light of my finding with respect to the third prong in *Putkamer*, I need not delve into an analysis of the second prong, which requires plaintiff to prove that her injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle when she undertook to retrieve a diaper bag from the back seat. This Court's analysis in *Teman*, 123 Mich App at 266, wherein the plaintiff was attempting to unload the contents of a trailer, certainly supports a conclusion that the second prong was also satisfied in this case.