STATE OF MICHIGAN

COURT OF APPEALS

CHARLES ANTHONY LEFEVERS,

Plaintiff-Appellee,

V

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant,

and

TITAN INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, STEADFAST INSURANCE COMPANY, CLARENDON NATIONAL INSURANCE COMPANY and REDLAND INSURANCE COMPANY,

Defendants.

UNPUBLISHED
December 13, 2011

No. 298216
Wayne Circuit Court
LC No. 08-116325-NF

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Defendant, State Farm Mutual Automobile Insurance Company,[1] appeals as of right the trial court's order denying its motion for summary disposition under MCR 2.116(C)(10) in this no-fault insurance action.[2] Because the tailgate on plaintiff's dump trailer involved in the accident constitutes "equipment" within the meaning of MCL 500.3106(1)(b), and a question of

[1] Because State Farm is the only defendant participating in this appeal, our reference to "defendant" refers to that entity only.

[2] The trial court entered a stipulated judgment that preserved defendant's right to appeal the trial court's ruling.

fact exists regarding whether plaintiff's injury occurred as a direct result of his physical contact with the tailgate, we affirm.

This case arises out of an accident that occurred when plaintiff was attempting to unload DDT contaminated dirt into a landfill from a dump trailer. Plaintiff backed the trailer toward the landfill, bringing his rear tires to a lip at the edge of the landfill. Plaintiff walked to the back of the trailer to release a safety latch on the trailer's tailgate, and then walked back to the front axle of his truck to activate the tailgate release switch. When the tailgate did not swing open as it should have, plaintiff walked to the back of the trailer and attempted to force it open by pushing on the tailgate in the direction of the landfill. The tailgate then broke free and opened, causing plaintiff to lose his balance and fall over the edge, into the landfill. He fell approximately 12 feet onto a concrete base covered by one inch of dirt, injuring his back.

Plaintiff filed a complaint against defendant, his no-fault insurer, seeking first party no-fault benefits. Defendant moved for summary disposition, arguing that the parked vehicle exclusion, MCL 500.3106(1), precluded coverage and that no exceptions to the exclusion applied. In response, plaintiff contended that the circumstances fit squarely within exceptions MCL 500.3106(1)(a) and (b) to the parked vehicle exclusion because (1) the vehicle was unreasonably parked, (2) he was injured as a direct result of physical contact with equipment permanently mounted on the vehicle, and (3) he was injured as a direct result of contact with property being lowered from the vehicle. The trial court agreed with plaintiff on all three grounds and denied defendant's motion.

We review de novo a trial court's decision on a motion for summary disposition. *Blue Harvest, Inc v Dep't Of Transp*, 288 Mich App 267, 271; 792 NW2d 798 (2010). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *BC Tile & Marble Co v Multi Bldg Co, Inc*, 288 Mich App 576, 582; 794 NW2d 76 (2010). In reviewing a motion under subrule (C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and other evidence in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

This Court also reviews de novo issues involving statutory interpretation. *Chandler v Co of Muskegon*, 467 Mich 315, 319; 652 NW2d 224 (2002). "When interpreting statutory language, our obligation is to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Id.* If the statutory language is unambiguous, "it is presumed that the Legislature intended the meaning plainly expressed, and judicial construction of the statute is not permitted." *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 141; 783 NW2d 133 (2010).

MCL 500.3105(1) of the no-fault act, MCL 500.3101 *et seq.*, requires an insurer to pay personal protection insurance benefits to its insured "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." MCL

500.3106(1) provides that "[a]ccidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle," unless one of the following three exceptions is met:

> (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),[3] 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.
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> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle. [Footnote added.]

These exceptions to the exclusion of coverage for parked vehicles represent situations in which, "although the vehicle is parked, its involvement in an accident is nonetheless directly related to its character as a motor vehicle." *Miller v Auto-Owners Ins Co*, 411 Mich 633, 640-641; 309 NW2d 544 (1981). The trial court denied defendant's motion for summary disposition based on subsections (a) and (b).

We first address defendant's argument that subsection (b) is inapplicable because the tailgate did not constitute "equipment" within the meaning of that provision. As stated above, subsection (b) provides that accidental bodily injury arises out of the operation and use of a parked vehicle as a motor vehicle if the injury was a direct result of physical contact with equipment permanently mounted on the vehicle while the equipment was being used. In *Miller*, our Supreme Court stated:

> Section 3106(b) recognizes that some parked vehicles may still be operated as motor vehicles, creating a risk of injury from such use as a vehicle. Thus a parked delivery truck may cause injury in the course of raising or lowering its lift or the door of a parked car, when opened into traffic, may cause an accident. Accidents of this type involve the vehicle as a motor vehicle. [*Id*. at 640.]

In *Gunsell v Ryan*, 236 Mich App 204, 210 n 5; 599 NW2d 767 (1999), this Court held that the rear door of a semitrailer constituted "equipment" under subsection (b). Conversely, this Court has held that bumpers and taillights do not constitute "equipment" because they are integral parts of all motor vehicles, and to hold otherwise would allow the exception to swallow the rule. *Amy v MIC Gen Ins Corp*, 258 Mich App 94, 127-128; 670 NW2d 228 (2003), rev'd in part on other grounds sub nom *Stewart v State of Michigan*, 471 Mich 692; 692 NW2d 376 (2004).

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[3] Subsection (2) pertains to worker's disability compensation, which is not at issue in this case.

We hold that the tailgate on the trailer in this case constitutes "equipment" within the meaning of subsection (b). Similar to the rear door of the semitrailer in *Gunsell*, plaintiff here was injured while attempting to open the rear tailgate of his dump trailer. Moreover, the *Miller* Court recognized that the lift of a delivery truck constitutes equipment. *Miller*, 411 Mich at 640. Because the facts of this case fall squarely within the circumstances contemplated in *Gunsell* and *Miller*, the tailgate on the dump trailer constitutes "equipment permanently mounted on the vehicle," as stated in subsection (b).

Defendant argues that the tailgate is an integral part of the dump trailer in the same way that a trunk is an integral part of a car and that, to allow tailgates and trunks to qualify as "equipment" would allow the exception to swallow the rule. Defendant's argument is misguided because the exception set forth in subsection (b) further requires that the equipment be in operation or use when the injury occurred. See MCL 500.3106(1)(b). The exception precludes coverage if, for example, a person runs into the trunk of a parked car or the tailgate of a parked truck because, in those circumstances, the "equipment" is not in use. Thus, the statutory requirement of "use" or "operation" prevents the exception from swallowing the rule.

Defendant also argues that subsection (b) in inapplicable because plaintiff's contact with the tailgate did not directly result in his injury. Rather, defendant contends that plaintiff's injury was a direct result of his landing on concrete. To show that an injury directly resulted from physical contact with equipment, a plaintiff must show that "the injury [had] a causal relationship to the motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer v Transamerica Ins Corp of Am*, 454 Mich 626, 635-636; 563 NW2d 683 (1997). The determination whether an injury was a direct result of physical contact with equipment on a vehicle is a question of fact to be determined by the trier of fact. See *Ritchie v Fed Ins Co*, 132 Mich App 372, 374-375; 347 NW2d 478 (1984). In *Ritchie*, the plaintiff was injured when stairs collapsed beneath him while he was loading a truck. This Court held that a question of fact existed regarding whether the plaintiff's injury "directly resulted" from the loading process because a trier of fact could find that the weight of the cargo, rather than the plaintiff's weight alone, caused the stairs to collapse. *Ritchie*, 132 Mich App at 375.

Here, a trier of fact may similarly find that plaintiff's injury was a direct result of his physical contact with the tailgate, which caused an abrupt shift in plaintiff's momentum when it suddenly broke free. Although plaintiff was injured when he landed on the concrete, he also presented evidence that pushing on the tailgate was a cause of his injury, and a question of fact remains regarding which of these factors, independently or in the aggregate, directly resulted in his accidental bodily injury. Because the tailgate constitutes equipment, and plaintiff presented evidence that pushing on it caused his fall, a question of fact exists regarding whether plaintiff's injuries directly resulted from his pushing on the tailgate.[4] Accordingly, the trial court properly denied defendant's motion for summary disposition in this regard.

[4] We also reject defendant's argument that summary disposition was appropriate because plaintiff's injury did not occur as a result of his direct physical contact with the tailgate. This argument misreads the statute, which states that an injury must be the "direct result of physical

Defendant also argues that the trial court erred by finding that a genuine issue of material fact exists regarding whether plaintiff's injury occurred as "a direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading or unloading process." MCL 500.3106(1)(b). We agree with defendant that summary disposition was appropriate. Plaintiff failed to present any evidence that his injury was a direct result of physical contact with the dirt that he was unloading. Plaintiff argues that the force of the dirt in the trailer applied pressure to the tailgate, causing it to swing open, which in turn caused his fall. The statutory language, however, requires that plaintiff's injury occur as a result of physical contact with the property being lifted or lowered from the vehicle, i.e., the contaminated dirt. Plaintiff's argument therefore fails. See *Winter v Auto Club of Michigan*, 433 Mich 446, 458-460; 446 NW2d 132 (1989). Because this aspect of subsection (b) is inapplicable, summary disposition was appropriate.

Further, defendant argues that the trial court erred by holding that the manner in which the dump trailer was parked presented an unreasonable risk of harm such that the exception to the parked vehicle exclusion set forth in MCL 500.3106(1)(a) is applicable. "[F]actors such as the manner, location, and fashion in which a vehicle is parked are material to determining whether the parked vehicle poses an unreasonable risk." *Stewart*, 471 Mich at 698-699. In *Stewart*, the Court held that a police car, with its emergency lights flashing, parked in the middle of a highway to provide emergency services to a stalled vehicle, did not present an unreasonable risk within the meaning of subsection (a). *Id*. at 699. The Court noted that the stalled vehicle itself presented a risk of bodily injury and that other lanes on the road were available for use. The Court held that, under the circumstances, an oncoming driver would have sufficient opportunity to recognize and avoid the hazard posed by the police vehicle. *Id*.

Generally, the cases to which the exception under subsection (a) has been applied involve vehicles that impede traffic parked on roadways. See, e.g., *Wills v State Farm Ins Co*, 437 Mich 205, 211-212; 468 NW2d 511 (1991). In *Wills*, the Court noted that courts addressing this issue have "appropriately held that a vehicle, parked in a prudent fashion and out of the flow of traffic, does not create an unreasonable risk of injury under" the exception. *Id*.

In accordance with this precedent, we hold that plaintiff's dump trailer parked adjacent to the landfill did not present an unreasonable risk of bodily injury. The trailer was parked in a manner consistent with the general practice of the landfill, in which trucks are parked with their tires at the edge of a lip at the top of the landfill. This manner of parking was necessary to ensure that the hazardous material being dumped would fall into the landfill and avoid spilling outside the pit. The trailer, while parked at the dump site, did not impede traffic or create any risk related to the trailer's use as a motor vehicle. Moreover, parking next to the landfill, without more, did not cause a risk of injury. Had the tailgate opened as expected, plaintiff would not have been required to step near the pit and would have been able to dump the contaminated dirt into the pit without incident. The situation became dangerous only when the tailgate stuck, and plaintiff approached the landfill to force it open. Thus, the vehicle was not parked in a manner

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contact" with equipment on the vehicle. Defendant's argument ignores the placement of the word "direct" in the statute and misreads the statute as requiring that an injury occur as a result of "direct physical contact" with equipment on the vehicle.

such as to cause an unreasonable risk of bodily injury, and the trial court erred by denying defendant's motion for summary disposition in this respect.

In sum, we hold that the tailgate on the dump trailer constituted equipment permanently attached to the vehicle and that plaintiff's evidence was sufficient to establish a genuine issue of material fact regarding whether his injury occurred as a direct result of his physical contact with the tailgate. We further conclude that the trial court erred by finding that questions of fact exist regarding whether the trailer was parked in such a fashion as to cause an unreasonable risk of harm and whether plaintiff was injured as a direct result of physical contact with the dirt being dumped from the vehicle. Because plaintiff needed to establish only one of the exceptions under MCL 500.3106(1) to qualify for no-fault coverage, we affirm the trial court's order denying defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Pat M. Donofrio