

STATE OF MICHIGAN
COURT OF APPEALS

VERLIN SCRIBER,

Plaintiff-Appellant,

v

CONSUMERS ENERGY CORPORATION also
known as CONSUMERS ENERGY COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 19, 2026

12:06 PM

No. 376788

Hillsdale Circuit Court

LC No. 24-000448-NZ

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting defendant’s motion for summary disposition under MCR 2.116(C)(7) (statute of limitations) and (8) (failure to state a claim). We reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of damage to trees on plaintiff’s property allegedly caused by defendant’s employees. In February 2022, a transformer on an electrical pole maintained by defendant malfunctioned, causing power outages at several nearby residences. Defendant dispatched a repair crew that night to restore service. To reach the transformer that was located on a neighboring property, the crew allegedly drove through plaintiff’s property and damaged multiple trees.

In July 2024, plaintiff filed this action, asserting claims for trespass and negligence. Defendant moved for summary disposition, arguing that plaintiff’s claims were, in substance, claims for property damage arising out of the use of a motor vehicle. According to defendant, the claims were therefore governed by the no-fault act, MCL 500.3101 *et seq.*, including its one-year statute of limitations, which rendered plaintiff’s complaint untimely under MCL 500.3145(5). Plaintiff responded that the no-fault act did not apply because the crew’s conduct fell within an

exception for intentionally caused damage. Plaintiff argued that, at a minimum, his trespass claim¹ was thus subject to the general three-year statute of limitations and was therefore timely.

The trial court granted defendant's motion, concluding that plaintiff had failed to present sufficient evidence that the repair crew intended to damage the trees. Plaintiff now appeals.

II. STANDARDS OF REVIEW

We review a trial court's summary-disposition decision de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). Questions of statutory interpretation are also reviewed de novo. *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013).

"Summary disposition under MCR 2.116(C)(7) is appropriate when the undisputed facts establish that the plaintiff's claim is barred under the applicable statute of limitations." *Id.* "In determining whether a plaintiff's claim is barred because of immunity granted by law, the reviewing court will accept the allegations stated in the plaintiff's complaint as true unless contradicted by documentary evidence." *Id.* "The reviewing court must review the pleadings and supporting evidence in the light most favorable to the nonmoving party to determine whether the undisputed facts show that the moving party has immunity." *Id.* "If there is no factual dispute, whether a plaintiff's claim is barred under the applicable statute of limitations is a matter of law for the court to determine." *Id.* at 523. "However, if the parties present evidence that establishes a question of fact concerning whether the defendant is entitled to immunity as a matter of law, summary disposition is inappropriate." *Id.* "In those cases, the factual dispute must be submitted to the jury." *Id.*

"A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint." *El-Khalil*, 504 Mich at 159 (emphasis omitted). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160. "A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.*

III. ANALYSIS

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We agree.

The no-fault act abolished tort liability for damages arising out of the use of a motor vehicle, subject to a few limited exceptions. MCL 500.3135(3).² The relevant exception here

¹ Plaintiff conceded his negligence claim failed and the trial court dismissed the count. Plaintiff does not challenge this action on appeal.

² Ordinarily, an insurer is liable to pay property protection insurance (PIP) benefits for accidental damage to most tangible personal property arising out of its insured's use of a motor vehicle. MCL 500.3121-3127. In these situations, benefits are owed under MCL 500.3121 without regard

preserves tort liability for “[i]ntentionally caused harm to persons or property.” MCL 500.3135(3)(a). If this exception does not apply,³ the no-fault act controls plaintiff’s trespass claim, and the no-fault act’s one-year statute of limitations controls. MCL 500.3135(3); see also MCL 500.3121(1). But if this exception applies, plaintiff’s trespass claim is governed by the general three-year statute of limitation. See *Morse v Colitti*, 317 Mich App 526, 551; 896 NW2d 15 (2016), citing MCL 600.5805 and MCL 600.5827. Plaintiff filed his complaint after the no-fault act’s one-year limitations period had expired, but before the three-year limitations period applicable to trespass claims had run. Accordingly, the dispositive question here is whether the intentional-damage exception applies to plaintiff’s claim, thereby rendering the suit timely.

Defendant moved for summary disposition under MCR 2.116(C)(7) and (8). Under both subrules, the trial court was required to accept as true all the allegations in the plaintiff’s complaint unless, at least for purposes of (C)(7), documentary evidence provided otherwise. *El-Khalil, Inc.*, 504 Mich at 159-160; *Kincaid*, 300 Mich App at 522.

Plaintiff specifically alleged in his complaint that defendant’s repair crew “intentionally drove their trucks directly over Plaintiff’s trees . . . to create a new access path to the pole.” At the summary dispositional stage, the trial court was required to accept that allegation as true unless defendant provided documentary evidence contradicting it. Defendant presented no such evidence. Instead, defendant argued that plaintiff’s factual allegations were insufficient because they were unsupported by evidence. That argument impermissibly shifted the burden of proof to plaintiff. At this stage in the proceedings, plaintiff was not required to prove the allegation; the well-pleaded factual allegations in the complaint were sufficient. Because plaintiff adequately pleaded facts that brought the claim within the intentional-harm exception, the trial court erred by granting summary disposition.⁴

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

/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado
/s/ Randy J. Wallace

to fault. But if plaintiff were to assert such a claim in this situation, it would be time-barred, which is why he must demonstrate that an exception exists warranting recovery outside the scope of the no-fault act.

³ The parties do not argue that any of the other exceptions are applicable in this case.

⁴ The parties disagree about whether plaintiff presented sufficient evidence to establish the repair crew’s actual intent. We need not address these arguments, because plaintiff was not required to provide such evidence at this stage of the proceedings. We also decline to address whether defendant’s crew had a legal right to enter plaintiff’s property because both parties acknowledge that this issue has no bearing on whether plaintiff’s complaint was factually sufficient to withstand defendant’s motion for summary disposition.