STATE OF MICHIGAN

COURT OF APPEALS

MARTIN ESTRADA,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee.

UNPUBLISHED
July 21, 2000

No. 217520
Kent Circuit Court
LC No. 98-004816-NF

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Plaintiff Martin Estrada appeals as of right from an order of the trial court granting defendant Farmers Insurance Exchange summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This case arises from a gunshot wound that plaintiff suffered when plaintiff's cousin's 12-gauge shotgun accidentally discharged as plaintiff's cousin attempted to move the gun from the front seat to the back of his pickup truck. On September 20, 1997, plaintiff's cousin, Fernando Arevalo (Arevalo), was waiting for plaintiff by Arevalo's pickup truck in the parking lot of plaintiff's apartment complex. Arevalo and plaintiff were planning to use Arevalo's truck to transport themselves and their hunting gear to Grandville where Arevalo and plaintiff planned to go rabbit hunting. When plaintiff opened the passenger door and began to enter the vehicle, Arevalo was standing outside the truck on the driver's side of the vehicle and the driver's side door was open. As plaintiff was preparing to enter the vehicle, plaintiff noticed Arevalo's shotgun and other items lying across the bench-style front seat of the truck. Plaintiff asked Arevalo to move the gun behind the seat. When Arevalo reached into the vehicle to move the shotgun from the front seat, he accidentally hit the trigger, causing the weapon to discharge. Plaintiff was shot in the left thigh and suffered serious injuries.

Plaintiff, who is defendant's statutorily assigned insured pursuant to MCL 500.3114-.3115; MSA 24.13114-.13115, sought no-fault personal injury protection benefits from defendant. Following discovery in the trial court, both plaintiff and defendant moved for summary disposition. The trial court denied plaintiff's motion and granted defendant's motion pursuant to MCR 2.116(C)(10). The court found that "[a]lthough plaintiff's injuries were associated with a parked motor vehicle, those injuries were not closely related to the transportational function of that vehicle," and dismissed plaintiff's claim.

Under Michigan's no-fault insurance act, 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, subject to the provisions of the act. MCL 500.3105(1); MSA 24.13105(1); *Yost v League General Ins Co*, 213 Mich App 183, 184; 539 NW2d 568 (1995). "Injuries that arise out of the use of a parked motor vehicle generally are not covered under the no-fault act. However, there are several statutory exceptions to this 'parked vehicle exclusion' that permit recovery." *Id.* (Citations omitted.) Specifically, MCL 500.3106(1); MSA 24.13106(1) provides, in pertinent part, as follows:

> (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:
>
> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
>
> (b) . . . [T]he 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) . . . [T]he injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

In *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635-636; 563 NW2d 683 (1997), our Supreme Court set forth a three-part test for recovery for injuries relating to a parked motor vehicle:

> [W]here a claimant suffers an injury in an event related to a parked motor vehicle, he must establish that the injury arose out of the ownership, operation, maintenance, or use of the parked vehicle by establishing that he falls into one of the three exceptions to the parking exclusion in subsection 3106(1). In doing so under § 3106, he must demonstrate that (1) his 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.

We find that as a matter of law, plaintiff has failed to satisfy the third prong of the *Putkamer* test because the involvement of the parked vehicle in his injury was not directly related to its character as a motor vehicle; rather, it was merely incidental, fortuitous, or "but for." *Id.* at 636; see also *Shellenberger v Ins Co of North America*, 182 Mich App 601, 603-604; 452 NW2d 892 (1990); *Krause v Citizens Ins Co of America*, 156 Mich App 438, 440; 402 NW2d 37 (1986). Here, the motor vehicle was merely the site of the accident.

Plaintiff cites *Perryman v Citizens Ins Co of America*, 156 Mich App 359; 401 NW2d 367 (1986) to support his argument that the vehicle was more than the mere situs of his injury. Plaintiff contends that as in *Perryman*, the confining nature of the vehicle in this case restricted Arevalo's ability to swing the shotgun around when he was attempting to unload the shotgun from the truck. Plaintiff argues further that because of the height of the truck, Arevalo had to reach "up and out in an awkward manner" to reach the shotgun. These assertions are contrary to Arevalo's deposition testimony that there was nothing obstructing his access to the gun in the truck other than a towel that was lying over the gun. He testified that he reached into the vehicle to grab the shotgun and the instant he touched the shotgun, it fired. Thus, the facts in this case are distinguishable from the facts in *Perryman*. Because Arevalo's deposition testimony and his statements to police following the accident clearly establish that the vehicle's involvement in the injury was merely incidental, we conclude that the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins