# STATE OF MICHIGAN

# COURT OF APPEALS

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MICHIGAN MUTUAL INSURANCE COMPANY, as Subrogee of YVONNE M. ALLEN,

Plaintiff-Appellee,

v

YVONNE T. ROCK-BROWN,

Defendant-Appellant.

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UNPUBLISHED
August 1, 2000

No. 213698
Macomb Circuit Court
LC No. 96-000327-NI

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

In this action for reimbursement of personal injury benefits, defendant appeals as of right from the trial court's grant of summary disposition to plaintiff and denial of summary disposition to defendant. We reverse.

Defendant argues that the trial court erred in granting plaintiff's motion for summary disposition because Yvonne Allen, plaintiff's assigned insured, was not alighting from the vehicle at the time of her injury and there was no causal connection between the injury and the motor vehicle. We review a trial court's 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). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). This Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Id*.

To recover no-fault benefits for injuries sustained when a motor vehicle is parked, a claimant must suffer injuries falling within one of the categories enumerated in MCL 500.3106; MSA 24.13106, which include an injury "sustained by a person while occupying, entering into, or alighting from the vehicle." MCL 500.3106(1)(c); MSA 24.13106(1)(c); see also *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 632; 563 NW2d 683 (1997). In addition to establishing the applicability of one of the categories of § 3106, a claimant must also establish that "the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle *as a motor vehicle* . . . and . . .

the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for." *Id*. at 635-636.

Although there is no statutory definition of the term "alighting," an individual has not finished alighting from a vehicle at least until both feet are firmly planted on the ground. *Krueger v Lumbermen's Mut Casualty Co*, 112 Mich App 511, 515; 316 NW2d 474 (1982). This Court has generally interpreted "alighting from" as requiring some movement associated with physically removing oneself from the immediate confines of the vehicle. *Harkins v State Farm Mut Automobile Ins Co*, 149 Mich App 98, 101; 385 NW2d 741 (1986).

In *Krueger, supra* at 513, the plaintiff was climbing out of the vehicle when he sustained his injuries. He had placed his left foot on the ground and brought his right foot down into a hole in the ground, causing injuries to his lower back and left ankle. *Id*. This Court held that because both feet were not firmly planted on the ground the plaintiff had not finished alighting from the vehicle at the time he suffered his injuries. *Id*. at 515.

The trial court granted plaintiff's motion for summary disposition, analogizing this case to *Krueger*. However, Allen's deposition testimony revealed that her slip and fall occurred at some point after she had firmly planted both feet on the ground. Because Allen's injury occurred after she had successfully removed herself from the immediate confines of the vehicle and firmly planted both feet on the ground, she was not alighting from the vehicle within the meaning of § 3106 when she sustained her injuries. Therefore, the trial court erred in granting plaintiff's motion for summary disposition and denying defendant's motion for summary disposition. Our holding is further supported by the plain and ordinary meaning of the term "alight," which is defined as "to . . .descend from a vehicle [or] to settle or stay after descending; come to rest." Random House Webster's College Dictionary (2d ed), 33.[1]

In light of our disposition of the foregoing issue, we need not address whether Allen's injury had a causal relationship to the motor vehicle.

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Harold Hood
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

[1] "Where a statute does not define one of its terms it is customary to look to the dictionary for a definition." *People v Lee*, 447 Mich 552, 558; 526 NW2d 882 (1994), citing *Energetics v Whitmill*, 442 Mich 38; 497 NW2d 497 (1993).