STATE OF MICHIGAN

COURT OF APPEALS

DAVID OFFENBORN,

Plaintiff-Appellant,

v

NORTHBROOK PROPERTY & CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
May 25, 2001

No. 220504
Wayne Circuit Court
LC No. 97-740846-CK

Before: McDonald, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition. We affirm.

Plaintiff was injured when, in the course of his employment, he slipped and fell from a bulldozer he had loaded onto a trailer for transport. Plaintiff continued working, but experienced some dizziness later in the day and was subsequently treated for minor head and scalp injuries (the "head injury"). During the course of his treatment for these minor injuries, doctors discovered a brain tumor (the "brain injury"). The tumor was surgically removed approximately one week after plaintiff's fall. As a result of the surgery, plaintiff became permanently disabled.

Plaintiff petitioned for worker's compensation benefits under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*; MSA 24.13101 *et seq.* Following a trial, the presiding magistrate ordered plaintiff's employer to provide benefits compensating plaintiff for those expenses reasonable and necessary for treatment of plaintiff's head injury. However, the magistrate determined that plaintiff's brain tumor was not the result of the fall and that plaintiff's post-surgical symptoms, which led to his permanent disability, were related to the tumor-removal surgery, not the fall. The magistrate denied benefits for medical treatment or disability related to the brain injury.

While plaintiff's worker's compensation case was pending, he initiated this action in the circuit court pursuant to the no-fault act, MCL 500.3101 *et seq.*; MSA 24.13101 *et seq.* Plaintiff sought personal protection insurance benefits from defendant, the insurer of the trailer, alleging that he suffered accidental bodily injury as the result of his fall, said injury arising out of the operation and use of a motor vehicle. See MCL 500.3105; MSA 24.13105. The court, however,

granted defendant's motion for summary disposition reasoning that plaintiff lacked eligibility for no-fault benefits due to the application of MCL 500.3106(2); MSA 24.13106(2).

Plaintiff first argues that the circuit court erred in finding that worker's compensation benefits were "available" to him. We disagree.

We review de novo an order granting or denying a motion for summary disposition. *Walters v Bloomfield Hills Furniture*, 228 Mich App 160, 162; 577 NW2d 206 (1998). The interpretation and application of statutes likewise presents questions of law that are reviewed de novo. *Travelers Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 279; 597 NW2d 235 (1999).

MCL 500.3106(2); MSA 24.13106(2), which limits recovery of no-fault benefits for accidental bodily injury, provides in pertinent part:

> (2) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, or under a similar law of another state or under a similar federal law, are available to an employee who sustains the injury in the course of his or her employment while doing either of the following:
>
> (a) Loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. As used in this subdivision, "another vehicle" does not include a motor vehicle being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle.

Plaintiff contends that because he did not *receive* worker's compensation benefits for his brain injury, for the purpose of the statute benefits were not *available* to him. To the contrary, we agree with the circuit court that as used in the statute, "available" means that plaintiff possesses "the ability to make a claim for work-related benefits from his worker's compensation carrier."

Where the language of a statute is clear and unambiguous, no judicial interpretation is warranted. *Lee v National Union Fire Ins Co*, 207 Mich App 323, 326; 523 NW2d 900 (1994). However, where a term is not defined in a statute, we may look to dictionary definitions for guidance. *Gordon v Allstate Ins Co*, 197 Mich App 609, 616; 496 NW2d 357 (1992). *Random House Webster's College Dictionary* (1997) defines available as what is "readily obtainable" or "accessible." In addition, in the context of automobile insurance policies, this Court has agreed with foreign jurisdictions that construe the term to mean "that which is 'actually' or 'reasonably' available to the insured," rather than that which is theoretically or hypothetically available. *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 11-12; 512 NW2d 324 (1993). Here, there is no question that worker's compensation benefits were accessible and readily obtainable for those injuries determined to be a result of plaintiff's fall. The magistrate did in fact award plaintiff benefits for his head injury, and he assuredly would have awarded benefits for plaintiff's brain injury were it not for his finding that the latter injury was not a result of his fall. That plaintiff did not actually receive benefits for his brain injury does not justify a finding that such benefits were only hypothetically available.

Plaintiff also argues that the court erred in reaching the conclusion that his fall and injury did not arise from the use or operation of "another vehicle" due to the applicability of the second-tier exclusionary language of the subsection. Though we disagree with its reasoning, we reach the same result as the circuit court and, therefore, decline to reverse. See *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000); *Gentry v Allstate Ins Co*, 208 Mich App 109, 115; 527 NW2d 39 (1994).

We agree with plaintiff, as did the circuit court apparently, that pursuant to *Gordon, supra* at 616-617, the bulldozer qualifies as "another vehicle." We also agree with plaintiff that the court erred in applying the following language of subsection 3106(2)(a):

> As used in this subdivision, "another vehicle" does not include a *motor vehicle* being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle [emphasis added.]

Although the bulldozer was, as found by the circuit court, "being loaded on the trailer as cargo," because the bulldozer does not qualify as a "motor vehicle" as defined in the statute, MCL 500.3101(2)(e); MSA 24.13101(2)(e), strict interpretation of the statutory language requires us to conclude that the exclusionary language is inapplicable.

However, the inquiry does not end here as the question still remains whether plaintiff's fall and injury truly "arose from the use or operation" of the bulldozer. We find that they did not. Unlike in *Gordon, supra* at 610-611, where the plaintiff's injury clearly resulted from the movement and action of a crane, here the bulldozer was stationary—parked and shut-off on the bed of the trailer. Though, as discussed, the bulldozer was not a "motor vehicle" for the purpose of the exclusionary language of the statute, it was for all intents and purposes nevertheless "cargo." Possessed of the same nature as any inert load awaiting transportation, a box for instance, we decline to find that plaintiff's fall and injury arose from the *use* or *operation* of the bulldozer.

Affirmed.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ Patrick M. Meter