

STATE OF MICHIGAN  
COURT OF APPEALS

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GEORGIE M. BURKS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

October 30, 2001

No. 224446

Saginaw Circuit Court

LC No. 99-027086-CH

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker\*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was involved in a motor vehicle accident when a vehicle driven by Brad Gnatkowski collided with her car. Gnatkowski testified that he struck plaintiff's car after he swerved to avoid another car that pulled out in front of him. Plaintiff sought uninsured motorist benefits, based on the actions of the driver of the unidentified car that pulled out in front of Gnatkowski's vehicle. The trial court granted defendant's motion for summary disposition based on the lack of physical contact with the uninsured motor vehicle.

Uninsured motorist coverage is not required by statute. *Citizens Ins Co of America v Buck*, 216 Mich App 217, 224; 548 NW2d 680 (1996). However, such insurance may be purchased to provide an insured with a source of recovery if the tortfeasor is uninsured. *Id.* Because uninsured motorist benefits are not required by statute, the contract of insurance determines under what circumstances such benefits will be awarded. *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 525; 502 NW2d 310 (1993). The policy definitions control. *Id.*

The requirement in an uninsured motorist policy of "physical contact" between a hit-and-run vehicle and the insured's vehicle is enforceable in Michigan. *Kreager v State Farm Mutual Automobile Ins Co*, 197 Mich App 577, 582; 496 NW2d 346 (1992). The provision is designed to reduce fraudulent phantom vehicle claims. *Hill v Citizens Ins Co of America*, 157 Mich App 383, 394; 403 NW2d 147 (1987). There must be actual physical contact between the hit-and-run

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\* Circuit judge, sitting on the Court of Appeals by assignment.

vehicle and the insured's vehicle. Swerving to avoid a hit-and-run vehicle does not satisfy the physical contact requirement. *Said v Auto Club Ins Assn*, 152 Mich App 240; 393 NW2d 598 (1986). This Court has construed the physical contact requirement broadly to include indirect physical contact, such as where an object is cast off by a hit-and-run vehicle, as long as there is a substantial physical nexus between the disappearing vehicle and the object cast off. *Berry v State Farm Automobile Ins Co*, 219 Mich App 340, 347; 556 NW2d 207 (1996).

Plaintiff has failed to show any substantial physical nexus between the alleged uninsured motor vehicle and her vehicle. The policy requires physical contact in its definition of an uninsured motor vehicle. The alleged uninsured motor vehicle did not make physical contact with either plaintiff or Gnatkowski. The trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker