

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TIMOTHY SWIDERSKI,

Plaintiff-Appellant,

v

COMCAST CABLEVISION OF SHELBY, INC.,  
d/b/a COMCAST CABLEVISION, and LECOM,  
INC.,

Defendants-Appellees.

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UNPUBLISHED

June 4, 2002

No. 227194

Macomb Circuit Court

LC No. 99-004333-CZ

Before: Murphy, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

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

I. Basic Facts and Procedural History

Plaintiff was the principal shareholder of Frosty Mug, Inc., a corporation that operated a 150-seat bar and restaurant in Shelby Township, Michigan. Plaintiff owned the property on which the business operated for twenty years. In May 1997, plaintiff began efforts to find a buyer for the liquor license and restaurant business.

On October 29, 1997, defendant Lecom, Inc.'s employees were installing cable for defendant Comcast, Inc. on the property directly south of plaintiff's property. Lecom's employees drove a truck over a curb and onto the back of plaintiff's property. The truck sank into the rain-soaked earth, and its undercarriage caused damage to plaintiff's underground septic tank.

The township required plaintiff to obtain approval from the Macomb County Health Department to repair the tank. According to plaintiff, to service the 150-seat bar and restaurant, the Health Department required \$60,000 in repairs. To conserve money, plaintiff undertook a lesser repair that would cost only \$30,000. However, plaintiff would only be permitted to maintain an 80-seat bar and restaurant and would also have to sacrifice parking spaces. All of

this adversely affected a pending sale.<sup>1</sup> Plaintiff filed this action seeking treble damages for the intentional trespass along with damages for the wrongful interference with business relations.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(7). Defendants argued that plaintiff's complaint essentially sought recovery of no-fault property protection benefits and other related causes of action. Because MCL 500.3145(2) requires that any claim for property protection benefits caused by damage arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, must be commenced within one year of the accident, plaintiff's complaint was barred by the statute of limitations.

In response to defendants' motion, plaintiff alleged that the one-year statute of limitations did not apply to his claim for property damage arising out of a trespass. He argued that because defendant's employees intentionally drove across his property and must have known that driving a vehicle of that magnitude across property not intended for vehicular traffic would cause damage, his complaint was governed by the "intentionally caused damage to property" exception to the abolition of tort liability or property damage arising from the use of a motor vehicle, pursuant to MCL 500.3135(3)(a). Therefore, his claim was timely because it was filed within the three-year statute of limitations for trespass provided in MCL 600.5805(8). Plaintiff also filed a motion for leave to amend his complaint to add his corporation as a party.

The trial court decided the motions without oral argument. The court found that defendants' alleged liability stemmed from the ownership and use of the truck as a motor vehicle. The trial court further found that plaintiff's asserted damages were clearly within the scope of the no-fault act and plaintiff failed to plead or otherwise offer evidence that the driver of the truck intended to cause damage to plaintiff's property, and damage to a septic system was not reasonably foreseeable by merely driving across an open field. The trial court granted summary disposition and found that because the complaint was time-barred, allowing plaintiff to amend the complaint would be futile.

Plaintiff moved for reconsideration arguing that defendants' employees actions in driving a large, double-tired truck across plaintiff's property, without plaintiff's permission, constituted a trespass; an intentional tort. Because a plaintiff is entitled to at least nominal or general damages which are presumed to flow from the trespass, the injuries for which those damages are assessed must also be presumed to have been intended. Accordingly, plaintiff argued that his claim fell within the parameters of MCL 500.3135(3)(a).

In a written opinion, the court stated:

Plaintiff's argument misconstrues the general law regarding trespass. The general law of trespass presumes nominal damages (for the intentional violation of a landowner's right to exclude others from the premises) in the absence of actual damages. "However, the presumption of nominal damages does not lead to the conclusion that any damages (nominal or actual) were intended.

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<sup>1</sup> Plaintiff alleged that prior to the damage caused by defendants, he had an offer of \$400,000 for the liquor license and business with \$5,000 monthly rent for the building. This offer was reduced to \$50,000 for the license and \$3,000 monthly rent.

Moreover, the specific law regarding the intentionally caused harm exception to application of the no-fault act clearly does not permit a presumption of intended damages. To the contrary, the exception requires an intent to cause harm to a person or property and an intent to do the act causing the harm. Significantly, and with the close of discovery, plaintiff has not proffered and will be unable to procure any evidence suggesting the driver [of] the truck intended to cause damage to the subject property in addition to intending to trespass upon it.

The trial court ruled that plaintiff failed to state a claim under the intentional injury exception provided by MCL 500.3135(3)(a) and thus his only claim was for no-fault benefits.<sup>2</sup> Because plaintiff failed to file this action within a year after the incident, it was statutorily time-barred.

## II. Standard of Review

This Court reviews a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Whether a plaintiff's claim is statutorily time-barred is also a question of law for this Court, which we consider de novo. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997), lv den 459 Mich 867 (1998).

In addition, the interpretation of statutes presents a question of law that this Court considers de novo. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998). The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. *In re Messer Trust*, 457 Mich 371, 379-380; 579 NW2d 73 (1998). Statutory language should be construed reasonably, keeping in mind the purpose of the act. *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). This Court will not read into a statute anything that is not within the manifest intention of the Legislature as gathered from the act itself. *Kokx v Bylenga*, 241 Mich App 655, 661; 617 NW2d 368 (2000).

## III. MCL 500.3135(3)(a)

The sole issue presented by plaintiff on appeal is whether the damage to his property caused by the trespass of Lecom's employees was an "[i]ntentionally caused harm" within the meaning of MCL 500.3135(3)(a). MCL 500.3135(3)(a) provides:

Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

(a) Intentionally caused harm to persons or property. Even though a person knows that harm to persons or property is substantially certain to be caused by his or her act or omission, the person does not cause or suffer that harm

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<sup>2</sup> The trial court also apparently relied on MCR 2.116(C)(8) in granting the motion for summary disposition and denying reconsideration.

intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property.

Plaintiff contends that because he alleged in his complaint that defendants entered his property without permission, he pleaded a cause of action for trespass and because trespass is an intentional tort with a three-year limitations period, his claim comes within the scope of § 3135(3)(a) and is timely. We disagree.

Trespass is an intentional tort, meaning it is based on an intentional act. 87 CJS, Trespass, § 6, p 664. Specifically, it is an intentional and unauthorized invasion of another person's interest in the exclusive possession of his property. *Traver Lakes Community Maintenance Ass'n v Douglas Co*, 224 Mich App 335, 344; 568 NW2d 847 (1997); *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 195; 540 NW2d 297 (1995).

While we agree that plaintiff may have sufficiently plead an intentional tort, we find that the exception provided by § 3135(3)(a) is not for intentional torts but for intentionally caused harm. This means that the defendant must "intend to cause harm to a person or property and not merely . . . intend to do the act which causes the harm." *Hicks v Vaught*, 162 Mich App 438, 440; 413 NW2d 28 (1987). While the plaintiff is entitled to at least nominal or general damages which are presumed to follow from the trespass, *Kratze v Independent Order of Oddfellows*, 442 Mich 136, 148; 500 NW2d 115 (1993), that does not mean that the injuries for which those damages are assessed are presumed to have been intended. Thus, pursuant to MCL 500.3135(3)(a), liability for intentional torts committed with a motor vehicle is retained only for intentionally caused harm to persons or property.

Plaintiff alleged only that defendants intentionally entered his property and did not allege any facts to show that defendants specifically intended to cause the harm that resulted from that act. As such, his complaint clearly fell within MCL 500.3145(2). Because the complaint was filed more than one year after the incident, it was time-barred. The trial court did not err in granting summary disposition to defendants.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly