# STATE OF MICHIGAN

# COURT OF APPEALS

KIMBERLY BOURSAW,

Plaintiff/Garnishee Plaintiff-Appellant,

v

JUSTIN HAWKS,

Defendant,

and

MIDDLE CITIES RISK MANAGEMENT TRUST,

Garnishee/Defendant-Appellee.

UNPUBLISHED
July 9, 2002

No. 230319
Genesee Circuit Court
LC No. 99-064516-NO

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

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

Plaintiff, a transportation aide on a school bus, was injured by a student passenger. She sued the student, who consented to entry of a judgment. Plaintiff then attempted to recover on the judgment from garnishee defendant, which provided insurance coverage for the school district. The trial court ruled that plaintiff's injuries did not arise out of the student's use of the bus and dismissed the case.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Where, as here, the facts are not in dispute, the issue whether an injury arose out of the use of a motor vehicle is an issue of law for the court to decide, *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 630; 563 NW2d 683 (1997), and issues of law are also reviewed de novo on appeal. *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998).

In order to find that an injury arose out of the operation, maintenance, or use of a motor vehicle, three conditions must be met:

> 1. The accident must have arisen out of the inherent nature of the automobile, as such; 2. The accident must have arisen within the natural territorial limits of an automobile, and the actual use; 3. The automobile must not merely contribute to cause the condition that produces the injury, but must, itself, produce the injury. [*Century Mutual Ins Co v League General Ins Co,* 213 Mich App 114, 121; 541 NW2d 272 (1995), quoting 6B Appleman, Insurance Law & Practice (Buckley ed), § 4317, pp 367-369.]

Plaintiff's injury was unrelated to defendant's use of the vehicle as a student-passenger. The bus was merely the situs of a physical attack and assaults are not closely related to the transportational function of a motor vehicle and are not normal foreseeable occurrences in the use of a vehicle. *Morosini v Citizens Ins Co of America (After Remand),* 461 Mich 303, 311; 602 NW2d 828 (1999); *Kangas v Aetna Casualty & Surety Co,* 64 Mich App 1, 17; 235 NW2d 42 (1975).

We find plaintiff's reliance on *Pacific Employers Ins Co v Michigan Mutual Ins Co,* 452 Mich 218; 549 NW2d 872 (1996), to be misplaced. In that case, the student-passenger's injuries were causally connected to, and liability was predicated on, the bus driver's violation of a duty owed to the passenger arising from the carrier-passenger relationship. Here, liability against defendant was predicated on his duty to refrain from intentionally injuring another through unconsented-to contact; both his duty and plaintiff's injuries were unrelated to his use of the bus or his status as a passenger.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff