STATE OF MICHIGAN

COURT OF APPEALS

MYCHELLE PROUGH,

Plaintiff-Appellee,

v

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
July 12, 2002

No. 229490
Calhoun Circuit Court
LC No. 00-000635-CK

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's August 17, 2000, order granting summary disposition in favor of plaintiff in this action for uninsured motorist benefits. We affirm.

The parties submitted this case for judgment in the lower court on a stipulated set of facts. MCR 2.116(A)(1), (2). According to the stipulated facts, plaintiff commenced this action in December 1999 in Wayne Circuit Court[1] seeking uninsured motorist coverage pursuant to the terms of her insurance policy with defendant. Plaintiff's claim arises from a motor vehicle accident that occurred on August 12, 1999, in Calhoun County. Plaintiff was driving southbound on North Avenue when a second unidentified vehicle failed to yield to a third vehicle and turned southbound onto Poorman Road. The unidentified vehicle struck the third vehicle, which in turn struck plaintiff's vehicle. However, the unidentified vehicle and plaintiff's vehicle did not come into actual physical contact.

Relying on this Court's decision in *Lord v Auto-Owners Ins Co*, 22 Mich App 669; 177 NW2d 653 (1970), the trial court ruled that uninsured motorist coverage was available to plaintiff because a substantial physical nexus existed between the unidentified vehicle and the object causing the injury to plaintiff to the extent that the "physical contact" requirement of the insurance policy was satisfied.

[1] After the parties agreed to change the venue of this action from Wayne Circuit Court to Calhoun Circuit Court, an order was entered accordingly on February 2, 2000.

We review de novo a trial court's decision regarding a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In the instant case, the sole question presented is one of contractual interpretation. We review de novo such questions of law. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). Because uninsured motorist coverage is not mandated by statute, the terms of the insurance policy alone determine coverage. *Cruz v State Farm Mutual Automobile Ins Co*, 241 Mich App 159, 167-168; 614 NW2d 689 (2000), lv gtd 464 Mich 873 (2001);*Wills v State Farm Ins Co*, 222 Mich App 110, 114; 564 NW2d 488 (1997).

On appeal, defendant argues that the trial court erred in concluding that plaintiff was entitled to uninsured motorist benefits in spite of the fact that plaintiff's vehicle did not come into actual physical contact with the unidentified vehicle. We disagree.

As relevant to this appeal, the insurance policy defendant issued to plaintiff defines an uninsured automobile as a "hit-and-run" automobile. A hit-and-run automobile is further defined in the following terms.

> "[H]it-and-run automobile" means an automobile which causes bodily injury to an insured arising out of *physical contact* of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident . . . . [Emphasis supplied.]

As this Court explained in *Kersten v DAIIE*, 82 Mich App 459, 469; 267 NW2d 425 (1978):

> [t]he physical contact provision is designed to reduce the possibility of fraud. The purpose of the language is to prevent phantom vehicle claims – the possibility that a motorist who negligently lost control of his own vehicle would recover by alleging that an unknown vehicle caused him to lose control. *Lord* [*supra*]; *State Farm Mutual Auto Ins Co v Spinola*, 374 F2d 873 (CA 5, 1967). Recently, physical contact has been stretched to include situations where no direct contact occurs. *The most common circumstance in which recovery is thus permitted is the intervening vehicle situation where the hit-and-run vehicle strikes a second or intervening vehicle which in turn is propelled into the insured vehicle. Under these circumstances, there is a physical contact, although indirect or transmitted, between the insured vehicle and the hit-and-run vehicle. The possibility of fraud in such a situation is minimal*. [Emphasis supplied.]

Moreover, where there is tangible evidence of indirect physical contact between the hit-and-run vehicle and the insured's vehicle, the possibility of fraud is significantly diminished. *Hill v Citizens Ins Co of America*, 157 Mich App 383, 394; 403 NW2d 147 (1987). Consequently, a "common thread" runs through the cases where this Court has concluded that recovery of uninsured motorist benefits is permitted. *Kersten, supra* at 471. Specifically, "[r]ecovery is permitted where the evidence discloses a direct causal connection between the hit-and-run vehicle and [the] plaintiff's vehicle and which connection carries through to the plaintiff's vehicle by a continuous and contemporaneously transmitted force from the hit-and-run vehicle." *Id.* Thus, this Court has interpreted the language in insurance contracts requiring "physical contact" broadly to include indirect physical contact. *Berry v State Farm Mutual*

Automobile Ins Co, 219 Mich App 340, 347; 556 NW2d 207 (1996); *Wills, supra* at 115; *Adams v Zajac*, 110 Mich App 522, 527; 313 NW2d 347 (1981).

In the instant case, the stipulated facts demonstrate that the unidentified hit-and-run vehicle hit a third vehicle that in turn struck plaintiff's vehicle. We agree with the trial court under the facts of this case that plaintiff has demonstrated a substantial physical nexus between her vehicle and the unidentified hit-and-run vehicle to the extent that uninsured motorist coverage is provided. Moreover, the facts of the present case are analogous to those of this Court's decision in *Lord, supra* at 670, in that an intermediary vehicle struck the plaintiff's vehicle after being struck by an unidentified hit-and-run vehicle. Under these same facts, this Court concluded that the "physical contact" requirement was indeed satisfied. *Id.* at 672. Accordingly, the trial court correctly determined that a "substantial physical nexus exist[ed] between the unidentified vehicle and . . . the object that str[uck] the insured's vehicle." *Wills, supra* at 115.

Further, we find defendant's reliance on this Court's decisions in *Said v Automobile Club Ins Ass'n*, 152 Mich App 240; 393 NW2d 598 (1986), *Kreager v State Farm Mutual Automobile Ins Co*, 197 Mich App 577; 496 NW2d 346 (1992), and *Auto Club Ins Ass'n v Methner*, 127 Mich App 683; 339 NW2d 234 (1983), in support of its argument that uninsured motorist coverage is not available under the instant facts to be misplaced. In each of these cases, this Court concluded that uninsured motorist coverage was not available because there was no contact, indirect or otherwise, between the insured's vehicle and the unidentified vehicle. See *Said, supra* (no physical contact where the insured's vehicle swerved to avoid oncoming vehicle); *Kreager, supra* (no physical contact occurred where the plaintiff's vehicle was struck by gunfire emanating from another vehicle); *Methner, supra* (no physical contact occurred where the plaintiff swerved to avoid oncoming unidentified vehicle). Rather, in the instant case, the stipulated facts reflect indirect physical contact between plaintiff's vehicle and the unidentified hit-and-run vehicle.

Finally, we disagree with defendant's implied contention that this Court has perverted the plain meaning of the phrase "physical contact" or given it an alien construction merely to benefit the insured. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). Likewise, we reject defendant's assertion that *Lord* and its progeny were wrongly decided and warrant reconsideration, given that as recently as 1997 this Court has reaffirmed the broad interpretation of the "physical contact" requirement. See *Wills, supra* at 115.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell