STATE OF MICHIGAN

COURT OF APPEALS

DAVID TOKARSKI,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee,

and

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Defendant.

UNPUBLISHED
September 11, 2003

No. 238715
Washtenaw Circuit Court
LC No. 01-000141-NF

Before: Meter, P.J., and Talbot and Borrello, J.J.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant Titan Insurance Company's motion for summary disposition.[1] We affirm.

Dean Langenderfer was hired to pour gravel over the driveway of Bill's Truck and Trailer Repair, plaintiff's employer. As the trailer of Langenderfer's truck was raised to pour the gravel, the trailer came into contact with overhead electrical wires. Langenderfer attempted to reenter the truck to lower the trailer but was fatally electrocuted upon touching the truck. Plaintiff injured his back when he attempted to pull Langenderfer away from the truck.

Plaintiff filed suit against his no-fault insurer, Titan Insurance Company, seeking personal injury protection (PIP) benefits. Titan moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff was not entitled to PIP benefits because his injury arose from the use of a parked vehicle and none of the statutory exceptions applied. MCL 500.3106.

[1] Frankenmuth Mutual Insurance was dismissed from the case and is not a party to this appeal.

We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Where the facts are not in dispute, it is the function of the trial court, as a matter of law, to determine whether statutory exceptions are applicable. *Wills v State Farm Ins Co*, 437 Mich 205, 212; 468 NW2d 511 (1991).

An insurer may pay PIP benefits for accidental injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105(1). An injury arising from the use of a parked vehicle is excluded from coverage, except under certain circumstances. MCL 500.3106, which provides the circumstances under which benefits are to be paid for accidents involving parked vehicles, 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, . . . are available to an employee who sustains the injury in the course of his or her employment while doing either of the following:
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> > (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.
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> > (b) Entering into or alighting from the vehicle unless the injury was sustained while entering or alighting from the vehicle immediately after the vehicle became disabled. This subdivision shall not apply if 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. [Emphasis added.]

Plaintiff argues that the words "another vehicle" indicate legislative intent to provide coverage for work-related injuries sustained from the use or operation of a vehicle which was not owned by the insured. In essence, plaintiff argues that the accident from which the personal injuries arose need only involve a single vehicle not owned by the injured party. We disagree. As this Court stated in *Gordon v Allstate Ins Co*, 197 Mich App 609, 614; 496 NW2d 357 (1992), "section 3106(2)(a) necessarily implies that there will be an injury arising out of a parked motor vehicle *and* another vehicle in order for recovery to be permitted." (Emphasis added). Further, plaintiff's reliance on *Dowling v Auto Club Casualty Ins Co*, 147 Mich App 482, 486; 383 NW2d 233 (1985), is misplaced. The injury in that case arose out of the maintenance of a *second* vehicle. *Id*. at 486. Accordingly, summary disposition for defendant was proper.

Plaintiff next argues that he was not required to show that the truck was not being used "as a motor vehicle" pursuant to MCR 500.3105(1). Plaintiff failed to properly present this claim for appeal. Because he did not raise it in his questions presented and failed to brief the

merits of the issue, it is abandoned. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Stephen L. Borrello