STATE OF MICHIGAN

COURT OF APPEALS

JAMES KIMMER, Plaintiff-Appellant,	UNPUBLISHED February 24, 2004
v	No. 243502 Genesee Circuit Court
AUTO CLUB INSURANCE COMPANY, Defendant-Appellee.	LC No. 2001-072214-NF

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

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

Plaintiff drove to a local Kmart store to buy some bags of garden soil. He parked his car fifteen feet away from the outdoor display area and began carrying the bags of dirt to the trunk. As he picked up one bag of soil, he slipped on wet dirt on the ground, tripped over another bag of dirt, or caught his foot in a pallet and fell. His hip broke when it struck a pallet.

The trial court ruled that plaintiff's injury did not come within the loading or unloading exception to the parked vehicle exclusion, MCL 500.3106(1)(b), 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). Statutory interpretation is a question of law which is also reviewed de novo. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

A person is entitled to personal protection insurance benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." MCL 500.3105(1). Accidental bodily injury does not arise out of the ownership, operation, maintenance or use of a parked vehicle as a motor vehicle unless "the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process." MCL 500.3106(1)(b).

To establish a right to benefits under § 3106, the plaintiff must prove the following:

> (1) his conduct fits one of the three exceptions of subsection 3106(1); (2) the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle *as a motor vehicle*; and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for. [*Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635-636; 563 NW2d 683 (1997) (emphasis in original).]

Plaintiff's parked vehicle was being used as a motor vehicle in that it was in the process of being loaded with newly purchased goods for transport home. However, we agree with the trial court that plaintiff failed to otherwise meet the criteria necessary to establish a right to relief. One, plaintiff did not show that his injury was the direct result of physical contact with the bag of dirt. *Frohm v American Motorists Ins Co,* 148 Mich App 308, 311; 383 NW2d 604 (1985); *Dembinski v Aetna Cas & Sur Co,* 76 Mich App 181, 183; 256 NW2d 69 (1977). Although he lifted the bag of soil to carry it to his car, there is no evidence that the act of lifting or carrying the bag caused him to fall and break his hip. Two, plaintiff was not in the process of lifting the bag of soil into the vehicle at the point in the loading process when his injury occurred. *Block v Citizens Ins Co of America*, 111 Mich App 106, 109; 314 NW2d 536 (1981); *Dembinski*, *supra*. He had only just picked up the bag of dirt and perhaps taken a step or two in the direction of the car when he fell. Three, plaintiff's injury was not causally connected to the loading of the vehicle. *Putkamer, supra.* Nothing in connection with the car caused plaintiff's injury, which resulted from slipping on dirt or tripping on a pallet or another bag of soil in an area away from the vehicle. *Block, supra.*

Affirmed.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood