STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW HOUCHLEI,

Plaintiff-Appellee,

v

NATIONWIDE INSURANCE COMPANY OF AMERICA and ALLIED INSURANCE,

Defendants-Appellants.

UNPUBLISHED
August 23, 2005

No. 254257
Ingham Circuit Court
LC No. 02-000504-NF

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment for plaintiff.[1] We reverse.

Plaintiff's home was a distance from the roadway. Plaintiff had a habit of placing trash bags on the roof of his vehicle and leaving them at the end of the driveway. On the date of the accident, plaintiff and his wife left their home to run errands in their motor vehicle. However, on this particular date, plaintiff forgot to drop the trash off at the end of the driveway. Plaintiff drove onto the freeway and noticed a load of garbage had fallen from the roof of his vehicle. The contents of the bag had spilled into the road. Plaintiff pulled his vehicle off the lane of travel parallel to the trash spill. He left his engine running and turned on his four-way flashers. Plaintiff collected a load of trash and placed it in the back of his vehicle. Plaintiff's wife also collected a load of trash and came back to their vehicle. Plaintiff was standing "next to" the vehicle when his wife warned him to watch out for a motorcyclist. The motorcyclist hit plaintiff, causing him injury. Plaintiff filed suit against defendant insurance companies, alleging that they were the no-fault insurers with priority responsibility for payment of no-fault benefits. Defendants moved for summary disposition, alleging that the statutory basis for payment of

[1] Defendants initially filed an application for leave to appeal from the trial court's denial of the motion for summary disposition. We denied the application for leave to appeal. Docket No. 244198. The parties agreed that no further issues remained and entered a judgment for plaintiff. However, the claim of appeal as of right was dismissed because certain past damages were not made a part of the judgment. Docket No. 252358. Consequently, the parties withdrew the judgment and prepared a new judgment and filed this appeal as of right. Docket No. 254257.

benefits was not satisfied. The trial court denied the defense motion for summary disposition, and judgment was entered in favor of plaintiff.

Defendants first allege that the trial court erred in granting summary disposition in favor of plaintiff. We agree. Our review of the grant of summary disposition is de novo, *In re Capuzzi Estate*, 470 Mich 399, 420; 684 NW2d 677 (2004), and the issue of statutory construction also presents a question of law that is reviewed de novo. *Cruz v State Farm Mutual Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002). Application of the no-fault law is examined on a case by case basis, reviewing the unique facts of each scenario in light of the law. *Kochoian v Allstate Ins Co*, 168 Mich App 1, 9; 423 NW2d 913 (1988).[2] MCL 500.3106 addresses injuries that arise from a parked vehicle, and provides in relevant part:

> (1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
>
> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
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> (b) Except as provided in subsection (2), 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.
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> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

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[2] We note that plaintiff alleges that our review of this "appealed judgment" is limited because the judgment is presumed to be correct. Moreover, plaintiff alleges that we review the trial court's factual findings for clear error. In actuality, this case presents our review of the motion for summary disposition decision. The parties stipulated to the terms of the judgment in order to proceed to this Court as of right after the application for leave to appeal was denied. Moreover, the parties did not dispute the material facts in order to resolve the issue of law. When the parties stipulate to the facts, appellate courts primarily concern themselves with examination of the law. *In re Butterfield Estate*, 405 Mich 702, 715; 275 NW2d 262 (1979). Our review of the trial court's application of the facts to the law is reviewed de novo. *Cain v Dep't of Corrections*, 451 Mich 470, 503 n 38; 548 NW2d 210 (1996). The parties only factual dispute centers around the location of the injury. Plaintiff and his wife indicate his location at the time of the injury was near his vehicle. Defendants allege that plaintiff was in the highway returning for more trash at the time of his injury. The proximity of plaintiff in relationship to the vehicle is not dispositive of the issue of payment of benefits. See also *Putkamer v Transamerica Ins Corp*, 454 Mich 626, 630; 563 NW2d 683 (1997) ("Where there is no dispute about the facts, the issue whether an injury arose out of the use of a vehicle is a legal issue for a court to decide and not a factual one for a jury.").

However, even if the applicability of one of the parked vehicle exceptions is established, a claimant must still demonstrate: (1) that the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle;[3] and (2) 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*, 454 Mich 626, 635-636; 563 NW2d 683 (1997).

> In drafting MCL 500.3105(1); MSA 24.13105(1), the Legislature limited no-fault PIP benefits to injuries arising out of the use of a motor vehicle *as a motor vehicle*." In our view, this language shows that the Legislature was aware of the causation dispute and chose to provide coverage only where the causal connection between the injury and the use of a motor vehicle as a motor vehicle is more than incidental, fortuitous, or "but for." The involvement of the car in the injury should be "directly related to its character as a motor vehicle." … Therefore, the first consideration under MCL 500.3105(1); MSA 24.13105(1), must be the relationship between the injury and the vehicle use of a motor vehicle. Without a relation that is more than "but for," incidental, or fortuitous, there can be no recovery of PIP benefits. [*Thornton v Allstate Ins Co*, 425 Mich 643, 5659-660; 391 NW2d 320 (1986) (emphasis in original).]

In *Thornton*, the Supreme Court rejected the claim for PIP benefits where the injured party, a taxicab driver, was shot and paralyzed by a robber posing as a fare. In doing so, the Court held that the connection between the debilitating injuries and the use of the taxicab as a motor vehicle was no more than incidental, fortuitous, or but for. The Court held that, "the motor vehicle was not the instrumentality of the injuries." *Id*. at 660.

In *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 216; 580 NW2d 424 (1998), the plaintiff slept in a camper/trailer attached to the back of his pickup truck. The camper/trailer was equipped with a propane-fueled, forced air heater. Carbon monoxide fumes from the heater were emitted into the camper/trailer, and the plaintiff was overcome by the fumes. However, he was found in time, was hospitalized, and recovered. The Supreme Court rejected the claim for PIP benefits. The Court held that the appropriate examination of "whether an injury arises out of the use of a motor vehicle 'as a motor vehicle' under § 3105 [MCL 500.3105] turns on whether the injury is closely related to the transportational function of motor vehicles." *Id*. at 226. Applying the test to the facts involved, the Supreme Court concluded that the requisite nexus between the injury and the transportational function of the vehicle was missing. At the time of the injury, the parked camper/trailer was being used for sleeping accommodations. This was too far removed from the transportation function to constitute "use as a motor vehicle" at the time of injury for purposes of the statute. *Id*. Therefore, coverage was not triggered by the no-fault act.

Applying the law to the facts of this case, the trial court erred in denying defendants' motion for summary disposition. In the present case, the motor vehicle was not the

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[3] Both MCL 500.3106, the parked vehicle exception, and MCL 500.3105, the accidental bodily injury section, contain the same requirement that the injury arise out of "the ownership, operation, maintenance or use of a motor vehicle *as a motor vehicle*."

instrumentality of the injury, *Thornton, supra*, and the injury was not related to the transportational function of the motor vehicle. *McKenzie, supra*.[4] Case law provides that the involvement of the car in the injury must be directly related to its character as a motor vehicle. *Thornton, supra*. Although plaintiff utilized his vehicle to get to the highway, his injury was not related to the transportational function of the motor vehicle. Accordingly, the trial court erred in denying the dispositive motion.

Moreover, the trial court concluded that irrespective of the no-fault act, the terms of the insurance policy provided for coverage. However, the decision relied on by the trial court was reversed by the Supreme Court. Courts are not entitled to elevate preferential rules of interpretation above the unambiguous text of a statute or contract. *Rednour v Hastings Mutual Ins Co*, 468 Mich 241, 251; 661 NW2d 562 (2003).

Reversed.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Bill Schuette

[4] We note that plaintiff alleges that the vehicle was not parked for purposes of MCL 500.3106. Alternatively, if it could be concluded that the vehicle was parked, it is alleged that an exception applies. We need not conclude that the vehicle was parked or whether an exception applies. Assuming that plaintiff could establish that the vehicle was not parked or that an exception applied, the claimant still had to demonstrate that the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle and a more than fortuitous casual relationship between the injury and the vehicle. *Putkamer, supra*.