STATE OF MICHIGAN

COURT OF APPEALS

MARIO MONTOYA,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE and PRIORITY HEALTH MANAGED BENEFITS, INC.,

Defendants-Appellees.

UNPUBLISHED
April 6, 2006

No. 256324
Newaygo Circuit Court
LC No. 02-018447-CK

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In this action under the no-fault act, MCL 500.3101 *et seq*., plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant Farmers Insurance Exchange pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when the snowmobile he was driving struck the back end of a disabled vehicle. The sole issue on appeal is whether the disabled vehicle was, for purposes of MCL 500.3106(1)(a), "parked in such a way as to cause unreasonable risk of the bodily injury which occurred." On review de novo, we find that it was not. See *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005); see also *Wills v State Farm Ins Co*, 437 Mich 205, 208; 468 NW2d 511 (1991). It was not disputed that the disabled vehicle extended onto the traveled portion of the roadway. However, as recognized by our Supreme Court in *Stewart v Michigan*, 471 Mich 692, 697; 692 NW2d 376 (2004), the no-fault act "does not create a rule that whenever a motor vehicle is parked entirely or in part on the traveled portion of a road, the parked vehicle poses an unreasonable risk" of harm. Rather, the act "recognizes that there are degrees of risk posed by a parked vehicle." *Id*. Plaintiff cites *Stewart*, *supra*, as support for the proposition that the manner, location, and fashion in which the disabled vehicle was parked were unreasonable given the circumstances of this case; specifically, that the disabled vehicle extended onto the traveled portion of the roadway, there were hazardous weather conditions creating a "white-out" effect, and there was a question regarding whether the disabled vehicle's hazard lights were in working order. Still, the disabled vehicle did not pose an unreasonable risk of danger. The disabled vehicle had a right to use the shoulder of the roadway because it was experiencing mechanical difficulties. See MCL 257.59a. The vehicle had been pulled over as far as possible, and its hazard lights switch was in the on position when the

collision occurred. Even assuming that the disabled vehicle's hazard lights were not working, it is undisputed that the car assisting the disabled vehicle had its headlights on and was facing the disabled vehicle. Therefore, the disabled vehicle did not pose an unreasonable risk within the meaning of MCL 500.3106(1)(a).

Plaintiff argues that the trial court failed to consider the evidence in a light most favorable to plaintiff when rendering its decision because the trial court assumed that plaintiff was riding on the traveled portion of the road at the time of the accident. Plaintiff is correct in stating that all reasonable inferences are to be drawn in favor of the nonmovant. *Scalise*, *supra*. However, the accident report indicated that plaintiff was traveling on the fog line of the roadway where it is unlawful to operate a snowmobile. It is not "unreasonable to park a vehicle without regard to the protection of persons who may not legally be . . . where the vehicle is parked." *Wills, supra* at 214-215.

In any event, even if the facts were such that plaintiff was traveling entirely on the shoulder of the roadway, he would be precluded from recovering no-fault benefits. The fact that the disabled vehicle extended to the traveled portion of the roadway would be irrelevant under those circumstances. As the trial court correctly pointed out, MCL 257.59a permits the shoulder of a roadway to be used for the temporary parking of disabled vehicles.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra