

STATE OF MICHIGAN
COURT OF APPEALS

DONALD TRESEDDER,

Plaintiff-Appellee,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellant.

UNPUBLISHED

April 6, 2006

No. 259221

Oakland Circuit Court

LC No. 03-055082-NF

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court order granting summary disposition in favor of plaintiff concerning liability. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On May 18, 2003 plaintiff was driving his off road vehicle (ORV) on Little Shag Road in Marquette County. While driving with one passenger on the ORV, plaintiff failed to negotiate a curve in the road. The ORV went off the roadway, throwing the riders off the vehicle and causing injuries to both.

Plaintiff submitted a claim to defendant for personal protection benefits under Michigan's no-fault act. Defendant denied plaintiff's claim on the basis that the accident did not involve a "motor vehicle" as set forth in Michigan statutes. Plaintiff filed a motion for summary disposition concerning liability and application of Michigan's no-fault act to plaintiff's claim.

Defendant argued that plaintiff's ORV was not a motor vehicle at the time of the accident because it was not being operated on a public highway at that time. Plaintiff, however, argued that the ORV was a motor vehicle at the time of the accident because, even though the crash site was off of the roadway, the accident was a direct result of plaintiff's operation of the vehicle on the roadway. The trial court found that the ORV was a motor vehicle as defined by Michigan's no-fault act and that personal protection benefits were recoverable.

On appeal, defendant continues to assert that the accident in question did not involve a motor vehicle as defined by Michigan statutes. Defendant argues that whether an ORV is a motor vehicle under the no-fault act is dependent upon the actual location of operation at the time of the accident or injury. According to defendant, the crash site was from 25 to 70 feet

away from the paved roadway, and therefore the ORV was not a motor vehicle at the time of the accident.

A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Morris v Allstate Ins Co*, 230 Mich App 361, 364; 584 NW2d 340 (1998). A motion for summary disposition pursuant to MCR 2.116(C)(10) may be granted when, except for the amount of damages, "no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id.*

Questions of statutory interpretation are also reviewed de novo on appeal. *Allstate Ins Co v Dep't of Management and Budget*, 259 Mich App 705, 710; 675 NW2d 857 (2003). When the legislative intent is clearly conveyed in a statute the court's role "is simply to apply the terms of the statute to the circumstances in a particular case." *Id.*

Michigan's no-fault act defines a motor vehicle to include a vehicle that is "operated or designed for operation upon a public highway...." MCL 500.3101(2)(e). The question of whether an ORV is a motor vehicle for purposes of the no-fault act is decided by the sole factor of where the vehicle was operated. *Allstate, supra*, 259 Mich App 714; *Morris, supra*, 230 Mich App 365. The terms of the statute relate only to the actual operation of the vehicle. There is no implication that the legislature intended to alter the character of a vehicle that was operated on a public highway and moments later, due to its operation on the highway, crashed off the public highway.

In this case there is no evidence that plaintiff operated the ORV any place other than the public roadway. Plaintiff drove the vehicle on the roadway and only left the roadway when he failed to negotiate a curve, thereby causing the accident. While the crash site ultimately ended up off the public highway, the operation of the ORV occurred only on the public highway, and falls within the unambiguous statutory definition of motor vehicle.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio