STATE OF MICHIGAN

COURT OF APPEALS

DEWANDA NUCKLES,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
April 20, 2006

No. 264300
Wayne Circuit Court
LC No. 04-405527-NF

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court's order denying its motion for summary disposition in this insurance coverage dispute. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that it was entitled to summary disposition pursuant to MCL 500.3106(1) and case law interpreting that provision. We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists and the moving party is entitled to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id*. at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id*. at 31.

MCL 500.3105(1) entitles an injured person to personal injury protection (PIP) benefits "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." MCL 500.3106(1) provides, in pertinent 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:
>
> * * *

> (c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

In *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626; 563 NW2d 683 (1997), abrogation in part recognized in *Rice, supra* at 33-34, our Supreme Court interpreted the above sections and articulated a three-part test for determining whether coverage exists with respect to injuries involving parked vehicles. Under the test, a claimant must show that:

> (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. [*Id*. at 635-636 (emphasis in original).]

Both parties argue that the *Putkamer* three-part test applies in this case.

Moreover, in *Rice, supra* at 33, this Court stated that MCL 500.3105(1) is the starting point for analyzing cases involving PIP benefits. This Court opined:

> The key language in MCL 500.3105(1) splits the analysis for determining whether no-fault PIP benefits are available into two broad steps. In the first step, we must determine whether the injury at issue is covered, i.e., that it is "accidental" and "bodily" and "aris[es] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." In the second step we must determine whether coverage for injuries that fit this definition is, nevertheless, excluded under other provisions in the no-fault act and whether an exception to an exclusion would save the claim. [*Id*. (brackets in original).]

For liability under MCL 500.3105(1), an injury must arise out of the "use of a motor vehicle as a motor vehicle." *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 215; 580 NW2d 424 (1998); *Putkamer, supra* at 635-636. In *McKenzie, supra* at 220, the Court opined that this phrase means that coverage is triggered when "an injury [is] closely associated with the transportational function of a vehicle." In that case, the Court held that coverage was not triggered because the plaintiff's asphyxiation while sleeping in a camper attached to his pickup truck did not occur while the plaintiff was using the camper for its transportational function. *Id*. at 226. In *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303, 310-311; 602 NW2d 828 (1999), the Court held that the vehicle at issue in that case was not being used for its transportational function when the plaintiff was assaulted by another driver while examining his vehicle following a traffic accident.

On the other hand, in *Putkamer, supra* at 628, 636, the Court held that the plaintiff was using the vehicle as a motor vehicle when she slipped on some ice while getting into her car. The plaintiff was shifting her weight to her left leg and attempting to place her right foot inside the car when she fell. *Id*. at 628. In the instant case, however, plaintiff fell on ice while walking around the back of her car. Although the facts of this case do not compare to *McKenzie* and *Morosini*, they are also dissimilar to *Putkamer*, because plaintiff was not getting into her vehicle when she fell. In fact, plaintiff's vehicle itself had nothing to do with her fall other than that plaintiff happened to be walking around her car at the time she fell. Thus, plaintiff's injuries

were not related to the transportational function of the vehicle. Accordingly, plaintiff's injuries did not arise out of the "use of a motor vehicle as a motor vehicle" under MCL 500.3105(1).

Defendant also argues that plaintiff failed to satisfy an exception under MCL 500.3106(1). Subsection (c) is the exception applicable in this case. Defendant argues that plaintiff had already alighted from the vehicle when she was injured. The statute does not define "alight," but the *Random House Webster's College Dictionary* (2001) defines the term as to "descend from a vehicle." This Court has also interpreted the phrase "alighting from" "as requiring some movement associated with physically removing one's person from the immediate confines of the vehicle." *Harkins v State Farm Mut Automobile Ins Co*, 149 Mich App 98, 101; 385 NW2d 741 (1986). Further, this Court has stated that "an individual has not finished 'alighting' from a vehicle at least until both feet are planted firmly on the ground." *Krueger v Lumbermen's Mut Cas & Home Ins Co*, 112 Mich App 511, 515; 316 NW2d 474 (1982).

Under the above authority, plaintiff was not injured while alighting from the vehicle. She testified that she got out of the car, closed the door, and was walking toward the back of the car. She did not fall until she reached the rear passenger tire. Thus, she had already descended from the vehicle and removed herself from its confines when she fell. Indeed, she could not have closed the car door if she had not first removed herself from the confines of the vehicle. Moreover, contrary to the trial court's conclusion, plaintiff's feet were firmly planted on the ground if she was able to close the car door and walk toward the rear of the car. Accordingly, plaintiff was not "alighting from" the vehicle within the meaning of MCL 500.3106(1)(c) when she was injured.

Moreover, plaintiff was not yet "entering into" the vehicle when she fell. Although the statute does not define the phrase "enter into," *Random House Webster's College Dictionary* (2001) offers the following definitions of "enter": "1. to come or go in or into," "2. to penetrate or pierce," and "3. to put in or insert." This case is similar to *McCaslin v Hartford Accident & Indemnity*, 182 Mich App 419, 420, 422; 452 NW2d 834 (1990), in which the plaintiff was injured while walking behind his truck, intending to enter the truck on the driver's side. Although MCL 500.3106(1)(c) allows recovery of benefits if a person is injured while "entering into" a parked vehicle, this Court stated that "the express language of § 3106(1)(c) does not address the intent of the injured person." *Id*. at 422. Similarly, in the instant case, it is irrelevant that plaintiff intended to enter her vehicle through the driver's side door at the time of her fall.

In the circuit court, plaintiff likened this case to *Ansara v State Farm Ins Co*, 207 Mich App 320, 321; 523 NW2d 899 (1994), in which the plaintiff fell on a stone or other debris while approaching the driver's seat. The plaintiff had entered and started the car before getting out of the vehicle and walking around the car to assist his wife in placing their grandchild in the car. He left his driver's side door open before walking around the car to the passenger side. After assisting his wife, he closed the passenger door, walked around the car, and was approximately one foot away from the driver's seat when he fell. He caught himself using the car and sat on the car seat after his injury. *Id*. This Court held that the trial court erred by ruling that no genuine issue of material fact existed regarding whether the plaintiff was entering the vehicle. *Id*. at 321-322.

This case is distinguishable from *Ansara* because plaintiff was nowhere near the driver's side door at the time of her injury. Rather, she fell near the rear passenger tire. Thus, no genuine

issue of material fact exists that plaintiff was not entering her vehicle at the time of her injury. Plaintiff was merely intending to enter her vehicle when she fell, similar to the plaintiff in *McCaslin, supra* at 422. Thus, because plaintiff was not "alighting from" or "entering into" the vehicle within the meaning of MCL 500.3106 when she was injured, she failed to satisfy the exception under MCL 500.3106(1)(c).

Defendant additionally argues that plaintiff's injury was not causally related to the parked vehicle. The third prong of *Putkamer* requires that "the injury ha[ve] a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer, supra* at 636. The *Putkamer* Court held that the plaintiff's injury was causally related to her use of the motor vehicle because the plaintiff slipped on ice and fell after opening her car door and shifting her weight to her left leg in order to get into the car. *Id*. We agree with defendant that plaintiff's injury in the instant case was not causally related to her use of the parked car. Plaintiff testified that she slipped and fell because of the icy condition of the parking lot. She held on to the car while she was walking because the ground was slippery and she was pregnant. Thus, although plaintiff held on to the car as a precaution, her injuries were caused by falling on ice rather than by any cause directly related to the vehicle. Unlike the plaintiff in *Putkamer*, plaintiff was not attempting to get into the car at the time of her fall. Accordingly, plaintiff's injuries did not have a causal relationship to the vehicle that is more than incidental, fortuitous, or but for. The trial court erred by denying defendant's motion for summary disposition.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray