STATE OF MICHIGAN

COURT OF APPEALS

HORACE WALKER,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 20, 2006

No. 265604
Wayne Circuit Court
LC No. 04-435097-NF

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

PER CURIAM.

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

While plaintiff was crossing the street, he was struck in quick succession by two different unidentified hit-and-run drivers. According to an eyewitness, "the first car . . . was a black Honda that knocked [plaintiff] to the ground and then the second car, [an] Escort, ran over him." Plaintiff brought this action against defendant to recover uninsured motorist benefits under an automobile insurance policy issued by defendant. Plaintiff's policy provided a maximum uninsured motorist liability benefit of $20,000 a person, and $40,000 an accident. The policy states that the liability limits "are the maximum we will pay for any single auto accident." The policy also provides:

> The coverage limit shown on the declarations page for:
>
> 1. "each person" is the maximum that we will pay for damages arising out of bodily injury to one person in any one motor vehicle accident, including damages sustained by anyone else as a result of that bodily injury.
>
> 2. "each accident" is the maximum that we will pay for damages arising out of bodily injury to two or more persons in any one motor vehicle accident. This limit is subject to the limit for "each person."

Therefore, the issue is whether plaintiff was injured in one accident or two accidents. Because the material facts are not in dispute, the trial court correctly decided the issue as a matter of law. Plaintiff alleges that his injuries arose from two separate accidents and, therefore, he is

entitled to $20,000 for each accident. Defendant maintains that there was only one accident. The trial court granted defendant's motion for summary disposition on this issue, concluding that both collisions arose from a continuous and indivisible set of circumstances, so there was only one accident. We agree. We review de novo a trial court's decision on a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002). Summary disposition should be granted if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra*, *supra* at 164. We construe unambiguous policy provisions according to the plain and ordinary meaning of their terms. *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 11; 512 NW2d 324 (1993).

We find enlightening the analysis employed in *United Services Automobile Ass'n v Baggett*, 209 Cal App 3d 1387; 258 Cal Rptr 52 (1989). There, the insured's automobile policy provided liability coverage of $100,000 a person, and $300,000 an accident. *Id.* at 1391. The insured's vehicle collided with the decedent's vehicle on a freeway, and both drivers stopped in the center lane to discuss the accident. *Id.* Within a minute, a third vehicle struck the insured's vehicle, pushing it into the decedent's vehicle, and killing the decedent. *Id.* The California Court of Appeals applied the causation approach to determining the number of occurrences and rejected the argument that there were two separate accidents even though two separate negligent acts were committed. *Id.* at 1394. The court reasoned, "'If cause and result are so simultaneous or so closely linked in time and space as to be considered by the average person as one event, courts adopting the "cause" analysis uniformly find a single occurrence or accident.'" *Id.*, quoting *Welter v Singer*, 126 Wis2d 242, 251; 376 NW2d 84 (1985). It added, "'A common sense view of the facts discloses that any of appellant's injuries not inflicted by the first impact were the result of causes acting concurrently with and directly attributable to it. Hence, [the initial impact with the car] was the predominant, active and continuing cause.'" *United Services Automobile Ass'n*, *supra*, quoting *Welter*, *supra*.

The facts of this case are more persuasive than in *United Services Automobile Ass'n*, because here the cars hit plaintiff almost instantaneously, leading one witness to speculate that their drivers were drag racing. The plain meaning of the word "accident" denotes a "happening," "incident," or "event," *Random House Webster's College Dictionary* (2001), so it follows that, to be considered more than one "accident," the causes of damage must be readily distinguishable, either in temporal or spatial proximity, or in nature. The record here establishes a lightning-quick, uninterrupted succession of blows dealt by similar vehicles, going similar speeds, moving in the same stream of traffic, and arising from the unitary recklessness of their drivers. The second impact flowed naturally from the first and occurred well before plaintiff reached safety. Therefore, there was one indivisible event and a single "accident" for contract purposes.[1]

[1] The trial court correctly rejected plaintiff's invitation to dice this odd set of circumstances into its minutest details. Accepting plaintiff's argument would require us to count horses (or perhaps their hooves) after a stampede, and would turn every multi-vehicle pileup into perhaps dozens of individual collisions and separate impacts, each meriting the payment of another policy limit.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray