STATE OF MICHIGAN

COURT OF APPEALS

ANNIE KING,

Plaintiff-Appellant,

v

ECONOTRAVEL ONE, f/k/a ECONOTRAVEL, and ECONOLINE CORP.,

Defendant-Appellees.

UNPUBLISHED
April 25, 2006

No. 265520
Washtenaw Circuit Court
LC No. 04-000880-NO

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

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's sole argument on appeal is that the trial court erred in finding that the no-fault act, MCL 500.3101 *et seq*., applied to her claims. On appeal, a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). When deciding a motion for summary disposition, a court must consider the entire record in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Review is limited to the evidence presented to the trial court at the time the motion was denied. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Where the burden of proof at trial rests on the nonmoving party, as is the case here, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Under the no-fault act, a person's personal no-fault insurer stands primarily liable for all economic damages stemming from injuries arising out of the ownership, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105(1); *Gunsell v Ryan*, 236 Mich App 204, 208; 599 NW2d 767 (1999). A party whose injury arises out of the ownership, operation,

maintenance, or use of a motor vehicle must seek recovery within the confines of the no-fault act. *Id.* at 209. MCL 500.3135(1) provides that "[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." On appeal, plaintiff argues that the no-fault act does not apply because her injury did not arise out of the ownership, operation, maintenance, or use of a motor vehicle.

Whether an injury arises out of the use of a motor vehicle as a motor vehicle under the no-fault act turns on whether the injury is closely related to the transportational function of motor vehicles. *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 225-226; 580 NW2d 424 (1998). In order to find that an injury arose out of the operation, maintenance, or use of a motor vehicle, three conditions must be met: (1) the accident must have arisen out of the inherent nature of the automobile as such, (2) the accident must have arisen within the natural territorial limits of the automobile and the actual use must not have terminated, (3) the automobile must not merely contribute to cause the condition that produces the injury, but must, itself, produce the injury. *Century Mut Ins Co v League Gen Ins Co*, 213 Mich App 114, 120-121; 541 NW2d 272 (1995).

In this case, plaintiff was injured while being transported in the bus. She was inside the moving bus, and the bus was within its natural territorial limits, when plaintiff attempted to recline her seat; her use of the bus had not terminated at the time of the accident. Defendants were still using and operating the bus to transport plaintiff when the accident occurred. The accident occurred because of a defect in the bus itself, i.e., a faulty seat. The bus was more than the mere site of the accident and the injury arose out of the use of the bus to transport passengers. We, therefore, conclude that the no-fault act applies in this case.

Plaintiff raises two arguments in support of her claim that her injury did not injury arise out of the operation, maintenance, or use of a motor vehicle. First, she argues that because there was no ongoing act of maintenance at the time of the alleged injury, the injury did not arise out of the maintenance of the bus. Assuming that the argument is legally sound, it does not establish that the no-fault act is inapplicable to this case. The no-fault act covers more than injuries arising from the maintenance of motor vehicles and, as discussed above, the injury in this case arose out of the use and operation of a motor vehicle.

Plaintiff also argues that the Michigan Supreme Court explicitly held, in *Michigan Mut Ins Co v Allstate Ins Co*, 426 Mich 346; 395 NW2d 192 (1986), that the no-fault act does not apply in the case of a passenger injured in a bus operated by a common carrier. The dispute in that case involved the order of priority between two insurance companies. *Id.* at 347-349. At no point does the Supreme Court hold that the no-fault act does not apply in the case of a passenger injured in a bus operated by a common carrier. The Supreme Court did cite MCL 500.3114(2) in a footnote, *id.* at 349 n 5, and plaintiff's argument appears to come from a misreading of that statute. MCL 500.3114(2) provides, in part:

> (2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy:

* * *

> (b) A bus operated by a common carrier of passengers certified by the department of transportation.

MCL 500.3114(2), in part, provides for the priority of insurers when a passenger of a motor vehicle operated in the business of transporting passengers is injured. It does not exclude such passengers from the no-fault act, and thus we conclude that plaintiff's argument based on MCL 500.3114 lacks merit.[1]

Affirmed.

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

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[1] Plaintiff makes a cursory argument that, because there arose a rebuttable presumption of negligence where defendants failed to comply with a statute concerning bus safety standards, the court erred in finding that plaintiff's injuries did not constitute a serious impairment of body function. This argument lacks logic. Simply because defendants may have been negligent does not mean that plaintiff suffered a serious impairment of body function as a result of the negligence, nor that the no-fault act was inapplicable. See *Kreiner v Fischer*, 471 Mich 109; 683 NW2d 611 (2004).