STATE OF MICHIGAN

COURT OF APPEALS

PROGRESSIVE INSURANCE COMPANY,

Plaintiff-Appellant,

and

KELLY COLMAN and MEGANNE HOWELL,

Plaintiffs,

v

KENNETH BURNS,

Defendant-Appellee.

UNPUBLISHED
August 22, 2006

No. 265521
Macomb Circuit Court
LC No. 2004-001676-CK

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff Progressive Insurance Company (Progressive) appeals by leave granted from the trial court order denying its motion for summary disposition under MCR 2.116(C)(9) and (10) and granting summary disposition in favor of defendant Kenneth Burns pursuant to MCR 2.602(B). We reverse and remand. We decide this appeal without oral argument.[1]

I. Basic Facts And Procedural History

In September 2000, Progressive's insured, Kelly Colman, crashed her automobile into a trailer that Burns left parked alongside Morrow Road in Macomb County. Colman alleged that she did not see the trailer because it did not have reflectors and it was parked on a dirt road that did not have any lighting. After paying property protection benefits to Colman and personal injury benefits to Colman's passenger, Progressive filed suit seeking reimbursement from Burns. Progressive then moved for summary disposition, arguing that the detached trailer was a motor vehicle that required insurance coverage. Progressive further argued that because Burns left his trailer blocking a traveled portion of a road, he created an unreasonable risk of bodily injury under MCL 500.3106.

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[1] MCR 7.214(E).

Burns responded, arguing that, because the trailer weighed less than 2,500 pounds, it did not have to be titled under the Michigan Motor Vehicle Code or carry insurance under the No-Fault Act. Thus, he argued that he could not be considered an uninsured person and was not liable to Progressive. Further, Burns argued that he legally parked his trailer along the side of the road. Moreover, he asserted, Progressive had not submitted any evidence in support of its contention that the trailer was parked in such a manner as to cause an unreasonable risk of harm.

The trial court found that the trailer was a motor vehicle. But the trial court found that, because the trailer weighed less than 2,500 pounds, it did not have to be registered and, accordingly, it did not have to be insured. Therefore, the trial court concluded, Burns could not be held liable under the no-fault act. The trial court therefore denied Progressive's motion for summary disposition and granted summary disposition in favor of Burns.

II. No-Fault Insurance Requirements

A. Standard Of Review

We review de novo a lower court's decision to grant or deny a motion for summary disposition.[2] Similarly, issues involving the interpretation and application of statutes present questions of law that we review de novo.[3]

A trial court properly grants summary disposition under MCR 2.116(C)(9) based on the opposing party's failure to state a valid defense.[4] The motion tests the legal sufficiency of the pleaded defense and is tested by reference to the pleadings alone, with all well-pleaded allegations accepted as true.[5] "The proper test for such a motion is whether defendant's defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery."[6]

A trial court properly grants summary disposition under MCR 2.116(C)(10) when there is "no genuine issue as to any material fact" and the moving party is entitled to judgment as a matter of law. In deciding a motion under this rule, the trial court must consider "the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party."[7] Further, the trial court can render judgment in favor of the opposing party if that party, and not the moving party, is entitled to judgment.[8]

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[2] *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002).

[3] *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

[4] *Hanon v Barber*, 99 Mich App 851, 854; 298 NW2d 866 (1980).

[5] *Id*.

[6] *Id*.

[7] *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

[8] MCR 2.116(I)(2); *Auto-Owners Ins v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

B. Trailers Are Vehicles Requiring Registration And Insurance

The no-fault insurance act[9] creates a system of mandatory automobile insurance for Michigan drivers.[10] MCL 500.3101(1) provides:

> The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance.

Under this system, an insurer is responsible to pay first-party personal injury protection benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.[11] Similarly, an insurer is generally required to pay its insured property protection benefits "for accidental damage to tangible personal property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle."[12] An occupant of a motor vehicle who suffers bodily injury and who has no available insurance policy of his own or in his family can claim personal injury protection benefits from the insurer of the owner or registrant of the vehicle occupied.[13]

Under MCL 500.3116(2), an insurance carrier responsible for no-fault benefits may only obtain reimbursement of personal protection benefits based on an insured's third-party tort claim in the following situations: "(1) accidents occurring outside the state, (2) actions against uninsured owners or operators, or (3) intentional torts."[14] Under MCL 500.3127, the same rules apply regarding reimbursement of personal property benefits.

It is well established that a trailer constitutes a motor vehicle,[15] and MCL 500.3101(1) provides that the owners of motor vehicles required to be registered in Michigan must be covered by no fault insurance. Burns argues, however, that, because it weighed less than 2,500 pounds, the trailer did not have to be registered. Therefore, Burns asserts that the trailer was exempt from the requirements of MCL 500.3101(1) and that he could not be considered uninsured.

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[9] MCL 500.3101 *et seq.*

[10] *Advocacy Organization for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 373; 670 NW2d 569 (2003), aff'd 472 Mich 91 (2005).

[11] *Stewart v Michigan*, 471 Mich 692, 696; 692 NW2d 376 (2004), quoting MCL 500.3105(1).

[12] MCL 500.3121(1).

[13] MCL 500.3114(4)(a); *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 15; 684 NW2d 391 (2004).

[14] *Great Lakes American Life Ins Co v Citizens Ins Co*, 191 Mich App 589, 596; 479 NW2d 20 (1991).

[15] MCL 500.3101(2)(e) (defining a vehicle as "including a trailer"); *Parks v DAIIE*, 426 Mich 191, 198; 393 NW2d 833 (1986); *Kelly v Inter-City Truck Lines, Inc*, 121 Mich App 208, 211; 328 NW2d 406 (1982).

We hold that the trial court erred in its interpretation of the applicable statutes. MCL 257.216 states:

> Every motor vehicle, pickup camper, trailer coach, trailer, semitrailer, and pole trailer, when driven or moved upon a highway, is subject to the registration and certificate of title provisions of this act . . . .

In the list of exceptions to the general rule, the statute states that a "*certificate of title* need not be obtained for a trailer, semitrailer, or pole trailer weighing less than 2,500 pounds."[16] The registration and certificate of title requirements are clearly not interchangeable.[17] Although MCL 257.216(g) exempts trailers weighing less than 2,500 pounds from the *certificate of title provision*, there is no similar exemption from the *registration requirement*. Therefore, Burns' trailer was subject to the MCL 257.216 registration requirement, and it had to be insured under MCL 500.3101(1). Thus, we conclude that Progressive's complaint stated a claim for reimbursement under the no-fault act.

C. Trailer Location Is A Genuine Issue Of Material Fact

Although the trial court erred in granting summary disposition to Burns, Progressive was not entitled to summary disposition. In its motion for summary disposition, Progressive asserted that the parked vehicle exclusions of MCL 500.3106(1)(a) and MCL 500.3123 did not apply because the trailer was at least partially on the roadway and, thus, parked in an unreasonable manner. Burns countered that the trailer was fully removed from the traveled portion of the roadway and, at most, only its left-side was on the shoulder of the road.[18]

An accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle unless the "vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred."[19] Similarly, a property protection exclusion applies unless a vehicle "is parked in a manner as not to cause unreasonable risk of damage that

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[16] MCL 257.216(g) (emphasis added).

[17] See MCL 257.216(m) (requiring "pickup campers" to have certificates of title, but exempting them from registration).

[18] Defendant filed a response to a request for admission in which he asserted:

> Defendant's parked trailer was properly parked and did not *cause* the subject accident. Defendant's trailer had only been parked along the side of the road for approximately two hours prior to the accident and was pulled off unto [sic] the shoulder because a couple of the tires on the trailer were deflating and the trailer could not be properly driven without repair or replacement of those tires. The right side of the trailer and its tires were parked upon the grass and weeds next to the dirt road, and only the left side of the trailer was parked on the shoulder of the road . . . .

[19] MCL 500.3106(1)(a).

occurred."[20] When no dispute exists regarding the underlying facts, "the determination of whether an automobile is parked in such a way as to create an unreasonable risk of bodily injury within the meaning of § 3106(1)(a) is an issue of statutory construction for the court."[21]

The police report prepared for the accident consists of a diagram of the accident scene.[22] The officer's drawing shows the trailer parked with its right-side off the roadway. It appears, however, that the left side of the trailer was on the roadway and that Colman, while traveling fully on the road, clipped its rear left corner. But, it may be that the police report also depicts the right-hand shoulder of the roadway rather than just the portion intended for actual vehicle travel. Hence, a genuine issue of material fact exists regarding whether the trailer was parked in such a way as to create an unreasonable risk of bodily injury or property damage. Accordingly, neither Progressive nor Burns was entitled to summary disposition, and the matter must be remanded to allow a trier of fact to determine whether the trailer was parked in an unreasonable manner.

Reversed and remanded for further proceedings on Progressive's claim. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder

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[20] MCL 500.3123.

[21] *Stewart*, *supra* at 696.

[22] Defendant argues that the fact that the police report shows that the responding officer did not issue any citations establishes that the trailer was not parked in an unreasonable manner. "The definition of proper parking techniques is provided by parking statutes and local parking ordinances." *Wills v State Farm Ins Co*, 437 Mich 205, 213; 468 NW2d 511 (1991). But whether a vehicle is unlawfully parked presents a different question than whether it is "'unreasonably parked' for purposes of no-fault liability." *Id*. at 214.