

STATE OF MICHIGAN
COURT OF APPEALS

ANDREA WAETJEN,

Plaintiff-Appellant,

v

NORTHLAND INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

October 26, 2006

No. 269802

Wayne Circuit Court

LC No. 05-524209-NF

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

In this no-fault insurance action, plaintiff appeals the trial court's order that granted summary disposition to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo the trial court's decision to grant summary disposition. *Mitan v Campbell*, 474 Mich 21, 23; 706 NW2d 420 (2005). Because defendant relied on plaintiff's deposition as factual support for its motion, we review defendant's motion under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The evidence submitted by the parties is viewed in the light most favorable to the nonmoving party. MCR 2.116(G)(6); *Maiden, supra* at 120. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden, supra* at 120.

Consistent with *Drake v Citizens Ins Co of America*, 270 Mich App 22, 25; 715 NW2d 387 (2006), lv pending, and *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 33-34; 651 NW2d 188 (2002), the starting point in our analysis is MCL 500.3105(1). Thus, the dispositive issue here is whether plaintiff's injury arose out of the use of the parked limousine "as a motor vehicle." As indicated in *Drake, supra* at 29, this question is controlled by *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214; 580 NW2d 424 (1998). Under *McKenzie*, "the Legislature intended coverage of injuries resulting from the use of motor vehicles when closely related to their transportation function and only when engaged in that function." *Id.* at 220. As the Court explained in *McKenzie, supra* at 218-219:

While it is easily understood from all our experiences that most often a vehicle is used "as a motor vehicle," i.e., to get from one place to another, it is

also clear from the phrase used that the Legislature wanted to except those other occasions, rare as they may be, when a motor vehicle is used for other purposes, e.g., as a housing facility of sorts, as an advertising display (such as at a car dealership), as a foundation for construction equipment, as a mobile public library, or perhaps even when a car is on display in a museum. On those occasions, the use of the motor vehicle would not be “as a motor vehicle,” but as a housing facility, advertising display, construction equipment base, public library, or museum display, as it were. It seems then that when we are applying the statute, the phrase “as a motor vehicle” invites us to determine if the vehicle is being used for transportational purposes.

Here, the evidence showed that the limousine was used as a display for attendees at a bridal show. Evidence established that plaintiff was injured after she looked at the interior features of the car. When she alighted from the vehicle, the limousine vendor’s representative lost control of her arm and she fell. Further, we find no evidentiary support for plaintiff’s assertion that the engine of the parked limousine was running when she was injured. When plaintiff was asked whether the engine was running, she testified, “I didn’t see.” We also find no evidentiary support for plaintiff’s position that her injury was associated with the transportational function of the limousine. There was no evidence that, at the time of plaintiff’s injury, the limousine was being used for any purpose other than as a display, and plaintiff’s injury clearly occurred in the course of that use.

Accordingly, we conclude that plaintiff presented insufficient evidence to establish the requisite nexus between her injury and the transportational function of a motor vehicle. Because plaintiff did not establish a genuine issue of material fact regarding whether her injury arose out of the use of the parked limousine as a motor vehicle, the trial court properly granted defendant’s motion for summary disposition. *Maiden, supra* at 120.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette