STATE OF MICHIGAN

COURT OF APPEALS

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, as Subrogee of NORTHLAND TOWERS MANAGEMENT GROUP,

Plaintiff-Appellant,

v

OHIO CASUALTY GROUP and EXCELL SNOW & TURF MAINTENANCE,

Defendants-Appellees.

UNPUBLISHED
November 21, 2006

No. 262249
Oakland Circuit Court
LC No. 2004-056740-ND

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) to defendant Ohio Casualty Group. We reverse and remand for entry of summary disposition in favor of plaintiff.

Defendant Excell Snow & Turf Maintenance (Excell) contracted with Northland Towers Management Group (Northland) to provide snow removal services to Northland's surface parking lot in Southfield. Unbeknownst to Excell, a subterranean parking garage was below Northland's parking lot. On April 8, 2003, following a late season snowstorm, an Excell vehicle, an F-650 pickup truck, began to plow and salt the parking lot. While the F-650 pickup truck was driving across the parking lot, the parking lot collapsed into the subterranean parking garage. After the collapse, Northland submitted a claim for property damage to plaintiff, its insurer, which plaintiff paid. Plaintiff then sought to be reimbursed from Ohio Casualty Group, Excell's no-fault insurer. When Ohio Casualty Group denied plaintiff's claim, plaintiff filed the present lawsuit. Plaintiff asserted that, pursuant to MCL 500.3121, Ohio Casualty Group, as Excell's no-fault insurer, was obligated to reimburse it for the damage caused to the parking lot. Plaintiff also asserted claims for negligence and breach of contract against Excell. Before any discovery was completed, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10) on its claim against Ohio Casualty Group. Reviewing plaintiff's motion only under MCR 2.116(C)(10) because the parties relied on matters outside of the pleadings, the trial court denied plaintiff's motion. According to the trial court, the use of the F-650 pickup truck as a motor vehicle did not cause the surface parking lot to collapse; rather, the collapse was caused by the weight of the truck on the poorly maintained parking lot.

We review a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition is proper under MCR 2.116(C)(10) if the affidavits and documentary evidence presented, viewed in the light most favorable to the non-moving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "[W]here there is no dispute about the facts, the issue whether an injury arose out of the use of a vehicle is a legal issue for a court to decide and not a factual one for a jury." *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 630; 563 NW2d 683 (1997).

Under the no-fault act, MCR 500.3101 *et seq.*, a person suffering accidental property damage in an accident involving a motor vehicle is entitled to seek property protection benefits from the no-fault insurer of the owner of the motor vehicle. MCR 500.3121(1); MCR 500.3125. MCR 500.3121(1) states in pertinent part:

> Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125, and 3127.

In this case, it is undisputed that the F-650 pickup truck was a motor vehicle, see MCL 500.3101(e), and that it was in operation at the time the parking lot collapsed. The parties disagree, however, on whether the F-650 pickup truck was being used as a motor vehicle at the time of the collapse. Plaintiff argues that, because the F-650 pickup truck was traveling across the parking lot at the time of the collapse, the F-650 pickup truck was engaged in a transportational function and, therefore, it was being used as a motor vehicle. Defendant Ohio Casualty Group argues that the cause of the collapse was the condition of the parking lot and the weight of the F-650 pickup truck, not the use of the F-650 pickup truck as a motor vehicle.

"Whether an injury arises out of the use of a motor vehicle 'as a motor vehicle' turns on whether the injury is closely related to the transportational function of automobiles." *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 215; 580 NW2d 424 (1998); *Drake v Citizens Ins Co of America*, 270 Mich App 22, 26; 715 NW2d 387 (2006). The transportational function of a motor vehicle relates to its ability "to get from one place to another." *McKenzie, supra* at 219. When the parking lot collapsed, the F-650 pickup truck was engaged in its transportational function. It was moving across the parking lot to plow the snow and to spread salt. See *Id.* at 221 ("[M]oving motor vehicles are quite obviously engaged in a transportational function."). Because the parking lot collapsed when the F-650 pickup truck was traveling across it, its collapse was related to the transportational function of the pickup truck. Accordingly, we hold that the collapse of the parking lot arose out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3121; *McKenzie, supra* at 215.

Nonetheless, there must still be a causal connection between the property damage and the use of the motor vehicle as a motor vehicle. *Shinabarger v Citizens Mut Ins Co*, 90 Mich App 307, 313; 282 NW2d 301 (1979). The use of a motor vehicle as a motor vehicle need not be the proximate cause of the property damage. *Id.* The relationship between the property damage and the use of the motor vehicle as a motor vehicle must only be more than "'but for,' incidental, and fortuitous." *McKenzie, supra* at 222 n 8, quoting *Thornton v Allstate Ins Co*, 425 Mich 643, 661;

391 NW2d 320 (1986). The injury must be foreseeably identifiable with the normal use of a motor vehicle. *Thornton, supra* at 661; *Auto-Owners Ins Co v Rucker*, 188 Mich App 125, 127; 469 NW2d 1 (1991).

In the present case, plaintiff and defendant Ohio Casualty Group agree that the weight of the truck was a cause in the parking lot's collapse. Accordingly, they agree that the F-650 pickup truck was an instrumentality of the collapse. *Thornton, supra* at 660. Moreover, as we previously concluded, the transportational function of the F-650 pickup truck was involved in the collapse. *Id.* at 661. The truck was transporting itself and the salt to different places in the parking lot, and it is reasonably foreseeable, given the use of "headache bars" and weight restriction signs at the entrance of bridges and parking ramps, that a large motor vehicle carrying a heavy load may be too heavy to drive on certain structures. Accordingly, the relationship between the use of the F-650 pickup truck and the collapse of the parking lot was more than incidental, fortuitous, and "but for." *Id.* at 661. We find that the causal connection required by the no-fault act exists between the use of the F-650 pickup truck as a motor vehicle and the collapse of the parking lot. Because the necessary causal connection exists and because Excell was using the truck as a motor vehicle at the time of the collapse, the trial court erred in denying plaintiff's motion for summary disposition.

Reversed and remanded for entry of summary disposition in favor of plaintiff. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski