STATE OF MICHIGAN

COURT OF APPEALS

RUDOLF KNOX II,

Plaintiff-Appellee,

v

AUTO CLUB GROUP INSURANCE COMPANY and AUTO CLUB INSURANCE ASSOCIATION,

Defendants-Appellants.

UNPUBLISHED
October 1, 2009

No. 287084
Genesee Circuit Court
LC No. 07-086147-NF

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendants appeal by leave granted the circuit court's order denying defendants' motion for summary disposition and granting plaintiff's motion for partial summary disposition regarding no-fault auto insurance coverage. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The following facts are undisputed. Plaintiff observed his ex-girlfriend, Wonjewel Snell, and another female sitting in a pickup truck in the parking lot of an apartment where plaintiff was staying with a friend. Concerned that Snell might attempt to vandalize the van, plaintiff went to his van and drove it away; Snell followed him in the pickup truck. Plaintiff entered a residential neighborhood and traveled down Arlene Avenue, where the speed limit is 25 miles per hour. Plaintiff stopped at a stop sign at the intersection of Arlene Avenue and Ballenger Highway. Snell pulled up behind plaintiff and bumped the van with her truck. Plaintiff believed Snell was trying to push the van into the busy intersection. At one point, Snell struck the van with such force that plaintiff believed she had caused damage to the van. Plaintiff put his van in park, exited the vehicle, and stood between his vehicle and Snell's truck to observe the damage. Snell suddenly struck plaintiff with her truck, pinning him between her truck and his vehicle. Plaintiff estimated that he was pinned for approximately two seconds. Snell reversed her truck, and plaintiff collapsed to the ground. Snell fled the scene.

At the time of the accident, plaintiff did not have no-fault insurance on the van. Plaintiff applied to the Assigned Claims Facility for no-fault coverage. Defendants were assigned plaintiff's claim for personal protection (PIP) benefits.

Plaintiff filed suit in circuit court seeking a declaration of the no-fault act's applicability to his claims and a determination of insurer priorities, if any other insurers were identified.

Defendants moved for summary disposition, arguing that plaintiff was precluded from collecting benefits under MCL 500.3113(b); plaintiff cross-motioned for partial summary disposition, arguing that MCL 500.3113(b) did not bar him from recovering benefits. The trial court granted plaintiff's motion and denied defendants' motion.

We review a trial court's decision on a motion for summary disposition de novo. *Stewart v Michigan*, 471 Mich 692, 696; 692 NW2d 376 (2004). "[W]here the facts are undisputed, 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." *Wills v State Farm Ins Co*, 437 Mich 205, 208; 468 NW2d 511 (1991). Likewise, we review issues of statutory construction de novo. *Stewart*, *supra* at 696.

Under the Michigan no-fault act, the owner of a motor vehicle is generally required to maintain no-fault insurance on that vehicle. MCL 500.3101(1). A person who fails to insure a vehicle he owns at the time that vehicle is involved in an accident is not entitled to PIP benefits for accidental bodily injury. MCL 500.3113(b).

In the instant case, there is no dispute that plaintiff owned the van and that the van was not insured at the time plaintiff was injured. The only issue before us is whether plaintiff's van was involved in the accident. "A parked vehicle is not 'involved in the accident' for purposes of § 3113(b) unless one of the statutory exceptions to the parked-vehicle provision [MCL 500.3106] is applicable." *Mack v Travelers Ins Co*, 192 Mich App 691, 694; 481 NW2d 825 (1992). The only exception to the parked-vehicle provision pertinent to this appeal is MCL 500.3106(1)(a), which provides:

> Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:
>
> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.

In *Miller v Auto-Owners Ins Co*, 411 Mich 633; 309 NW2d 544 (1981), our Supreme Court explained the policy underlying the parked vehicle exception as follows:

> Injuries involving parked vehicles do not normally involve the vehicle *as a motor vehicle*. Injuries involving parked vehicles typically involve the vehicle in much the same way as any other stationary object (such as a tree, sign post or boulder) would be involved. There is nothing about a parked vehicle *as a motor vehicle* that would bear on the accident.
>
> The stated exceptions to the parking exclusion clarify and reinforce this construction of the exclusion. Each exception pertains to injuries related to the character of a parked vehicle as a motor vehicle characteristics which make it unlike other stationary roadside objects that can be involved in vehicle accidents.
>
> Section 3106(a), which excepts a vehicle parked so as to create an unreasonable risk of injury, concerns the act of parking a car, which can only be

> done in the course of using the vehicle as a motor vehicle, and recognizes that the act of parking can be done in a fashion which causes an unreasonable risk of injury, as when the vehicle is left in gear or with one end protruding into traffic. [*Id*. at 639-640 (emphasis in original; footnote omitted).]

The parties agree that the van was parked at the time of the accident. However, defendant argues that plaintiff's van was parked in such a way as to trigger MCL 500.3106(1)(a) and preclude plaintiff's claim for PIP benefits. Our Supreme Court's discussion of the parked-vehicle exception in *Stewart* is instructive. In *Stewart*, motorist Linda Jones was traveling down "a five-lane road (two southbound lines, two northbound lines, and a middle turn lane) with a speed limit of forty-five miles an hour" when her car stalled. *Stewart*, *supra* at 694. The highway did not have a shoulder so Jones maneuvered her car into the right lane of the highway, placed it in park, and activated the vehicle's emergency flashers. *Id*. A state trooper pulled behind Jones to assist her, and activated the police cruiser's emergency lights and the driver-side spotlight. *Id*. The state trooper placed the cruiser in park and went to speak with Jones. *Id*. The state trooper decided he would use his cruiser to push Jones's vehicle off the road. *Id*. As the state trooper was returning to his cruiser, a motorcyclist struck the cruiser and was killed. *Id*. The *Stewart* Court held that the police cruiser "was not parked in such a fashion as to pose an unreasonable risk," finding:

> [The] police cruiser was parked in a travel lane, but it was parked in an area that was well lit, with its emergency lights flashing, with its spotlight on, and it was parked there for the purpose of providing necessary emergency services to a stalled vehicle that itself posed a risk of bodily injury. The stalled vehicle ahead of it also had its flashing lights on. The speed limit was forty-five miles an hour. Moreover, there was another northbound lane available, and the middle turn lane was potentially available for other vehicles to use. There is nothing in the record to suggest that an oncoming northbound driver would not have ample opportunity to observe, react to, and avoid the hazard posed by the police cruiser. In short, we find that the parked police cruiser in this case did not pose an *unreasonable* risk within the meaning of MCL 500.3106(1)(a). [*Id*. at 699 (emphasis in original).]

The *Stewart* Court stated that, "[t]he statutory language [in MCL 500.3106(1)(a)] does not create a rule that whenever a motor vehicle is parked entirely or in part on a traveled portion of a road, the parked vehicle poses an unreasonable risk," and that the statutory language "recognizes that there are degrees of risk posed by a parked vehicle." *Id*. at 697.

Defendants argue that the holding in *Stewart* applies exclusively to police vehicles or other emergency vehicles. We disagree. While the *Stewart* Court noted the reason for the police cruiser's presence on the highway, "aiding a stalled vehicle", the opinion contained no such limiting language. At most, the fact that the vehicle was a police cruiser was merely a factor in the Court's decision. Instead, the Court explained that whether a vehicle is parked in such a way as to pose an unreasonable risk of injury depends on "factors such as the manner, location, and fashion in which a vehicle is parked . . . ." *Id*. at 698-699.

Here, plaintiff's van was parked at a stop sign during daylight conditions in a residential neighborhood where the speed limit was 25 miles per hour. We hold that plaintiff's van was not parked in such a way as to cause an unreasonable risk of injury. The relatively low speed limit

and natural daylight would have provided oncoming traffic adequate time to safely maneuver around plaintiff's van. Moreover, persons traveling on that portion of Arlene Avenue would be forced to slow their vehicle in anticipation of the stop sign and eventually come to a complete stop regardless of whether plaintiff's van was there.

We conclude that the trial court correctly granted plaintiff's motion for partial summary disposition and correctly denied defendant's motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Stephen L. Borrello