STATE OF MICHIGAN

COURT OF APPEALS

SHERRY WEBSTER,

Plaintiff-Appellant,

v

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 2, 2010

No. 288971
Kalamazoo Circuit Court
LC No. 08-000012-NF

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

PER CURIAM.

In this action for no-fault benefits in connection with a parked car, plaintiff appeals by right the circuit court's order granting summary disposition to defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On January 15, 2007, plaintiff drove herself, a granddaughter, and a great-granddaughter to the home of a friend. Upon her arrival, she parked and left the vehicle. Then, on a slippery driveway, she approached the rear door on the driver's side and touched its handle, intending to retrieve a diaper bag from inside. Plaintiff slipped, fell, and sustained injuries. Plaintiff sought personal protection insurance (PIP) benefits from defendant, her insurer, but defendant denied the claim. Plaintiff brought suit, and defendant moved for summary disposition pursuant to MCR 2.116(C)(10), on the ground that plaintiff's injuries did not have a sufficient causal connection with the automobile. In granting the motion, the trial court held that plaintiff's version of events indicated that she was in the process of entering the vehicle when she fell, citing MCL 500.3106(1)(c), "because she was in physical contact with the vehicle and intended to retrieve some personal belongings from the interior," but that even so, plaintiff's injuries bore only incidental, fortuitous, or otherwise "most limited causal relationships to the parked motor vehicle." The court added, "plaintiff . . . did not slip while trying to enter the car; she slipped before she had opened or attempted to open the door."

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a

trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Statutory interpretation likewise presents a question of law, calling for review de novo. *Ardt*, *supra* at 690.

To recover PIP benefits in connection with an accident involving a parked car, the plaintiff must establish that one of the exceptions to the parking exclusion of MCL 500.3106(1) applied, that the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle, and that "the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer v Transamerica Ins Corp*, 454 Mich 626, 636; 563 NW2d 683 (1997).

Section 3105(1) of the no-fault act[1] states, "Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." Section 3106(1) in turn defines coverage in connection with parked vehicles:

> 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.
>
> (b) Except as provided in subsection (2),[2] the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
>
> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

We conclude that the trial court erred in holding that plaintiff satisfied MCL 500.3105(1)(c) in the first instance.

In *King v Aetna Casualty & Surety Co*, 118 Mich App 648; 325 NW2d 528 (1982), the plaintiff had parked his car in a grocery store's parking lot, shopped in the store, and then returned to his car while carrying a bag of groceries. *Id.* at 649. The plaintiff slipped on an icy surface and fell as he removed his car keys from his pocket and reached to unlock the door. *Id.* at 650. The plaintiff's hand was about two inches from the car when he fell, but the plaintiff could not remember whether his key ever touched the car. *Id.* This Court held that "plaintiff was not entering his vehicle when he slipped and fell, but was merely preparing to enter it," and thus concluded, "Because none of the three subsections of the parked vehicle exclusion (§ 3106)

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[1] MCL 500.3101 *et seq.*

[2] Subsection (2) concerns worker's disability compensation, which is not here at issue.

is applicable, plaintiff's injuries are not compensable under the no-fault act." *Id.* at 651 (parenthetical in the original).

Indeed, the intent of the injured person is not part of the inquiry concerning whether that person was entering the car. *McCaslin v The Hartford Accident & Indemnity*, 182 Mich App 419, 422; 452 NW2d 834 (1990). Accordingly, the issue hinges on the physical act of entering the car, not the sundry things a person might do while merely intending to enter a car.

Our Supreme Court has expressly approved the reasoning in *King* pertaining to what constituted entering, as opposed to merely preparing to enter, a car. *Putkamer*, *supra* at 637 n 10. The instant case is nearly on all fours with *King*, in that they both involved persons approaching their vehicles to enter them, but fell before they succeeded in engaging any of their vehicles' opening mechanisms.

A distinction is that in this case, plaintiff maintains that she had her hand on a door handle as she fell, whereas the plaintiff in *King* was understood to have his hand two inches from the car when he fell. But this Court, and our Supreme Court, deemed it of no significance whether the *King* plaintiff had touched key to car before he fell. Similarly, the instant plaintiff reports touching the door handle, but that she cannot remember if she had begun to pull up on it. In both cases, then, the cars were and remained completely closed as their respective drivers fell.

Plaintiff thus failed to satisfy the parked vehicle exception set forth in MCL 500.3106(1)(c), and the trial court erred in concluding otherwise. But, this Court will not reverse when the trial court reaches the correct result regardless of the reasoning employed. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997). Because we conclude that plaintiff's claim did not fall under any exception to the parked vehicle exclusion of the no-fault act, we affirm the trial court's decision to grant summary disposition to defendant for that reason.

We concede that this result is not entirely consistent with *Hunt v Citizens Ins Co*, 183 Mich App 660, 664; 455 NW2d 384 (1990) (a person who was struck by a moving vehicle while touching his car door with keys in hand was attempting to enter his car for purposes of the parked-vehicle exception). Nonetheless, we merely acknowledge that the caselaw predating November 1, 1990, and thus not binding on this Court, see MCR 7.215(J)(1), was not entirely consistent in this particular. The approval our Supreme Court expressed for this Court's differentiation between entering and preparing to enter a car in *King* compels us to follow *King* in that regard in this case.

Because we affirm on the ground that plaintiff failed to satisfy MCL 500.3106(1)(c), or any other exception to the parked vehicle exclusion of the no-fault act, we need not address the trial court's determination that plaintiff failed to show a sufficient causal connection between her car and her fall.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ Stephen L. Borrello