STATE OF MICHIGAN

COURT OF APPEALS

COMMUNITY ASSOCIATION UNDERWRITERS OF AMERICA, INC. and WINDMILL POINTE CONDOMINIUM ASSOCIATION,

Plaintiffs,

and

SAFECO INSURANCE COMPANY OF ILLINOIS,

Plaintiff-Appellant,

v

SAFECO INSURANCE COMPANY OF AMERICA, STERLING HEIGHTS POLICE DEPARTMENT, SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORT, CLECCHAY C. ALTALET, and RONNIE C. LOCKETT,

Defendants,

and

CITY OF STERLING HEIGHTS and ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
June 28, 2012

No. 303544
Macomb Circuit Court
LC No. 2009-004988-NF

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

In this dispute between insurers over indemnification for a loss arising from a vehicle fire, plaintiff-appellant Safeco Insurance Company of Illinois (Safeco)[1] appeals by right the trial court's orders granting summary disposition in favor of defendants City of Sterling Heights (Sterling Heights) and St. Paul Fire and Marine Insurance Company (St. Paul). On appeal, we conclude that the trial court did not err when it determined that, although the police cars and bus at issue were involved in an accident for purposes of no-fault liability, that accident did not actively contribute to the fire damage at issue. Because Safeco was not entitled to apportionment from the insurers of the vehicles involved in that accident, the trial court did not err when it dismissed Safeco's claims on that basis. Accordingly, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In November 2008, an employee from an Ethan Allen furniture store called the Sterling Heights Police Department to report that she suspected a customer of trying to pass a bad check. Officer Kevin DeRoy responded to the store. DeRoy entered the store and began to speak with employees at the reception desk. As he was speaking with the employees, the customer with the suspect check—later identified as Ronnie Lockett—worked his way to the front of the store. The employees noticed Lockett and pointed him out to DeRoy. DeRoy ordered Lockett to stop, but he ran from the store. Lockett got into his car, which was titled under the name Clecchay Altalet, and drove off. DeRoy left the store and pursued Lockett in his fully marked Expedition.

Officer Dennis Duncan joined the pursuit shortly thereafter. DeRoy testified at his deposition that Duncan got ahead of him. At some point, Lockett crossed over the median of a divided highway in a turnaround and proceeded in the wrong direction. He then turned left onto a side street. Deroy said that, after Lockett turned, he lost sight of both Duncan and Lockett.

Duncan testified that he followed Lockett through the turnaround, but lost sight of Lockett after he rounded another corner. While out of sight, Lockett turned again and collided with a bus owned by the Suburban Mobility Authority for Regional Transport—commonly referred to as SMART—and driven by Sherita Thompson. Thompson testified at her deposition that she could see the driver of the car that hit her in her rear view mirror and he was shaking his head. She stated that he "got his bearings together" after a few seconds "and then took off." She said the front end of his car was "pretty messed up" and that it was "smoking."

Duncan testified that dispatch terminated the chase at about the time that he lost sight of Lockett. But he continued to follow Lockett at a "drastically" reduced speed. Duncan arrived at the next intersection and noticed a SMART bus in the middle lane with its flashers on; there was also debris in the road and he assumed that Lockett must have hit the bus. He said he stopped to check if anyone was injured, but resumed following Lockett after another officer radioed that he would take the accident.

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[1] The original plaintiffs sued Safeco Insurance Company of America and, at a later point, Safeco Insurance Company of Illinois. But in March 2010 the trial court dismissed Safeco Insurance Company of America from the case. Therefore, we shall use Safeco to refer exclusively to Safeco Insurance Company of Illinois.

DeRoy stated that he proceeded to the location of the accident with the SMART bus and saw Duncan checking it over. DeRoy could see a plume of smoke in the distance and proceeded that way on the assumption that there was another accident. DeRoy saw several "uninvolved" vehicles pulled to the side of the road and two people pointed to a street that entered Windmill Pointe condominium complex. DeRoy turned into the complex and began to look for Lockett. After turning a corner, he saw smoke coming from an open garage at the end of the complex. He drove up to the garage, parked, and got out to investigate. He saw Lockett's car parked in the garage next to another car. Lockett's car was smoking and, because it did not appear to have struck the garage, he assumed that it was from the accident with the bus. DeRoy checked to see if Lockett was in the car, but he was not. He then noticed Lockett standing in the corner "as still as a mouse" and arrested him with the assistance of other officers who had just arrived.

DeRoy testified that he saw a small fire coming from Lockett's car and that the fire began to grow. Some officers tried to put the fire out with fire extinguishers, but their attempts failed. So the officers cleared the two condominiums that were attached to the garage. The fire soon engulfed the garage and the adjacent car. The fire department responded and extinguished the fire, but not before it caused more than $180,000 in damages.

Community Association Underwriters of America, Inc. (Community Underwriters) insured the garage for the Windmill Pointe Condominium Association and paid Windmill Pointe for the loss. In November 2009, Community Underwriters sued various defendants as the Condominium Association's subrogee to recover the amount that it paid to the Condominium Association. Safeco insured the car that Lockett drove and it agreed to pay $125,000 to Community Underwriters in full satisfaction of the Condominium Association and Community Underwriter's claims. The parties also agreed that the lawsuit would survive the agreement so that Safeco could seek reimbursement from the insurers of the other vehicles that were involved in the accident that led to the fire damage. Accordingly, in March 2010, the trial court entered an order dismissing all defendants other than Sterling Heights and St. Paul.

Safeco filed an amended complaint for reimbursement in March 2010. It sought reimbursement from Sterling Heights as the self-insurer of its police department's vehicles and from St. Paul as the insurer of the SMART bus involved in the accident with Lockett.

In August 2010, Sterling Heights moved for summary disposition. In its motion, it presented evidence that its police vehicles were not involved in an accident that directly led to the fire loss. As such, it maintained, it was not liable for the loss under the no-fault act. The trial court agreed that the police vehicles were involved in the accident with the SMART bus, but determined that the fire loss was not the direct result of that accident. For that reason, it granted Sterling Heights' motion and entered an order dismissing Safeco's claim against Sterling Heights in October 2010.

St. Paul moved for summary disposition on similar grounds in February 2011 and the trial court granted its motion as well. The trial court entered an order dismissing Safeco's claim against St. Paul in April 2011.

This appeal followed.

II. NO-FAULT REIMBURSEMENT

A. STANDARD OF REVIEW

Safeco argues on appeal that the trial court erred when it granted summary disposition in favor of Sterling Heights and St. Paul. Given the evidence, Safeco maintains, the trial court should have granted summary disposition in its favor as to both defendants under MCR 2.116(I)(2). This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo the proper interpretation and application of statutes. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

B. INVOLVED IN THE ACCIDENT

Property protection insurance benefits are payable for "accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle . . . ." MCL 500.3121(1). In this case, the fire at issue caused damage to the Condominium Association's property. As such, the Condominium Association—as a "person suffering accidental property damage"—had the right to seek "property protection insurance benefits" from the "insurers of owners or registrants of vehicles involved in the accident . . . ." MCL 500.3125. There is no dispute that the fire caused "accidental property damage" to the condominiums and that the fire arose "out of the ownership, operation, maintenance, or use of" the car that Lockett drove as "a motor vehicle." MCL 500.3121(1); MCL 500.3125. Therefore, as the insurer of that car, Safeco was plainly liable to pay property protection insurance benefits to Community Underwriters as the Condominium Association's subrogee. The only question is whether there were other vehicles "involved in the accident" such that the insurers of those vehicles might also be liable to pay property protection insurance benefits at the same priority. If there were other vehicles involved in the accident, then Safeco would be entitled to partial recoupment from the insurers of the owners of the vehicles involved in the accident. See MCL 500.3127 (providing that the provisions for reimbursement and indemnification applicable to personal protection insurers also applies to property protection insurers); MCL 500.3115(2) (stating that, when "two or more insurers are in the same order of priority", "an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority . . . in order to accomplish equitable distribution of the loss among such insurers.").

In *Turner v Auto-Club Ins Ass'n*, 448 Mich 22; 528 NW2d 681 (1995), our Supreme Court examined the meaning of the phrase "involved in the accident." In that case, a police officer tried to pull over the driver of a car that the officer suspected had been stolen. *Id.* at 25. When the driver sped off, the officer pursued him. *Id.* The suspect drove through a red light and struck a pickup truck and then another truck. *Id.* at 26. The second truck split in two and the rear portion smashed into a nearby building, which caught fire and burned. *Id.* One question before the Court was whether the police officer's car was "involved in the accident" within the meaning of MCL 500.3125. *Id.* at 26-27.

To be involved in the accident, our Supreme Court explained, means more than showing some connection between the vehicle's "operation or use" and the resulting damage—that is, the fact that the damage would not have occurred "but for" the operation or use of the vehicle at issue does not render the vehicle "involved in the accident." *Id.* at 39. Rather, "to be considered 'involved in the accident' under § 3125, the motor vehicle, being operated or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident." *Id.* Nevertheless, a vehicle can be involved in an accident without making physical contact and without showing fault. *Id.* There must, however, be a sufficient "causal nexus" between the use of the vehicle at issue and the resulting damage. *Id.* Stated another way, to be involved in the accident, a vehicle must "make an active contribution to the happening of the accident" that gives rise to the damage. *Id.* at 41-42.

Here, there is no doubt that the SMART bus and at least two vehicles owned by Sterling Heights were involved in an accident—namely, the accident that damaged the car that Lockett drove. It is, after all, undisputed that Lockett collided with the SMART bus and that he did so while trying to evade the two officers that were pursuing him. See *id.* at 42 (holding that the police vehicle was involved in the accident because the police officer's active use of his vehicle as a motor vehicle caused the suspect's flight, which directly caused the collision that damaged the property). However, the fact that the SMART bus and police vehicles were actively involved in the accident that caused damage to Lockett's car does not mean that the SMART bus and police vehicles must be deemed involved in any subsequent accident that can be linked to the damage to Lockett's vehicle. As the Court in *Turner* explained, there must be a more significant causal link between the vehicle's use and the resulting damage than a mere "but for" analysis; there must be an "active contribution to the happening" that leads to the damage. *Id.* at 39, 41-42. Thus, to prevail on its claim for contribution from Sterling Heights and St. Paul, Safeco had to demonstrate not just that the fire would not have occurred "but for" the earlier involvement of the SMART bus and police vehicles, but also that their involvement *actively contributed* to the accidental fire at the Condominium Association's property. *Id.*

It is undisputed that Lockett's car suffered damage in an accident involving the bus and that the police vehicles were involved in that accident. It is also undisputed that Lockett's engine began smoking almost immediately. It is, therefore, quite possible that Lockett's car would have burst into flame even had he not driven it further. And we would readily conclude that the bus and police vehicles were involved in any fire loss that might have occurred had Lockett's car burst into flames at that location and damaged property. But it did not burst into flames at that location. The undisputed evidence showed that Lockett's car came to a complete halt after the collision with the SMART bus and that he composed himself for a moment before driving his car off under its own power. At that point, the bus' active involvement clearly ended; and the bus could not be said to be involved in any subsequent loss on the sole basis that the subsequent loss would not have occurred "but for" the damage to Lockett's car. *Id.* at 39. Stated differently, when Lockett regained control of his car and resumed driving it, he effectively broke the causal link between the SMART bus' involvement as well as the involvement of the police vehicles up to that point. See *Wright v League General Ins Co*, 167 Mich App 238, 246; 421 NW2d 647 (1988) (stating that whether a vehicle was involved in the accident depends on whether the vehicle was an "active link" in the chain of circumstances causing the injury). To hold otherwise would be to hold that a vehicle involved in an accident that results in damage to another vehicle is necessarily involved in any subsequent accident involving the other vehicle, if the subsequent

accident would not have occurred but for the damage from the previous accident. See, e.g., *Turner*, 448 Mich at 41-42 ("While the causal nexus is more liberal under the 'involved in the accident' standard, the standard's requirement that the vehicle be used as a motor vehicle, and that it make an active contribution to the happening of the accident, guarantees that insurers will not be held liable for property protection benefits simply because of a remote association between their insureds' vehicles and the accident."). Such a connection is too tenuous to constitute the type of active involvement that our Supreme Court contemplated under *Turner*.

The undisputed evidence showed that the SMART bus had no involvement in subsequent events and, for that reason, could not be said to have actively contributed to the fire at the condominiums. Moreover, although the police vehicles were involved in subsequent events, their involvement did not actively contribute to the happening of the fire. *Id.* The evidence showed that—even assuming that they were still actively pursuing Lockett—the police officers were no longer immediately behind Lockett such that his reckless actions might be directly attributed to their pursuit. And Safeco conceded on appeal that Lockett did not crash his car into the garage while trying to evade capture, which in turn caused a fire; instead, the evidence showed that he was able to control his car, drive it some distance from the location of the first accident, park it safely in a garage, get out of the car, and conceal himself. Hence, the police officers' use of their vehicles subsequent to Lockett's crash with the bus, while likely motivating Lockett to seek a good hiding place, did not actively cause Lockett's car to catch fire and burn the condominiums connected to the garage.

C. CONCLUSION

Safeco had to establish that the SMART bus and police vehicles actively—as opposed to passively—contributed to the happening at the condominium, which resulted in fire damage. *Id.* When Lockett regained control of his car and left the location of that accident, he broke the causal link between the collision with the bus and any loss that occurred as a result of the damage from that collision. Accordingly, Safeco could not rely on the fact that the bus and police vehicles were involved in the collision with the bus to also establish that the bus and police vehicles were involved in the accidental fire at the condominiums. Rather, Safeco had to present evidence that the bus and police vehicles' involvement subsequent to Lockett's collision with the bus actively contributed to the accidental fire. This it did not do. Consequently, the trial court did not err when it granted summary disposition in favor of Sterling Heights and St. Paul.

Affirmed. As the prevailing parties, Sterling Heights and St. Paul may tax their costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Mark T. Boonstra