STATE OF MICHIGAN

COURT OF APPEALS

CHAD J. THEODORE,

Plaintiff-Appellee,

v

KRYSTA LIVINGSTON,

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant,

and

PROGRESSIVE INSURANCE COMPANY and PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
January 24, 2013

No. 306555
Genesee Circuit Court
LC No. 10-094902-NI

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

State Farm Mutual Automobile Insurance Company ("State Farm") appeals by leave granted from a circuit court order granting summary disposition to Progressive Marathon Insurance Company ("Progressive")[1] and dismissing Chad J. Theodore's claims against it. We affirm.

[1] MCR 2.116(C)(10).

Theodore was injured when he lost control of his motorcycle while attempting to avoid a collision with a passenger car operated by Krysta Livingston. Theodore and Livingston gave conflicting accounts of the events that preceded Theodore's accident, but it is undisputed that there was no contact between Theodore's motorcycle and Livingston's vehicle. State Farm, which insured the Livingston vehicle, and Progressive, which insured Theodore under a no-fault policy for an uninvolved automobile, disputed whether Livingston's vehicle was involved in the accident for purposes of the relevant statute,[2] which establishes the order of priority for payment of no-fault benefits in this circumstance. The trial court concluded that under either version of the events, Livingston's vehicle was involved in the accident and, therefore, State Farm was the first insurer of priority.[3] Accordingly, the court granted Progressive's motion for summary disposition.[4]

Appellate review of a trial court's decision on a motion for summary disposition is de novo.[5] Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

The trial court correctly determined that, despite the conflicting versions of events, there was no genuine issue of material fact regarding State Farm's status as a first-priority insurer because the accident "shows evidence of the involvement of [Livingston's] motor vehicle[.]"[6]

A motorcycle is not a "motor vehicle" for purposes of the no-fault act.[7] "For a motorcyclist to be entitled to no-fault PIP benefits, the [] accident must involve a motor vehicle."[8] The order of priority for accidents involving motorcycles and motor vehicles is established by MCL 500.3114(5), which provides:

> A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

---

[2] MCL 500.3114(5).

[3] MCL 500.3114(5)(a).

[4] MCR 2.116(C)(10).

[5] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[6] MCL 500.3114(5).

[7] MCL 500.3101(2)(e).

[8] *Auto Club Ins Ass'n v State Auto Mut Ins Co*, 258 Mich App 328, 331 n 1; 671 NW2d 132 (2003).

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

"Involvement" in an accident is construed in harmony with the other provisions of the no-fault act that refer to a motor vehicle being "involved" in the accident.[9] Neither "involved in the accident" nor "involvement of a motor vehicle" is defined in the act. In *Turner v Auto Club Ins Ass'n*, the Supreme Court addressed the meaning of the phrase "involved in the accident"[10] and stated:

> [W]e hold that for a vehicle 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. Showing a mere "but for" connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle is "involved in the accident." Moreover, physical contact is not required to establish that the vehicle was "involved in the accident," nor is fault a relevant consideration in the determination whether a vehicle is "involved in the accident."[11]

In *Turner*, a vehicle that was fleeing a police vehicle collided with other vehicles, and those vehicles caused property damage.[12] The Supreme Court concluded that the police vehicle was "involved in the accident" that caused the property damage, explaining:

> Before slowing down, the police vehicle had actively pursued the stolen vehicle, and this pursuit, in part, obviously prompted the stolen vehicle to ignore the red light and collide with the other vehicles. Those collisions directly resulted in the damage to the property. Thus, the use of the police vehicle as a motor vehicle had an active link with the damage, making it "involved in the accident" for purposes of [MCL 500.3125] . . . .[13]

According to Theodore's account of the accident, Livingston moved into the eastbound lane and into Theodore's path, causing him to brake and lose control. That scenario, accepted as

---

[9] *Hastings Mut Ins Co v State Farm Ins Co*, 177 Mich App 428, 432-434; 442 NW2d 684 (1989).

[10] MCL 500.3125.

[11] *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995).

[12] *Id*. at 25-26.

[13] *Id.* at 42-43.

true, is comparable to *Frierson v West American Ins Co*,[14] and thus is evidence of involvement of a motor vehicle under § 3114(5).

State Farm's argument on appeal concerns Livingston's version of the events, i.e., that she stopped for a pickup truck that was blocking the westbound lane, and she remained in that lane. State Farm also contends that the suddenness of her deceleration is disputed and, therefore, the trial court erred in ruling that her vehicle was involved in the accident. Livingston, however, consistently maintained that she began to brake when a silver car ahead of her "swerved" around the pickup truck that was blocking the westbound lane of travel. She agreed that she had to make "a quick stop where you had to hit your brakes hard[.]" It was not hard enough to make her tires squeal, but it was "harder than normal." "[R]ight after or during the stop," Livingston saw Theodore, who had "just started to tumble," go by within a few feet of her car door. Livingston's version of the events, accepted as true, shows that her quick deceleration in the lane of travel that Theodore was travelling in caused Theodore's evasive actions, which led to his accident.

We agree with the trial court that, regardless of which version of events is accepted by the trier of fact, Livingston's motor vehicle had an active contribution to the accident and, accordingly, there was "evidence of the involvement of [her] motor vehicle."[15] Although there are factual disputes, they are not material to the determination of State Farm's order of priority for payment of PIP benefits.

State Farm briefly refers to the possibility of the involvement of the pickup truck and oncoming car in the eastbound lane that Livingston purportedly observed before the motorcycle passed by. State Farm contends that because the identity of those vehicles is unknown, they are considered uninsured vehicles. State Farm fails to explain how the involvement of an unidentified vehicle would place Progressive in a higher order of priority than it, as the insurer of the owner of a motor vehicle involved in the accident. The statements by State Farm's counsel at the hearing on the motion for summary disposition indicate that the involvement of another unidentified vehicle would be significant to Progressive's liability only if Livingston's vehicle was not involved in the accident. As previously explained, we agree with the trial court that Livingston's vehicle was involved. Thus, the trial court properly determined that State Farm is the first-priority insurer.[16]

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter

---

[14] *Frierson v West American Ins Co*, 261 Mich App 732, 736-737; 683 NW2d 695 (2004).

[15] MCL 500.3114(5).

[16] *Id*.