STATE OF MICHIGAN

COURT OF APPEALS

WILLIE LEE BROWN, JR.,

Plaintiff-Appellee,

v

TRAVELERS INSURANCE COMPANY,

Defendant/Third-Party Defendant-Appellant.

and

TITAN INSURANCE COMPANY,

Defendant/Third-Party Plaintiff,

and

GALLAGHER SECURITY,

Third-Party Defendant.

UNPUBLISHED
April 2, 2013

No. 306622
Wayne Circuit Court
LC No. 09-007286-NF

Before: TALBOT, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Defendant/third-party defendant, Travelers Insurance Company ("defendant"), appeals as of right a judgment for $125,000 in favor of plaintiff.[1] We reverse.

[1] Although Travelers is also captioned as a third-party defendant, only Travelers and plaintiff remain in this action after Gallagher Security was dismissed and Travelers was substituted in place of Titan Insurance Company. The trial court's judgment concerns only Travelers and plaintiff.

I. BACKGROUND

Defendant's insured, Christina Wagner, is employed by Gallagher Security ("Gallagher") as a patrolling security officer. Wagner was patrolling the Sherwood Forest neighborhood in Detroit in a small truck owned by Gallagher. At some point in the evening, Wagner parked the vehicle, with its headlights and overhead emergency lights on, on the *west* side of Stratford Road, a two-way road, facing *north* about 100 feet from where Shrewsbury intersects with Stratford.[2] In other words, the vehicle was parked in a legal parking location, but it was facing the wrong way. Both Stratford and Shrewsbury have residential speed limits of 25 miles per hour.

Meanwhile, plaintiff was travelling southeast on Shrewsbury on his motorcycle, approaching Stratford. It was approximately 10:50 p.m.; it was dark out, but there is inconsistency in the record whether there were street lights on. As plaintiff turned right onto Stratford, he believed that he was "cut off" by Wagner's vehicle. Plaintiff was unable to negotiate the right turn from Shrewsbury onto Stratford; plaintiff lost control, ran over the east curb of Stratford, and crashed into the porch of a house at 19388 Stratford, sustaining injuries. Wagner testified that plaintiff was travelling "extremely fast," which was too fast in order to turn safely.

Plaintiff sought benefits under Michigan's no-fault act, MCL 500.3101 *et seq.* On stipulated facts, both plaintiff and defendant moved for summary disposition pursuant to MCR 2.116(C)(10). The trial court found that Wagner's vehicle was "unreasonably parked" and granted plaintiff's motion for summary disposition.

II. ANALYSIS

On appeal, defendant argues that the trial court erred in granting summary disposition to plaintiff because, as a matter of law, under the no-fault act, the parked vehicle at issue was not parked in such a way as to present an unreasonable risk of bodily injury to plaintiff. We agree.

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews a "motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition "is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

[2] Heading southeast, Shrewsbury dead ends into Stratford, a north-south road. Additionally, there is a yield sign on Shrewsbury at the intersection.

When the facts are undisputed, as they are here, "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." *Stewart v Michigan*, 471 Mich 692, 696; 692 NW2d 376 (2004) (quotations and citations omitted). Issues of statutory construction are reviewed de novo. *Id.*

Michigan's no-fault act requires an insurer to pay personal protection insurance benefits to its insured "for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle." MCL 500.3105(1). "Accidental bodily injury" will not be deemed to arise out of "the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle" unless one of the exceptions enumerated in MCL 500.3106(1) applies. *Heard v State Farm Mut Auto Ins Co*, 414 Mich 139, 144; 324 NW2d 1 (1982). The only applicable exception herein is MCL 500.3106(1)(a): "The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred."

"[F]actors such as the manner, location, and fashion in which a vehicle is parked are material to determining whether the parked vehicle poses an unreasonable risk." *Stewart*, 471 Mich at 698-699. In *Stewart*, a motorcyclist rear ended a police cruiser which was parked in a lane of traffic on a five-lane highway in order to aid a stalled vehicle. *Id.* at 699. The Court noted that the cruiser was parked in a well lit area with emergency lights flashing and spotlight on, and that it was "providing necessary emergency services to a stalled vehicle that itself posed a risk of bodily injury. *Id.* Furthermore, the speed limit was 45 miles per hour and there were at least two other lanes available for other vehicles to use. *Id.* Given these conditions, "[t]here [was] 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." *Id.* As a result, the Court concluded that the parked cruiser did not pose an unreasonable risk of harm. *Id.*

Here, Wagner's vehicle similarly was not parked in such a way as to cause an unreasonable risk of bodily injury. As *Stewart* directs, we must focus on the manner and fashion of how the vehicle was parked and its location. First, while the vehicle was illegally parked on the wrong side of the road, with its front end pointing in the opposite direction than it should have been pointed, nevertheless, the vehicle was parked near the curb, and did not protrude into the lane of travel any more than a legally parked car would have. Second, the vehicle had its headlights and emergency lights on. These lights would have alerted anyone in the vicinity to the presence of the parked vehicle. Third, though the distance of the vehicle from Shrewsbury is not precisely established here, the trial court found that it was about 100 feet from the intersection. This finding, as well as the other evidence, demonstrates that the vehicle was not parked to obstruct traffic coming from Shrewsbury onto Stratford, nor was it in the flow of such traffic. Fourth, the speed limit on both streets is only 25 miles per hour. Such a low speed limit would tend to provide oncoming drivers a reasonable amount of time to avoid the vehicle.

In reviewing the undisputed facts, we conclude, as did the Court in *Stewart*, that "[t]here was nothing in the record to suggest that an oncoming . . . driver would not have ample opportunity to observe, react to, and avoid the hazard posed by" Wagner's parked vehicle. The vehicle did not obstruct traffic any more than a legally parked vehicle, its lights provided notice to everyone in the area to the vehicle's presence, the slow speed limit would allow oncoming drivers a reasonable amount of time to identify and avoid the vehicle, and the sign on

Shrewsbury allowed for those approaching Stratford to yield. Therefore, we hold that Wagner's vehicle was not parked in such a way that it created an unreasonable risk of injury.

The Supreme Court's decision in *Wills v State Farm Ins Co*, 437 Mich 205; 468 NW2d 511 (1991), supports our analysis that the fact a vehicle is illegally parked is not dispositive of the question whether the way the vehicle was parked created an unreasonable risk of injury. "There may be situations where an automobile is illegally parked, . . . but this status as an illegally parked vehicle would not be sufficient to determine that the vehicle was 'unreasonably parked' for purposes of no-fault liability." *Id.* at 214. In *Willis*, because the illegally parked vehicle "was completely off the roadway, it was not impeding traffic flow, and it was plainly visible," it did not constitute an unreasonable risk of harm. *Id* at 215. Wagner's vehicle was similarly situated, parked illegally but plainly visible, with its headlights and emergency lights flashing, and not impeding traffic.

On the basis of our de novo review of the undisputed facts, we vacate the trial court's order granting summary disposition to plaintiff and the trial court's judgment in favor of plaintiff and instead conclude that summary disposition should have been granted in favor of defendant.

Reversed. Defendant, the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens