

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Estate of TERRY OLSEN.

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JACQUELINE OLSEN, Personal Representative  
for the Estate of TERRY OLSEN,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED  
April 23, 2013

No. 310816  
Alpena Circuit Court  
LC No. 11-004279-NF

Before: BECKERING, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to defendant under MCR 2.116(C)(8). The decedent allegedly injured his knees while helping his uncle from a parked vehicle. The only issue on appeal is whether his uncle can be considered "property" within the parked-vehicle provision (MCL 500.3106) of the no-fault act, MCL 500.3101 *et seq.* Because we hold that he cannot, we affirm.

Decisions regarding summary disposition are reviewed de novo. *Haaksma v Grand Rapids*, 247 Mich App 44, 51; 634 NW2d 390 (2001). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint." *Johnson v Pastoriza*, 491 Mich 417, 435; 818 NW2d 279 (2012). All well-pleaded factual allegations must be accepted as true and viewed in the light most favorable to the non-moving party. *Id.* "A court may only grant a motion pursuant to MCR 2.116(C)(8) where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992), mod on other grounds by *Patterson v Kleiman*, 447 Mich 429, 433-435; 526 NW2d 879 (1994). The proper interpretation of a statute is also reviewed de novo. *Plunkett v Dep't of Transportation*, 286 Mich App 168, 180; 779 NW2d 263 (2009).

Under MCL 500.3105(1), payment of personal protection insurance benefits are required "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter." If a vehicle is

parked, there is no obligation to pay benefits unless one of the “parked-vehicle” exceptions in MCL 500.3106 apply. MCL 500.3106 provides, in pertinent part:

(1) 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:

\* \* \*

(b) Except as provided in subsection (2), the injury was a direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading or unloading process.

Plaintiff argues that the word “property” in MCL 500.3106(1)(b) should be interpreted to include the loading and unloading of people. Defendant argues that “property” should be limited to its commonly understood usage, which would not include people.

When interpreting a statute, this Court must ascertain and give effect to the intent of the Legislature. *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011). In order to determine intent, this Court first looks at the specific language of the statute. *US Fidelity Ins & Guaranty Co v Michigan Catastrophic Claims Ass’n (On Rehearing)*, 484 Mich 1, 12-13; 773 NW2d 243 (2009). If the statute defines a term, that definition controls. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). However, if a word is undefined by the statute, this Court must afford the word its plain and ordinary meaning. *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). This Court may consult dictionary definitions in doing this. *Johnson*, 491 Mich at 436.

“Property” is not defined under the no-fault act. In *Michigan Bell Telephone Co v Dep’t of Treasury*, 445 Mich 470, 478; 518 NW2d 808 (1994), the Michigan Supreme Court considered the meaning of the term in connection with 1905 PA 282, MCL 207.1 *et seq*. The Court recognized the “usual and customary meaning” of “property:”

[I]n Black’s Law Dictionary . . . the word “property” is defined as denoting “everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal . . . .” 6th ed, p 1216. Another common definition of property is “[s]omething tangible or intangible to which its owner has legal title.” *The American Heritage Dictionary* (2d college ed), p 993. [*Michigan Bell Telephone Co*, 445 Mich at 478.]

The current version of Black’s includes a consistent definition: “Any external thing over which the rights of possession, use, and enjoyment are exercised . . . .” Black’s Law Dictionary (9th ed).

Although arguably a “thing,”<sup>1</sup> a person cannot be owned or possessed. Therefore, the parked-vehicle provision at issue does not apply.

Affirmed.

/s/ Jane M. Beckering

/s/ Patrick M. Meter

/s/ Michael J. Riordan

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<sup>1</sup> “An entity . . . perceived, known, or thought to have its own existence.” *The American Heritage Dictionary of the English Language* (1996).