STATE OF MICHIGAN

COURT OF APPEALS

BETTY WILLIAMS, Plaintiff-Appellant,	UNPUBLISHED February 6, 2014
v	No. 311008 Genesee Circuit Court
PIONEER STATE MUTUAL INSURANCE COMPANY, Defendant-Appellee.	LC No. 11-096948-NF

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent. I would affirm the summary disposition in favor of defendant, on the ground that the record contains nothing to support a finding of the causal relationship required by *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 636; 563 NW2d 683 (1997).

In *Putkamer*, our Supreme Court identified three requirements for obtaining no-fault coverage of injuries involving parked vehicles. 454 Mich at 635-636. To avoid summary disposition, a plaintiff must present evidence to raise questions of fact on all three requirements. First, the plaintiff must demonstrate that his or her conduct was within the provisions of MCL 500.3106(1). *Putkamer*, 454 Mich at 635. Second, the plaintiff must demonstrate that "the injury arose out of the ownership, operation, maintenance or use of the parked motor vehicle *as a motor vehicle*." *Id*. at 635-636. Third, the plaintiff must demonstrate that "the injury had a causal relationship to the parked motor vehicle that is more than incidental or fortuitous, or but for." *Id*. at 636.

In this case, the majority correctly concludes that the record presents a factual issue on the first *Putkamer* requirement, i.e., whether plaintiff was "entering into" her motor vehicle within the meaning of MCL 500.3106(1)(c). The record may also present a question of fact on the second requirement, regarding whether plaintiff was using her car as a motor vehicle when the tree branch unexpectedly fell onto her head. Unlike the majority, however, I find nothing in the record to raise any factual question on the third *Putkamer* requirement. To the contrary, the record establishes that there is no causal relationship between plaintiff's injury and the parked car.

The majority holds that the third *Putkamer* requirement is satisfied whenever a person is injured while entering into a vehicle for "transportational purposes." In my view, this holding not only expands no-fault coverage beyond the limits established by our Legislature, the holding also conflates the second and third *Putkamer* requirements. Proof of a transportational purpose may be sufficient to establish the second *Putkamer* requirement. See *Putkamer*, 454 Mich at 635-636. However, proof of a transportational purpose does not establish a causal relationship between a parked car and an injury for purposes of obtaining no-fault coverage. Rather, the *Putkamer* Court specified that a causal relationship exists when the injury results specifically from the plaintiff's movements required to enter a car, as when a plaintiff slips while stepping into a car. 454 Mich at 637 n 10.

Here, the record contains nothing to indicate that plaintiff's movements in entering the car caused the branch to fall and injure her, any more than plaintiff's movements could have caused lightning to strike, or a wind gust to sweep away a winning lottery ticket from her pocket. If there is any causal relationship between plaintiff's injury and the parked car, the relationship is surely incidental. An incidental or unfortunate causal relationship does not create a question of fact within the *Putkamer* requirements.

I would affirm the summary disposition in favor of defendant.

/s/ Peter D. O'Connell