

STATE OF MICHIGAN
COURT OF APPEALS

JAMES D. BORAH,

Plaintiff-Appellant,

v

WOLVERINE MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 26, 1997

No. 195418

Van Buren Circuit Court

LC No. 96-041272-CK

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant no-fault insurer, predicated on plaintiff's failure to satisfy the dual criteria imposed in tandem by §§ 3105 and 3106 of the Insurance Code with respect to no-fault liability involving parked motor vehicles¹. This case is being decided without oral argument pursuant to MCR 7.214(E).

There is no dispute but that plaintiff was occupying the motor vehicle when he sustained an injury to his knee. *Childs v American Commercial Liability Ins Co*, 177 Mich App 589; 443 NW2d 173 (1989). Plaintiff thus satisfies the "occupying" requirement of § 3106(1)(c) of the Insurance Code.

Defendant contends, and for present purposes this Court accepts (but see footnote 1), that plaintiff must additionally show that his injury arose out of the use of a motor vehicle as a motor vehicle. *Yost v League General Ins Co*, 213 Mich App 183, 184-185; 539 NW2d 568 (1995). Plaintiff's van is used to store his tools and transport plaintiff and his tools from one job site to another. Bearing in mind that the phrase "use of a motor vehicle as a motor vehicle" is subject to a broad remedial interpretation, plaintiff's action at the time of injury of securing the tools in preparation for traveling to or from a work location represents, as to his vehicle, use of the vehicle as a motor vehicle. *Bialochowski v Cross Concrete Pumping Co*, 428 Mich 219, 228-229; 407 NW2d 355 (1987). We note that to the extent *Bialochowski* could be read to require plaintiff to meet separately the criteria established in §§ 3105 and 3106 of the Insurance Code, as

* Circuit judge, sitting on the Court of Appeals by assignment.

suggested in *Yost, supra*, it was disavowed in *Winter v AAA*, 433 Mich 446, 458 n 10; 446 NW2d 132 (1989) (and see footnote 1), but this only strengthens plaintiff's position where, as here, it is undisputed that he was occupying the vehicle at the time of injury. Summary disposition was accordingly erroneously granted.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell

¹ The Michigan Supreme Court has recently clarified that only the requirements of § 3106 need be satisfied. *Putkamer v TransAmerica Ins Co*, 454 Mich 626; ___ NW2d ___ (1997). As this opinion finds error on the assumption that both § 3105 and § 3106 must be satisfied, a fortiori the circuit court erred in granting summary disposition for defendant.