STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM FIRE & CASUALTY COMPANY, Subrogee of LISA GLICK,,

Plaintiff-Appellee,

v

AUTO-CLUB INSURANCE ASSOCIATION, a/k/a ACIA, a/k/a AAA,

Defendant-Appellant.

UNPUBLISHED

No. 194426P
Oakland Circuit Court
LC No. 95-499040 ND

Before: Gage, P.J. , and Reilly and Jansen, JJ.

REILLY, J. (concurring in part and dissenting in part.)

While I agree that the parked motor vehicle exception does not apply to this case because there was no bodily injury, I respectfully dissent from the majority's conclusion that the property damage "arose out of the ownership of the motor vehicle as a motor vehicle."

I believe summary disposition was inappropriately granted to the plaintiff because the undisputed facts do not support plaintiff's claim that the property damage arose "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle."

Personal property insurance coverage is provided for under MCL 500.3121; MSA 24.13121, which states in pertinent part:

> (1). Under property protection insurance, an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125 and 3127. . . .
>
> (2) Personal property insurance benefits are due under the conditions stated in this chapter, without regard to fault.

The majority opinion states:

> Here, however, the qualitative characteristics of the truck which were the source of the fire are the key factors in the resulting fire damage. In other words, the quality that made the vehicle a motor vehicle are what caused the property damage. The truck is filled with flammable gasoline, has a source of ignition (such as the wiring), and has many flammable parts. Unlike a tree, sign post, or boulder, these very qualities of the motor vehicle can lead it to spontaneously burst into fire. Further, the truck was parked in the carport precisely because it was a motor vehicle.

My concern is: Where in the statute does the insurer become liable for an accident attributable to the "qualitative characteristics of the truck."? Although it is undisputed that the fire erupted spontaneously in the dashboard area near the radio, we have no evidence as to what caused the fire. In the available record, we only know that the parked truck spontaneously caught fire. I believe the majority's conclusion that the fire was attributable to the ownership of the vehicle is without any basis in the facts presently available. There is no evidence that the fire arose from the ownership, operation, maintenance or use of the motor vehicle as a motor vehicle. Perhaps, after further discovery, the parties will be able to pinpoint the actual cause of the fire. At this time the record does not permit a ruling that plaintiff is entitled to summary disposition because there remains a question of fact whether the fire arose from the ownership, operation, maintenance or use of the motor vehicle as a motor vehicle.

The majority's use of the phrase "the qualitative characteristics of the truck . . . are the key factors in the resulting fire damage." is reminiscent of the words "character as a motor vehicle" which were first used in Judge Levin's unanimous opinion in *Miller v Auto-Owners*, 411 Mich 633, 640-641 (1981) when the Supreme court was describing the policy behind the parked car exclusion in § 3106. The Court stated:

> Each of the exceptions to the parking exclusion thus describes an instance where, although the vehicle is parked, its involvement in an accident is nonetheless directly related to its character as a motor vehicle. The underlying policy of the parking exclusion is that, except in three general types of situations, a parked car is not involved in an accident *as a motor vehicle*. It is therefore inappropriate to compensate injuries arising from its non-vehicular involvement in an accident within a system designed to compensate injuries involving motor vehicles as motor vehicles.

In *Miller*, all parties acknowledged that the plaintiff was repairing his car when it fell on him. The Court determined that the injury arose from plaintiff's maintenance of his vehicle as a motor vehicle, and the policy of coverage while maintaining the motor vehicle as a motor vehicle superceded any policy supporting the parked vehicle exclusion under § 3106. The Court resolved the conflict in favor of coverage for plaintiff under the "maintenance" provision, not because the vehicle's involvement in the accident was directly related to its "character as a motor vehicle." The parties agree that the fire in this case was spontaneous, and was clearly attributable to the parked truck. However, it is not enough to show that the insured vehicle is "involved in the accident." *Turner v ACIA*, 448 Mich 22, 40-42; 528

NW2d 681 (1995). Without a finding that the fire arose out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, the insurer is not liable under § 3121. *Id.*

As noted by defendant, if the fire was attributable to a defect in a component part of the motor vehicle, but cannot be linked to the ownership, operation, use or maintenance of the motor vehicle as a motor vehicle, the plaintiff's recourse is in the form of a product liability action, not a claim under the no-fault policy. See *Klinke v Mitsubishi Motors*, 219 Mich App 500, 508-509; 556 NW2d 528 (1996). If that proves to be the case, or if plaintiff is unable to make the necessary showing under § 3121, then the defendant would be entitled to summary disposition. Because the question of fact remains, I would reverse the order granting summary disposition to the plaintiff.

/s/ Maureen Pulte Reilly