STATE OF MICHIGAN

COURT OF APPEALS

JOHN P. GIORI,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
July 9, 1999

No. 211024
Iosco Circuit Court
LC No. 97-000393 CK

Before: Griffin, P.J., and Wilder and Danhof,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff was riding in the front passenger seat of a motor vehicle driven by Bernard Murphy. While showing a shotgun to passenger Jay Allen in the back seat, plaintiff pushed down on the barrel of the gun to demonstrate its unique feature of retracting into the chamber to absorb recoil. The gun inadvertently fired, causing injury to plaintiff. Plaintiff brought an action against defendant to recover personal protection insurance (PIP) benefits. Defendant moved for summary disposition under MCR 2.116(C)(8) and (10), and the trial court granted the motion pursuant to MCR 2.116(C)(10).

Plaintiff argues that the trial court erred in finding that his injury did not arise out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle because the vehicle was being used to transport the firearm and his injury arose out of the transportational use of the vehicle. We disagree.

We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). This Court must determine whether any genuine issue of material fact exists that would preclude judgment for the moving party as a matter of law. *Id*. In making this determination, this Court must consider the pleadings,

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

affidavits, depositions, admissions, and any other evidence in favor of the nonmoving party, and grant the benefit of any reasonable doubt to the nonmovant. *Id.*

Under the Michigan no-fault act, MCL 500.3101 *et seq*.; MSA 24.13101 *et seq*., an insurer must pay PIP benefits "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); MSA 24.13105(1). The question of "whether an injury arises out of the use of a motor vehicle 'as a motor vehicle' under § 3105 turns on whether the injury is closely related to the transportational function of motor vehicles." *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 226; 580 NW2d 424 (1998). A causal connection must also exist "between the injury and the use of a motor vehicle as a motor vehicle [that] is more than incidental, fortuitous or 'but for.'" *Thornton v Allstate Ins Co*, 425 Mich 643, 659; 391 NW2d 320 (1986). That a vehicle was the situs of an injury, alone, is insufficient to establish the necessary causal connection. *Bourne v Farmers Ins Exchange*, 449 Mich 193, 200; 534 NW2d 491 (1995).

Although the vehicle in this case was being used for transportational purposes at the time of plaintiff's injury, the injury itself was not closely related to the transportation of the shotgun. *McKenzie, supra* at 226. Plaintiff's injury was caused by his own act of showing the gun to Allen and pushing down on the barrel without first determining whether the gun was loaded. Plaintiff's actions were not related to the function of transporting the shotgun inside the vehicle, but were independent of transporting the shotgun. The vehicle was merely the situs of plaintiff's injury which is insufficient to establish the necessary causal connection. *Bourne, supra* at 200. Plaintiff's injury was not closely related to use of the motor vehicle in its transportational function, and therefore, plaintiff was not entitled to PIP benefits from defendant. The trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder
/s/ Robert J. Danhof