STATE OF MICHIGAN

COURT OF APPEALS

RORY WILLIAMS,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

UNPUBLISHED
February 25, 2000

No. 212686
Genesee Circuit Court
LC No. 97-059895-NF

Before: Hood, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in this action for first-party benefits under the no-fault act, MCL 500.3101 *et seq*.; MSA 24.13101 *et seq*. We affirm.

Plaintiff injured his hand while helping his father load a riding lawnmower onto a trailer. Plaintiff and his father planned to hitch the trailer onto a parked pickup truck once the lawnmower was loaded. Plaintiff stood at the front of the trailer and steadied "the tongue" of the trailer with his hand. As plaintiff's father drove the lawnmower onto the trailer, the lawnmower lurched forward, causing the front end of the trailer to fall to the ground. As a result, plaintiff's hand became pinned between the tongue and the ground.

Plaintiff filed the instant action after defendant denied his claim for no-fault benefits. Defendant moved for summary disposition, arguing that plaintiff was not entitled to benefits under the no-fault act because (1) neither the trailer nor the lawnmower qualified as motor vehicles under the act, and (2) the pickup truck, the only motor vehicle involved, was "parked" when the accident occurred and none of the exceptions to the parked vehicle exclusion applied. The trial court granted summary disposition for the reasons specified in defendant's motion.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion brought

pursuant to MCR 2.116(C)(10), the court considers the documentary evidence in the light most favorable to the nonmoving party. *Id.*, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Summary disposition is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 454-455.

Plaintiff concedes that the trailer involved in the incident is not a motor vehicle as defined in MCL 500.3101(2)(e); MSA 24.13101(2)(e). Plaintiff nonetheless argues that he is entitled to no-fault benefits because his injury fit within the exception to the parked vehicle exclusion contained in MCL 500.3106(1)(b); MSA 24.13106(1)(b), which provides.

> (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:
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> * * *
>
> (b) Except as provided in subsection (2), *the injury was a direct result of physical contact with* equipment permanently mounted on the vehicle, while the equipment was being operated or used, or *property being lifted onto or lowered from the vehicle in the loading or unloading process*. [MCL 500.3106(1)(b); MSA 24.13106(1)(b) (emphasis added).][1]

Plaintiff maintains that the exception applies because he was in physical contact with the trailer and was in the process of loading the trailer onto the pickup truck when the accident occurred. We disagree. Subsection 3106(1)(b) embodies two distinct exceptions to the parking exclusion, namely (1) when the injury is the direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or (2) when the injury is the direct result of property being lifted onto or lowered from the vehicle in the loading or unloading process. See also *Winters v Automobile Club of Michigan*, 433 Mich 446, 458, 460; 446 NW2d 132 (1989); *Arnold v Auto-Owners Ins Co*, 84 Mich App 75, 77-80; 269 NW2d 311 (1978). With regard to the latter exception argued here, activity that is merely preparatory to the actual loading or unloading of the vehicle may not be a basis for awarding benefits under this subsection. See *Block v Citizens Ins Co of America*, 111 Mich App 106, 109; 314 NW2d 536 (1981).[2]

In this case, it was undisputed that the accident occurred when the lawnmower was being loaded onto the trailer. While plaintiff testified that the ultimate goal was to hitch the trailer onto the pickup truck, there was no evidence that he was injured while the trailer was "being lifted onto or lowered from" the pickup truck in the loading process. *Winters*, *supra* at 460. Indeed, the process of moving the trailer to the truck[3] and hitching it to the truck was never attempted in this case because plaintiff was injured when the trailer, not the truck, was being loaded. Under these circumstances, the act of loading the trailer with the lawnmower was merely preparatory to the act of hitching the trailer to the pickup truck. *Block*, *supra* at 109. Accordingly, the exception to

the parked vehicle exclusion set forth in subsection 3106(1)(b) is inapplicable, and the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Harold Hood
/s/ Michael R. Smolenski
/s/ Michael J. Talbot

[1] In order to recover benefits under § 3106, the plaintiff must demonstrate that (1) his conduct fits one of the three exceptions of subsection 3106(1), (2) the injury arose out of the ownership, operation, maintenance, or use of the parked motor vehicle as a motor vehicle, and (3) the injury had a causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for. *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 635-636; 563 NW2d 683 (1997).

[2] Plaintiff relies upon *Bell v FJ Boutell Driveaway Co*, 141 Mich App 802; 369 NW2d 231 (1985), to argue that the terms "loading and unloading" in subsection (1)(b) should be interpreted broadly to include preparatory activity. *Bell*, however, is inapposite because it construes MCL 500.3106(2)(a); MSA 24.13106(2)(a), a provision that deals exclusively with the coordination of no-fault and worker's compensation benefits. See *Perez v Farmers Ins Exchange*, 225 Mich App 731, 735; 571 NW2d 770 (1997).

[3] While plaintiff admitted that the trailer was not connected to truck at the time of injury, the exact distance between the trailer and the truck is not entirely clear from the record. Plaintiff testified that when the trailer was being loaded with the lawnmower it was parked on some grass "right off the end of the driveway." In a diagram plaintiff drew at deposition, it appears that the truck was parked on the driveway somewhere close to the end of it.