STATE OF MICHIGAN

COURT OF APPEALS

THOMAS ALT,

Plaintiff-Appellant,

v

HASTINGS MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 7, 2000

No. 216934
Kent Circuit Court
LC No. 97-008752-NF

Before: Zahra, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant on plaintiff's claim for first-party no-fault benefits. We affirm.

We review de novo motions for summary disposition under MCR 2.116(C)(10). *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Id.*

In order to recover personal protection insurance benefits for an injury sustained in conjunction with a parked motor vehicle, there are three prerequisites that must be established.

> [W]here a claimant suffers an injury in an event related to a parked motor vehicle, he must establish that the injury arose out of the ownership, operation, maintenance, or use of the parked vehicle by establishing that he falls into one of the three exceptions to the parking exclusion in subsection 3106(1).[1] In doing so under § 3106, he 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,* 454 Mich 626, 635-636; 563 NW2d 683 (1997); emphasis added.]

MCL 500.3106(1); MSA 24.13106(1) provides, in relevant part:

> 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:
>
> * * *
>
> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

Plaintiff argues that there was a question of fact with regard to whether he was alighting from the vehicle at the time he sustained his injuries. We disagree.

There is no statutory definition of "alighting from" a parked vehicle. *Harkins v State Farm Mutual Automobile Ins Co,* 149 Mich App 98, 101; 385 NW2d 741 (1986). This Court "has generally interpreted the phrase as requiring some movement associated with physically removing one's person from the immediate confines of the vehicle." *Id.* In *Krueger v Lumbermen's Mutual Casualty & Home Ins Co,* 112 Mich App 511, 515; 316 NW2d 474 (1982), this Court stated that "an individual is not finished 'alighting' from a vehicle at least until both feet are planted firmly on the ground." If alighting is completed, the exception set forth in section 3106(1) is inapplicable. *Royston v State Farm Mutual Automobile Ins Co,* 130 Mich App 602, 607; 344 NW2d 14 (1983).

In this case, plaintiff has failed to offer sufficient evidence to support his claim that he was in the process of alighting from the vehicle at the time the injury occurred. Thus, the first determination set forth in *Putkamer, supra,* has not been met. In plaintiff's first statement, which was made to a claims representative for the insurer of the property on which plaintiff was injured, plaintiff clearly indicated that he was "down and out of the truck" before he stepped on the piece of wood that caused his injuries. In his second statement, which was made to defendant's representative, plaintiff was unclear about whether he was in the process of alighting from the truck or already on the ground when he sustained injury. Finally, his statement at deposition was equivocal, based on speculation and based on his own experimentation in trying to recreate how the accident must have occurred. First, he testified that he had one foot on the bumper of the truck when the other foot came in contact with the wood. However, he thereafter indicated that he had no memory of how the accident occurred but believed it could not have occurred any other way. In other words, plaintiff agreed that he was speculating.

It is axiomatic that a party responding to a motion for summary disposition must "set forth specific facts showing that a genuine issue of material fact exists and cannot simply rest on mere conjecture and speculation to meet the burden of providing evidentiary proof establishing a genuine issue of material fact." *Altairi v Alhaj*, 235 Mich App 626, 628-629; 599 NW2d 537 (1999). In the present case, plaintiff failed to create a genuine issue of material fact regarding whether he was in the process of alighting from the vehicle. A genuine issue of material fact exists when evidence from two independent sources conflicts and the trier of fact must resolve the conflict. Here, the only conflict that exists is within plaintiff's own testimony which he offers to support his claim. Rather than constituting a genuine issue of material fact, such evidence constitutes a failure of proof for which plaintiff has the burden. *Altairi, supra*. Thus, summary disposition was appropriate for that reason alone.

Our resolution of the foregoing issue renders discussion of the other claims set forth by plaintiff on appeal unnecessary.

Affirmed.

/s/ Brian K. Zahra
/s/ Joel P. Hoekstra

[1] MCL 500.3106(1); MSA 24.13106(1).