

STATE OF MICHIGAN
COURT OF APPEALS

MARC E. ANDERSON,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

April 25, 2000

No. 208651

Lapeer Circuit Court

LC No. 95-021596 CK

Before: Kelly, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendant and denying plaintiff summary disposition in this no-fault automobile insurance action for first-party benefits. We affirm.

On November 11, 1994, plaintiff struck a deer that crossed into the path of the van he was driving on M-24 at approximately 10:00 p.m. Plaintiff pulled over to the shoulder of the road, parked his van, and dragged the deer off the traveled portion of the road to the shoulder so as to not create a hazard to other drivers. The next day, plaintiff experienced lower back pain and limited motion. When his symptoms did not subside in a week, he saw a doctor, whose medical records reflect that plaintiff said he did not know whether his symptoms were caused by the actual collision or dragging the deer from the road. Plaintiff ultimately incurred approximately \$3,000 in medical expenses and the collision caused damage to the van in the amount of approximately \$2,500.

Plaintiff sought first-party no-fault benefits from defendant, but his claim was denied. Plaintiff then filed a complaint on June 27, 1995, requesting reasonable medical expenses, household replacement services, travel expenses, and lost wages. Later, plaintiff stipulated to withdraw his claims for household replacement services and wage loss, and following defendant's first motion for summary disposition, only plaintiff's claim for medical expenses remained. Plaintiff filed a motion for summary disposition under MCR 2.116(C)(10), arguing that he was entitled to recover first-party personal protection insurance benefits regardless of whether his injury was caused by the collision or the dragging of the deer from the road. The trial court, however, granted summary disposition in favor of defendant

under MCR 2.116(C)(10), (I)(2), concluding that plaintiff's injury did not arise of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle because the injury was apparently caused when plaintiff dragged the deer off the road and there was no evidence that plaintiff was injured in the collision. The trial court thus concluded that an injury resulting from dragging a deer from the road did not fall under the no-fault act.

Plaintiff argues that the trial court erred in determining that his injury did not come within the coverage provided for by the no-fault act, MCL 500.3105(1); MSA 24.13105(1). Issues of statutory interpretation are questions of law which are reviewed de novo, *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997), and a trial court's decision regarding a motion for summary disposition is likewise reviewed de novo to determine whether the successful party was entitled to judgment as a matter of law, *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

We emphasize initially that plaintiff does not claim, nor has he presented any supporting evidence, that he suffered his injury as a result of the actual collision with the deer. Plaintiff conceded below in his motion for summary disposition that he was unsure whether he sustained his injury as a result of the collision or a result of pulling the deer off the road. For purposes of this appeal, plaintiff argues that he injured his back when he pulled the deer off the road, but contends that he is still entitled to first-party no-fault benefits under MCL 500.3105(1); MSA 24.13105(1). This statute provides that an insurer is liable to pay personal protection insurance benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

Pursuant to recent Supreme Court authority, we believe that the trial court must be affirmed. In *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303; 602 NW2d 828 (1999), the Supreme Court held that a motorist was not entitled to first-party no-fault benefits where the motorist was involved in a traffic accident and was injured when he was assaulted as he was inspecting the vehicles involved in the accident by the driver of the other vehicle. Specifically, the Court stated that the assault itself was a separate occurrence from the collision and that the plaintiff was injured not in a traffic accident, but by another person's response to that event. Thus, the assault was not closely related to the transportation function of a motor vehicle. *Id.*, pp 310-311.

In *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 225-226; 580 NW2d 424 (1998), the Supreme Court held that whether an injury arises out of the use of a motor vehicle as a motor vehicle under § 3105(1) turns on whether the injury was closely related to the transportation function of motor vehicles. Specifically, the Supreme Court held that the requisite nexus between the injury and the transportation function of the motor vehicle was lacking where the plaintiff was injured while sleeping in a camper/trailer attached to the back of the plaintiff's pickup truck. *Id.*, p 226. Further, the proper focus is on the relation between the injury and the use of a motor vehicle as a motor vehicle, *Bourne v Farmers Ins Exchange*, 449 Mich 193, 201; 534 NW2d 491 (1995), and first-party no-fault benefits are available where the involvement of the motor vehicle in the injury is directly related to its character as a motor vehicle. *Marzonie v Auto Club Ins Ass'n*, 441 Mich 522, 531-532; 495 NW2d 788 (1992). Thus, the connection between the injury and the use of the motor vehicle must be more than incidental, fortuitous, or but for. *Id.*, p 532.

Plaintiff has not presented any evidence that his injury is closely related to the transportation function of the vehicle, or related to the ownership, operation, maintenance, or use of the motor vehicle. Although it was initially disputed in the lower court whether plaintiff's injury occurred as a result of the collision with the deer or as a result of pulling the deer off the road, plaintiff did not depose his doctor and did not present any evidence that the back injury was caused by the collision. Plaintiff's contention there is a sufficient causal nexus between his injury and the use of a motor vehicle as a motor vehicle is incorrect in light of Supreme Court precedent because plaintiff was injured as a result of pulling a deer off the road, which is a separate occurrence from the van's collision with the deer.

Accordingly, the trial court did not err in granting summary disposition in favor of defendant.

Affirmed.

/s/ Michael J. Kelly

/s/ Kathleen Jansen