

STATE OF MICHIGAN
COURT OF APPEALS

TINA MORRIS,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 221425
Muskegon Circuit Court
LC No. 93-030587-CK

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiff appeals by right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10), after remand from this Court. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in a 1992 accident between two uninsured off road vehicles (ORV's), traveling on an undedicated road in Oceana County. Plaintiff brought this action for first party no-fault insurance benefits under a policy issued on other motor vehicles she owned with her husband. The trial court granted partial summary disposition, finding that the ORV's were motor vehicles under the no-fault act, and that the road was a public highway. In *Morris v Allstate Ins Co*, 230 Mich App 361; 584 NW2d 340 (1998), this Court affirmed the finding that the ORV was a motor vehicle, but found that there were factual issues regarding whether the road constituted a public highway, and remanded the matter for further proceedings.

After remand, additional discovery was taken, and defendant moved for summary disposition. The trial court granted defendant's motion, finding that although the road was open to the public, the infrequent maintenance provided by the county did not meet the requirements of a public highway. MCL 257.20; MSA 9.1820.

The no-fault act defines a motor vehicle as a vehicle operated or designed for operation on a public highway by power other than muscle power, which has more than two wheels. MCL 500.3101(2)(e); MSA 24.13101(2)(e). The no-fault act defines highway by reference to the motor vehicle code. MCL 500.3101(2)(b); MSA 24.13101(2)(b). The vehicle code provides:

“Highway or street” means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. [MCL 257.20; MSA 9.1820.]

The evidence supports the trial court’s finding that the road was not publicly maintained. The last incidental maintenance performed on the road occurred three years prior to the accident, and the maintenance employee was instructed afterwards not to maintain the road because it was not a county road. Infrequent maintenance and repairs by the county do not make a road a public highway. See *Keller v Locke*, 62 Mich App 591; 233 NW2d 666 (1975).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage