STATE OF MICHIGAN

COURT OF APPEALS

JOHN WASACZ,

Plaintiff-Appellant,

v

AAA OF MICHIGAN, INC., CULLIGAN WATER CONDITIONING OF GREATER DETROIT, INC., and DOUGLAS MICHAEL STARK,

Defendants-Appellees.

UNPUBLISHED
January 5, 2001

No. 214456
Oakland Circuit Court
LC No. 97-542985-NF

Before: Fitzgerald, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Plaintiff appeals of right from an order granting defendants' motion for summary disposition under MCR 2.116(C)(10) in this negligence claim. We affirm.

Plaintiff's lawsuit arises out of a three-vehicle accident. On the afternoon of December 6, 1994, plaintiff was traveling eastbound on a two-lane highway. After passing through an intersection, plaintiff came upon a truck owned by defendant Culligan and operated by defendant Stark. Stark had stopped the truck in the eastbound lane of the highway. Plaintiff was able to safely stop her vehicle behind Stark's truck. Moments later, Margaret Long came upon the scene in her vehicle. Unable to stop in time, Long rear ended plaintiff. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), while plaintiff moved for a default judgment because of Stark's failure to appear at scheduled depositions. Finding no genuine issue of material fact, the trial court granted defendants' motion for summary disposition and denied plaintiff's motion for a default judgment.

Plaintiff first contends that summary disposition was inappropriate because there was a question of fact on whether Stark was negligent when he stopped the truck in the eastbound lane. We disagree. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact

> and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

While there was differing evidence on why Stark had stopped his truck, it was undisputed that the truck's four-way hazard flashers were on. It is also undisputed that plaintiff saw the truck's flashers from about five hundred feet away, and that plaintiff was able to stop his vehicle in time to avoid colliding with the truck. Even when viewing the facts in a light most favorable to plaintiff, we believe this evidence leads to the conclusion that Stark acted with reasonable care as a matter of law when he stopped the truck. *Bowmaster v DePree Co*, 258 Mich 538; 242 NW 744 (1932).

Plaintiff argues that summary disposition was inappropriate, however, because plaintiff should have received the benefit of an inference of negligence in light of the evidence that Stark violated MCL 257.676b; MSA 9.2376(2). Section 676b reads in pertinent part:

> (1) A person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section shall not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway.

Plaintiff asserts that MCL 257.676b(1); MSA 9.2376(2)(1) was violated because Stark's truck served as a "barricade, object, or device" that impeded the flow of traffic.. We disagree with plaintiff's interpretation of the statute.

"Statutory interpretation is a question of law reviewed de novo on appeal." *People v Williams*, 226 Mich App 568, 570; 575 NW2d 390 (1997). "The overriding goal guiding judicial interpretation of statutes is to discover and give effect to legislative intent." *People v Parker*, 230 Mich App 677, 685; 584 NW2d 753 (1998).

Michigan's Motor Vehicle Code contains several sections that specifically address the parking, standing, or stopping of vehicles on Michigan roadways.[1] The term "parking" has been specifically defined in statute to mean "*standing a vehicle*, whether occupied or not, upon a highway, when not loading or unloading except when making necessary repairs." MCL 257.38; MSA 9.1838 (emphasis added). Parking a vehicle is "merely one form of stopping" the vehicle. *Bensinger v Happyland Shows, Inc*, 44 Mich App 696, 702; 205 NW2d 919 (1973). Further, each of the specific prohibitions employees the term "vehicle," which has been specifically

[1] See MCL 257.672, 257.674, 257.674a, 257.675, and 257.676; MSA 9.2372, 9.2374, 9.2374(1), 9.2375, and 9.2376.

defined, MCL 257.79; MSA 9.1879, and which would include Stark's truck.[2]

Any inclusion of parked or stopped or vehicles within the prohibitions of section 676b is premised on the general language employed in the statute. The categories "object" and "device" sweep broad enough to include a truck or other motor vehicle. And while the term "barricade" typically invokes notions of paraphernalia strewn across a roadway,[3] certainly a vehicle could serve as barricade by blocking passage across a roadway. Further, a vehicle parked or stopped on a roadway could easily be seen as "block[ing], obstruct[ing], imped[ing], or otherwise interfer[ing] with the normal flow of vehicular or pedestrian traffic." However, unlike the specific statues mentioned above, section 676b does not contain a specific reference to either vehicles or the parking, standing, or stopping of vehicles.

We believe the specific statutes control, and thus the trial court was correct when it denied plaintiff the benefit of a presumption of negligence arising from MCL 257.676b; MSA 9.2376(2). Additionally, we believe the trial court's decision is consistent with the harm section 676b is designed to remedy. See *Gould v Atwell*, 205 Mich App 154; 517 NW2d 283 (1994).

Plaintiff also argues that the trial court erred in denying his request for a default judgment based on Stark's failure to appear at his scheduled deposition. We disagree. This Court reviews for an abuse of discretion a trial court's handling of discovery sanctions and decision regarding whether to grant a default judgment. *Thorne v Bell*, 206 Mich App 625, 633; 522 NW2d 711 (1994); *Frankenmuth Mut Ins Co v ACO, Inc*, 193 Mich App 389, 397; 484 NW2d 718 (1992).

The record shows that Stark's nonappearance did not violate a court order and that the length of time between Stark's failure to appear and plaintiff's motion for a default judgment was less than two months. Further, plaintiff produced no evidence that Stark's failure to appear was willful. In fact, plaintiff failed to produce evidence that Stark was ever made aware of his scheduled deposition. *Thorne, supra* at 632-633. Therefore, we conclude that the trial court did not abuse its discretion in denying plaintiff's request to impose the severe sanction of a default judgment.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald

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[2] The Motor Vehicle Code defines "truck" to mean "every motor vehicle designed, used, or maintained primarily for the transportation of property." MCL 257.75; MSA 9.1875. A "motor vehicle" is "every vehicle that is self-propelled . . . ." MCL 257.33; MSA 9.1833.

[3] The term "barricade" is defined as meaning "[a] structure set up across a route of access to obstruct the passage of an enemy." *The American Heritage Dictionary of the English Language* (3d ed, 1996), p 151. As this definition indicates, a structure or object is considered a barricade not by virtue of its make-up, but because of the purpose for which it is being used, i.e., obstructing the flow or the passage of something else.