STATE OF MICHIGAN

COURT OF APPEALS

STATE MUTUAL INSURANCE CO., as subrogee of Earl Marsh and Annette Marsh, Plaintiff-Appellant/Cross-Appellee, v ALLSTATE INSURANCE CO., Defendant-Appellee/Cross-Appellant.	UNPUBLISHED April 27, 2001 No. 218262 Genesee Circuit Court LC No. 97-055578-CV

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

PER CURIAM.

Plaintiff, State Mutual Insurance Co., appeals as of right an order granting summary disposition in favor of defendant, Allstate Insurance Co., pursuant to MCR 2.116(C)(10). We affirm. We dismiss defendant's cross appeal as moot.

This is a subrogation action for no-fault property protection insurance benefits (PPI), MCL 500.3121; MSA 24.13121, brought by homeowners insurance company plaintiff State Mutual Insurance Company, as subrogee of its insureds Earl and Annette Marsh, against no-fault auto insurance company defendant Allstate Insurance Company.[1]

On January 29, 1996, a fire originated in the garage of the residence of plaintiff's insureds. The facts regarding the fire are not in dispute. At the time of the fire, a 1983 Buick Skylark owned by Emanuel Marsh (son of Earl and Annette Marsh) and insured by defendant was in the garage. Earl Marsh was working on the Skylark automobile with his friend, Lance Body, doing a "valve job." Because the garage was unheated, Earl Marsh frequently used a kerosene heater for warmth. On the day of the fire, Earl Marsh placed the kerosene heater approximately four to six feet away from the vehicle. As the result of an accident, gasoline from the vehicle spread along the garage floor to the kerosene heater causing a fire. Property damage to the garage and adjoining residence in the sum of $266,249.18 occurred because of the fire.

[1] Defendants Emanuel Marsh and Lance Body were dismissed from this action pursuant to stipulations of the parties.

After plaintiff homeowners insurance company paid the property damages to its insureds, it became subrogated to Earl and Annette Marsh's claim for property protection insurance benefits against the insurer of the automobile, defendant Allstate Insurance Company. In the lower court, defendant moved for summary disposition on two grounds: (1) that it was not liable for property protection insurance benefits because the accidental property damage did not arise "out or the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle," MCL 500.3121; MSA 24.13121, and (2) plaintiff's claim was barred by an exclusion in the policy and no-fault act for property owned "by a person named in a property protection insurance policy, the person's spouse or a relative of either domiciled in the same household." MCL 500.3123(b); MSA 24.13123(b).

In a well-reasoned written opinion, Genesee Circuit Judge Robert M. Ransom granted defendant's motion for summary disposition on the basis that the fire was caused by the use of the portable kerosene heater and that the negligent use of the kerosene heater was unrelated to the normal maintenance, repair, and use of the motor vehicle as a motor vehicle. The lower court found that its resolution of the first issue was dispositive and therefore defendant's second issue regarding the domicile of Emanuel Marsh was dismissed as moot. Plaintiff appeals the order of summary disposition granted in favor of defendant. Defendant cross appeals the ruling regarding the mootness of the policy exclusion issue that would be triggered were Emanuel Marsh a domicile of his parents' household.

We hold that the trial court correctly ruled there was an inadequate causal connection between the maintenance of the automobile and Earl Marsh's negligent use of the kerosene. The summary disposition granted in favor of defendant on the basis of lack of causation is affirmed.

For practical purposes, the present case is indistinguishable from *Auto-Owners Ins Co v Citizens Ins Co of America*, 189 Mich App 458; 473 NW2d 753 (1991), and *Central Mut Ins Co v Walter*, 143 Mich App 332; 372 NW2d 542 (1985). In *Auto-Owners, supra at* 459, our Court stated the following:

> Daniel Wilke brought his automobile into Coles Garage for maintenance. While the mechanics were draining the vehicle's fuel line, gasoline fumes were ignited by the pilot light of a nearby hot water heater. The fire spread to the vehicle and eventually destroyed the garage. Coles Garage recovered its damages from Auto-Owners under a property insurance contract. Auto-Owners then sought to recover from defendant, who insured Wilke's vehicle under a policy of no-fault automobile insurance, on the theory that the fire arose out of the maintenance of the automobile.
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> The relevant section of the no-fault act, MCL 500.3121(1); MSA 24.13121(1), provides:
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> "Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle. . . ."

> In a case with remarkably similar facts, where a vehicle's fuel was ignited by a hot water heater pilot light, this Court ruled that the accident did not arise out of the maintenance of the vehicle because there was no connection between the vehicle's being maintained and the source of ignition. *Central Mutual Ins Co v Walter*, 143 Mich App 332; 372 NW2d 542 (1985).

In the earlier case, *Central Mut Ins*, *supra* at 335, our Court applied the causation test set forth in *Kangas v Aetna Casualty & Surety Co,* 64 Mich App 1, 17; 235 NW2d 42 (1975). Later in *Century Mut Ins Co v League General Ins Co,* 213 Mich App 114, 121; 541 NW2d 272 (1995), this Court applied the *Kangas/Thornton v Allstate Ins Co,* 425 Mich 643; 391 NW2d 320 (1986), standard to PPI benefits and articulated the following three-part test:

> 1. The accident must have arisen out of the inherent nature of the automobile, as such; 2. The accident must have arisen within the natural territorial limits of an automobile, and the actual use, loading, or unloading must not have terminated; 3. The automobile must not merely contribute to cause the condition which produces the injury, but must, itself, produce the injury.

In the present case, the circuit court correctly applied the Kangas/Thornton test by holding that the automobile was a mere situs of the fire and did not cause the property damage. For this reason, the lower court properly granted summary disposition in favor of defendant.

In view of our affirmance of the order granting summary disposition, we find it unnecessary to rule on defendant's alternative basis for affirmance set forth in its cross appeal. For this reason, defendant's cross appeal is dismissed as moot. *People v Rutherford,* 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard Allen Griffin
/s/ Kathleen Jansen
/s/ Hilda R. Gage