STATE OF MICHIGAN

COURT OF APPEALS

JODY MAY, CO-CONSERVATOR, DON EDDY, CO-CONSERVATOR, of JOSHUA EDDY, a minor,

Plaintiffs/Appellees,

v

TITAN INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellant,

v

AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY,

Third-Party Defendant.

UNPUBLISHED
January 28, 2010

No. 287250
Oakland Circuit Court
LC No. 2003-049855-NF

JODY MAY, CO-CONSERVATOR, DON EDDY, CO-CONSERVATOR, of JOSHUA EDDY, a minor,

Plaintiff/Appellees,

v

TITAN INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellant,

v

AMERICAN FELLOWSHIP MUTUAL INSURANCE COMPANY,

No. 287252
Oakland Circuit Court
LC No. 03-049855-NF

Third-Party Defendant.

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant Titan Insurance Company (Titan) and third-party defendant, American Fellowship Mutual Insurance Company (American Fellowship), appeal as of right from a July 30, 2008, final judgment. In Docket No. 287250, Titan challenges a May 18, 2005 opinion and order granting plaintiffs summary disposition on the issue whether plaintiff Joshua Eddy (plaintiff)[1] was entitled to no-fault personal injury protection (PIP) benefits. In Docket No. 287252, American Fellowship challenges a January 8, 2008 opinion and order granting Titan summary disposition entitling Titan to recover from American Fellowship a portion ($250,000) of plaintiff's PIP benefits.

The facts of this case are not in dispute. On July 19, 2002, 13-year-old plaintiff attended a "motocross" race at a modified horse-race track in Barry County with several friends, including wheelchair-bound Josh Duits (Josh). Instead of watching the race from the grandstands, plaintiff's stepfather paid extra and parked a handicapped–equipped van in the "pit area" adjacent to the raceway. Plaintiff and his next-door neighbor and best friend, Kody Watson, along with Kody's father and uncle, had parked elsewhere but joined plaintiff and plaintiff's stepfather at the van to watch the race from that vantage point. Josh watched the race in his wheelchair from atop the van's extended-lift wheelchair ramp. Plaintiff and the others stood near the van and watched the race. The van was parked approximately 60 feet from the north end of the racetrack, at the end of a 90-foot northbound straightaway which ended in a 90-degree turn. The passenger side of the van with the wheelchair ramp faced the straightaway. The only barrier between the racetrack and the "pit area" where spectators were allowed to park was a snow fence and some straw bales. Other vehicles were parked in the pit area, but none as close to the track as the van.

During the race, the throttle became stuck on one of the motorcycles as it started down the northbound straightaway. The rider fell off, and the uncontrolled motorcycle continued in a straight line off the racetrack, striking the van and seriously injuring Josh. The motorcycle then ricocheted off the van and struck the back of plaintiff's head causing severe brain injury. Josh later died as a result of his injuries.

Plaintiff, through his natural parents as co-conservators, sought personal injury protection (PIP) benefits under an automobile insurance policy Titan had issued to plaintiff's stepfather. Titan denied coverage, asserting that plaintiff's injuries did not arise from the use of a motor

[1] Although Joshua's conservators brought the instant suit, for ease of reference this opinion will refer to Joshua as plaintiff.

vehicle as a motor vehicle and that no-fault coverage was precluded under MCL 500.3106(1) because the van was parked at the time of the collision. On May 16, 2003, plaintiff sued Titan to collect PIP benefits.

Titan moved for summary disposition on the basis that PIP benefits were precluded under MCL 500.3106(1). Plaintiff replied and asserted that PIP benefits were available since the van was parked in such a way as to cause unreasonable risk of the bodily injury which occurred. In support of this argument plaintiff presented an affidavit from accident reconstruction expert Weldon Greiger. According to Greiger, parking near a curve or turn on a racetrack was the most dangerous place to park during a race since a rider was most likely to lose control of a motorcycle at a curve or turn and an errant motorcycle was most likely to leave the track at the same place. Greiger averred that the momentum of the riderless motorcycle would carry it directly toward the van and that the van was too close to the track to avoid the dangers from an errant motorcycle. Greiger noted that there was no barrier which would protect the van or people around it from a collision, nor was there any time to react and avoid the collision. Greiger concluded that the van was parked in an unreasonably dangerous manner in relation to the track. The circuit court denied Titan's motion for summary disposition in an opinion and order dated April 15, 2004. Citing Greiger's opinion, the court found that there was an issue of fact as to whether the van was parked so as to create an unreasonable risk of harm.

Both plaintiff and Titan moved for reconsideration, seeking to have the circuit court declare as a matter of law whether the van fell under an exception to the parked-vehicle exclusion under MCL 500.3106(1). In support of this motion plaintiff and Titan filed a signed stipulation (the first stipulation), which provided:

> 1. The sole issue in this case concerns whether the subject handicapped van at issue in this lawsuit was parked in such a way as to trigger an exception to the parked motor vehicle exclusion of the Michigan No-Fault Act found at MCL 500.3106(1).
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> 2. The parties agree that whether such an exception applies to this subject case is a question of law to be determined by the court rather than a question of fact . . . .
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> 3. The parties respectfully request the court to reach an opinion and issue an order concluding as a matter of law whether any of the parked vehicle exclusions found at MCL 500.3106 apply to this case.
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> * * *
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> 5. The parties, therefore, ask this court to decide the motion for summary disposition as a matter of law.

The circuit court addressed the motion for reconsideration and granted partial summary disposition to plaintiff in its opinion and order dated July 7, 2004. The court noted that the van was parked at the end of a straightaway, that Grieger opined that this was a dangerous place to park, and that this type of accident was likely to occur at that location. The court found that Grieger's opinion was "confirmed by common sense," and that "clearly, a motorcycle is more

likely to leave a motorcycle racetrack at the beginning of a turn after a long straight-way than in any other location. Such a motorcycle would be likely to collide with and be deflected by cars or vans parked in that area." The court stated that "to the extent that the plaintiff's accident involved a parked motor vehicle, the court concludes that the vehicle was parked in such a way as to cause an unreasonable risk of the injury which did occur."

On July 16, 2004 plaintiff and Titan stipulated to entry of an order dismissing all remaining issues in the case without prejudice (the second stipulation). Plaintiff and Titan entered into the second stipulation in an attempt to make the circuit court's July 7, 2004 opinion and order a final order in the matter and permit Titan to claim an appeal of right from the circuit court's finding that the van was unreasonably parked under MCL 500.3106(1)(a). The second stipulation states that if plaintiff prevailed after Titan exhausted its appeals to this Court and the Michigan Supreme Court, "the parties will make a concerted and good faith effort to amicably resolve the further issues regarding the amount of no fault benefits owed to the plaintiff." Titan filed a claim of appeal from the circuit court's July 16, 2004 order. That appeal was assigned Docket No. 257016. In an order issued August 13, 2004, this Court dismissed Titan's appeal in Docket No. 257016 for lack of jurisdiction. The order provides that, "this type of dismissal does not satisfy the final order rule:"

> "The parties' stipulation to dismiss the remaining claims without prejudice is not a final order that may be appealed as of right; it does not resolve the merits of the remaining claims and, as such, those claims are 'not barred from being resurrected on that docket at some future date.' *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 134-136; 624 NW2d 197 (2000). The parties' stipulation to dismiss the remaining claims was clearly designed to circumvent trial procedures and court rules and obtain appellate review of one of the trial court's initial determinations without precluding further substantive proceedings on the remaining claims. This method of appealing trial court decisions piecemeal is exactly what our Supreme Court attempted to eliminate through the 'final judgment' rule. MCL 7.202(7)(a)(i); *McCarty & Associates, Inc v Washbum*, 194 Mich App 676, 680; 488 NW2d 785 (1992)." *City of Detroit v State Fairground Development Group LLC*, [262] Mich App [542, 545;] [686] NW2d [514] (2004) . . . .

Following dismissal of defendant's appeal in Docket No. 257016, plaintiff and Titan stipulated to entry of an order setting aside the July 16, 2004 order (the second stipulation). The circuit court granted this relief in an order signed September 22, 2004.

Titan submitted a renewed motion for summary disposition. The circuit court considered this motion at a hearing held April 27, 2005. Titan's renewed motion argued that it did not owe PIP benefits for 2 reasons: (1) plaintiff's injury did not arise from use of a motor vehicle as a motor vehicle; and (2) the motor vehicle in question was parked and did not fall within any exceptions to MCL 500.3106(1). At the motion hearing the circuit court pointed out that the first stipulation limited the relevant inquiry to whether the van fell within an exception to MCL 500.3106(1) and asked counsel for Titan whether the argument in regard to use of a motor vehicle as a motor vehicle was waived by the first stipulation. Titan argued that the first stipulation was not intended to waive this argument. Plaintiff's counsel disagreed, maintaining that the issue had been waived and that counsel for plaintiff and Titan had attempted to bring the

matter on appeal on the sole issue of whether the van fell within the MCL 500.3106(1)(a) exception.

The circuit court took the matter under advisement and granted partial summary disposition to plaintiff in its May 18, 2005 opinion. The opinion states that the sole issue before the court was whether the van was parked so as to trigger an exception to the parked vehicle exclusion of MCL 500.3106(1). The court found that the van was parked in such a way as to cause unreasonable risk of the injury, explaining:

> [T]he van was parked at the end of the one long straight section of the track. This section of the track had a jump on it, and immediately after landing the motorcyclists had to execute a right turn. The van was parked where momentum would carry any motorcycle if the driver could not execute the turn, if, as in this case, the rider fell off the motorcycle. The injured party was a friend of the boy in the wheelchair. It was foreseeable that he would watch the race from the same general area as his friend.

The circuit court refused to address Titan's argument that plaintiff's "injuries did not arise from use of a motor vehicle as a motor vehicle under the No-Fault Act under MCL 500.3105(1), explaining that the issue was precluded by the first stipulation that the sole issue was whether the facts gave rise to an exception under MCL 500.3106(1). The court noted that the plaintiff and Titan had twice made stipulations in writing indicating that the only issue to be decided is the parked motor vehicle exception under MCL 500.3106(1).

Titan then filed a delayed application for leave to appeal seeking interlocutory review of the circuit court's May 18, 2005 opinion and order granting partial summary disposition in favor of plaintiff. That appeal was assigned Docket No. 266417. This Court denied Titan's application "for failure to persuade the Court of the need for immediate appellate review." Titan moved for reconsideration, which this Court denied. Titan then filed an application for leave to appeal to the Supreme Court, which, on February 7, 2007,was also denied.

On August 15, 2007, Titan filed a third-party claim against American Fellowship seeking 50 percent reimbursement of any PIP benefits that Titan would be required to pay for plaintiff's care. Titan alleged that at the time of the accident plaintiff shared domicile in the home of his mother and stepfather and his father's home. Titan alleged that American Fellowship issued a no-fault policy of insurance to plaintiff's father. American Fellowship answered and raised several affirmative defenses, including statute of limitation, laches, waiver, estoppel, unclean hands and lack of notice.

Titan filed a motion for summary disposition. Titan alleged that after conducting the deposition of plaintiff and his parents on July 19, 2007, Titan learned that they had joint physical and legal custody of plaintiff and that he stayed with each parent on an established basis.

After conducting a hearing on December 12, 2007, the circuit court issued a written opinion. The court determined that insufficient evidence was presented to conclude as a matter of law plaintiff that shared domicile with his parents at the time of the accident. The court also dismissed American Fellowship's affirmative equitable defenses because Titan had a legal right to recovery pursuant to MCL 500.3115(2).

The circuit court conducted a one-day jury trial to determine whether plaintiff shared domicile with each parent at the time of the accident. The only witnesses were plaintiff and his natural parents. After a little over an hour, the jury returned a verdict finding that plaintiff shared residences with each parent at the time of the accident. On July 30, 2008, the court entered a final judgment. The court awarded plaintiff $500,000 "inclusive of all interest, costs and attorneys fees." The court also awarded Titan $250,000 "inclusive of all interest, costs and attorneys fees." The court noted that judgment represents only benefits accrued through July 14, 2008, and not future benefits. The court also indicated that Titan was entitled to 50 percent reimbursement of plaintiff's future benefits from American Fellowship.

I. Stipulations

A. Standard of Review

This Court reviews de novo a trial court's decision to grant or deny summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual support for a claim. When reviewing a motion under MCR 2.116(C)(10), a court must examine the documentary evidence presented and, draw all reasonable inferences in favor of the nonmoving party, and determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The nonmoving party has the burden of establishing through affidavits, depositions, admissions, or other documentary evidence that a genuine issue of disputed fact exists. *Id*. A question of fact exists when reasonable minds can differ on the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries* (*On Rehearing*), 441 Mich 379, 398-399; 491 NW2d 208 (1992). Only "the substantively admissible evidence actually proffered" may be considered. *Maiden*, 461 Mich at 121; see also MCR 2.116(G)(6). Summary disposition is properly granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 120.

B. Analysis

Titan first argues that the circuit court erred in concluding that the first or second stipulation precluded Titan from challenging whether plaintiff's "accidental bodily injury ar[ose] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." We disagree.

A stipulation is an agreement, admission or concession made in a judicial proceeding by the parties. *Eaton County Road Commissioners v Schultz*, 205 Mich App 371; 521 NW2d 847 (1994). Its purpose is generally to avoid delay, trouble and expense. *Id.* Stipulations differ in character. Some are mere admissions of fact while others embody all the essential characteristics of a contract. *Id*.

Although there were two stipulations in this case, the circuit court apparently, and properly, only relied on the first stipulation.[2]

In its written opinion, the trial court relied on paragraphs 1 and 3 of the first stipulation, which state that:

> 1. The sole issue in this case concerns whether the subject handicapped van at issue in this lawsuit was parked in such a way as to trigger an exception to the parked motor vehicle exclusion of the Michigan No-Fault Act found at MCL 500.3106(1).
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> * * *
>
> 3. The parties respectfully request the court to reach an opinion and issue an order concluding as a matter of law whether any of the parked vehicle exclusions found at MCL 500.3106 apply to this case.

Titan nonetheless argues that the first stipulation did not prevent the circuit court from considering whether the injury arose "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." Titan first claims that this stipulation was a stipulation of law.

A court is not bound by a parties' stipulation of law. *Kimmelman v Heather Downs Management Ltd*, 278 Mich App 569; 753 NW2d 265 (2008). This is because a court has inherent power to determine the law applicable to a case. *Kokx v Bylenga*, 241 Mich App 655; 617 NW2d 368 (2000). However, this rule does not support Titan's claim that a court cannot accept the parties' stipulation of law. It is well established that a party is bound by his own stipulations and may not later raise them as errors on appeal. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Ass'n*, 264 Mich App 523, 528-529; 695 NW2d 508 (2004) ("acquiesced to plaintiffs' right to sue by entering into a stipulation agreeing to the entry of a modified lake level order and, to that end, *specifying the issues to be decided at trial* and the mechanisms by which lake level determinations would be implemented.") (Emphasis added.); *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001) (defendants cannot challenge stipulation "to reinstate plaintiff's complaint expressly including plaintiff's claims for easement by reservation and implied easement of necessity."); *Weiss v Hodge (After Remand)*, 223 Mich App 620, 635-636; 567 NW2d 468 (1997) ("the parties here stipulated that the jury verdict form need not follow these statutes, and they waived any claim of violation of the tort reform act by using the shorter form.") Although Titan argues that parties cannot stipulate to a matter of law, "[w]here, as here, parties stipulate an arrangement that limits one party's rights to

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[2] As previously mentioned, in an order entered on September 22, 2004, stated the "[second stipulation]," dated July16, 2004, . . . be set aside and held naught." Black's Law Dictionary (6th ed) defines "vacate" as "[*t]o set aside*; to cancel or rescind. To render an act void; as, to vacate an entry of record, or a judgment." (Emphasis added). Thus, the second stipulation had no affect.

less than that which is otherwise required, that party may not later complain on appeal about this restriction." *Id*. Thus, the circuit court did not err in accepting Titan's first stipulation to narrow the disputed issues in the case.

Titan next argues that the language of this stipulation does not prevent the circuit court from considering whether the injury arose "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." Stipulations are a type of contract, and stipulated orders which are accepted by the trial court are generally subject to the rules of contract construction. *In re Nestorovski Estate*, 283 Mich App 177 (2009); *Phillips v Jordan*, 241 Mich App 17; 614 NW2d 183 (2000).

Titan specifically claims that circuit court voided the first stipulation because the court's September 22, 2004 order stated that "[t]he case will be placed back on this [c]ourt's trial docket as to all issues raised in the pleadings." However, while this language supports Titan's position, Titan simply cannot ignore that the September 22, 2004 order specifically addressed the "[second stipulation]," dated July 16, 2004." Had plaintiff and Titan intended to vacate the first stipulation, language identifying the first stipulation could readily have been included to vacate the first stipulation. Further, as the court noted, the first stipulation twice refers to MCL 500.3106 but does not mention MCL 500.3105.

In addition, below and on appeal, Titan concedes that plaintiff and Titan only entered into the first stipulation to "narrow the case to a single legal issue under § 3106(1)(a) in an attempt to bring the case before the Court of Appeals on an appeal of right." Titan attempts to explain that at the time the first stipulation was executed, there was confusion in regard to whether "satisfying an exception to the parked vehicle exclusion under § 3106 . . . obviate[s] the need to satisfy the threshold requirement that the injury arose our of the use of a motor vehicle as a motor vehicle."

However, we conclude that *Rice v Auto Club Ins Ass'n*, 252 Mich App 25; 651 NW2d 188 (2002), made extremely clear that:

> The starting point for any analysis is MCL 500.3105(1), which states that "[u]nder personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter."

Rice, decided in 2002, well before the first stipulation was entered into, clearly should have signaled that any issue in regard to a "bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions" would be addressed as a component of MCL 500.3105(1). At the least, counsel for Titan should have taken greater precaution and not entered into a stipulation that did not require plaintiff to establish both MCL 500.3105 and MCL 500.3106. Accordingly, the circuit court did not err in refusing to "consider other arguments under other provisions of the no-fault act," namely

whether the injury arose "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle."[3]

II. MCL 500.3106(1)(a)

A. Standard of Review

"[W]hether a motor vehicle "was parked in such a way as to cause unreasonable risk of the bodily injury which occurred" within the meaning of MCL 500.3106(1)(a) is an issue of statutory construction for the court." *Autry v Allstate Ins Co*, 130 Mich App 585, 591-592; 344 NW2d 588 (1983).

B. Analysis

Titan argues MCL 500.3106(2) "did not apply since any risk of plaintiff being injured by an out-of-control motorcycle was not a risk created by the parked motor vehicle." We agree.

Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. *Id*. The Legislature is presumed to have intended the meaning it plainly expressed. *Rowland v Washtenaw County Rd Comm*, 477 Mich 197, 219; 731 NW2d 41 (2007). In ascertaining legislative intent, this Court gives effect to every word, phrase, and clause in the statute. *Shinholster*, 471 Mich at 548-549. Courts must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Id*. Courts must avoid a construction that would render any part of a statute surplusage or nugatory. *Bageris v Brandon Twp*, 264 Mich App 156, 162; 691 NW2d 459 (2004). "The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended." *Shinholster*, 471 Mich at 549 (Citation omitted). If the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and we must enforce the statute as written. *Id*.

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[3] Further, this Court, in *Drake v Citizens*, 270 Mich App 22, 30; 715 NW2d 387 (2006), has since addressed this issue asserting that, "a cogent argument can be made that if any of the three parked-vehicle exceptions applies in a given case, the injury, by statutory mandate, does arise out of the ownership, operation, maintenance, or use of the parked vehicle as a motor vehicle; therefore, PIP benefits would be recoverable." In doing so, this Court recognized that *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214; 580 NW2d 424 (1998), *supra* controls the analysis of no-fault coverage in parked vehicle cases. In short, the *Drake* Court reluctantly held that *McKenzie* requires that plaintiffs establish an "accidental," "bodily," and "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle," MCL 500.3105, regardless whether any parked vehicle exception under MCL 500.3106 is met. Although the majority in *Drake, supra* disagreed with *McKenzie* and requested our Supreme Court clarify the parked-vehicle case analysis, our Supreme Court denied leave, 480 Mich 918, 740 NW2d (2007), and *McKenzie* remains binding law.

Here, the circuit court erred by not applying the plain language of the statute. Although the court's opinion parroted the language of MCL 500.3106(1)(a), finding "that the van was parked in such a way as to cause unreasonable risk of the injury which did occur," the court's opinion failed to explain how the van "caused" the unreasonable risk. Rather, the court's opinion suggests that MCL 500.3106(1)(a) is satisfied if a vehicle is simply parked unreasonably close to a known danger and someone is injured by that danger. Thus, the court apparently concluded that MCL 500.3106(1)(a) is satisfied if a vehicle is parked unreasonably close to a known danger and someone is injured by that danger.

However, MCL 500.3106(1)(a) requires that, "[t]he vehicle was parked in such a way as to *cause* unreasonable risk of the bodily injury which occurred." (Emphasis added.) As ceded in plaintiff's brief on appeal, "it is true that there was a risk that spectators would be hit by a runaway motorcycle. The risk was applied to people in the stands and to people parked in other areas around the track." In other words, the risk was present before the van was parked. If the risk was present before the van arrived, it cannot be maintained that the van caused the risk of harm. Plaintiff further argues that "it was the manner, location and fashion on which the Duits' van was parked that elevated a normal risk associated with the event to an unreasonable risk." We agree that, anecdotally, the risk of being struck by an errant motorcycle increases the closer the van parks to the track. However, the van did not elevate the risk of being struck by an errant motorcycle by *parking* near the track. At best, the van elevated the risk of being struck by an errant motorcycle by *driving* closer to the track. The manner in which the van was parked did not cause the risk of being hit by an errant motorcycle.

Here, the circuit court erred in interpreting MCL 500.3106(1)(a) as being satisfied if a vehicle is parked unreasonably close to a known danger and someone is injured by that danger. This interpretation would unduly expand MCL 500.3106(1)(a) to include situations in which the parked vehicle did not cause the risk of harm. For instance, under plaintiff's interpretation, MCL 500.3106(1)(a) could arguably be satisfied if a vehicle is parked unreasonably close to a known crime area and a passenger steps outside and becomes the victim of a crime. Further, MCL 500.3106(1)(a) could be satisfied in multitude of hypothetical situations where a vehicle is parked unreasonably close to a known natural danger, (i.e., geysers, tides, wildfire, wildlife) and a passenger steps outside and is injured by that natural danger. In these situations, the manner in which the car is parked simply does not cause the risk of harm. The court erred in granting plaintiff summary disposition.

Because of the above disposition, we need not address the issue raised in Docket No. 287252.

We reverse.

/s/ Kathleen Jansen
/s/ Brian K. Zahra