

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL FLOWERS,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED

July 20, 2010

No. 291958

Oakland Circuit Court

LC No. 2007-087977-NF

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The facts in this no-fault insurance case are not in dispute. On the day plaintiff was injured, he was visiting the home of friends for a party. He did not own or insure any vehicle at the time, and thus did not have his own no-fault policy. The party was held at a residence on Lakepointe Drive, an unpaved, private road¹ in Hamburg Township. While at the party, plaintiff went for a ride with another partygoer, Charles Thompson, on a two-seat all-terrain vehicle known as a "Rhino." Thompson lost control of the vehicle, and plaintiff was badly injured as a result.

Although Lakepointe Drive is considered a private road, it is not closed off or gated, and the public is free to travel on it. The road is maintained pursuant to Hamburg Township's creation of a special assessment district (SAD), under which the Township contracts with a private company for grading of the road and gravel for fill, and collects the money to pay the contractor through a special assessment on the affected property owners' winter tax bill. The Township does not itself maintain this road or any other road; the Township owns no road-maintenance equipment and does not have a road commission. Further, Livingston County's Road Commission does not maintain private roads.

¹ Plaintiff states in his appellate brief that Lakepointe Drive "is a private road[.]"

Plaintiff filed a claim for no-fault personal injury protection (PIP) benefits against defendant, Thompson's mother's automobile insurer. When the claim was denied, plaintiff filed suit. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that there was no coverage because Lakepointe Drive was not publicly maintained and thus was not a "highway" for purposes of Michigan's no-fault act, MCL 500.3101 *et seq.* After discovery, the trial court agreed, finding that "the Township's actions here are of a capitalist nature" and that the road was therefore not publicly maintained and not a "highway."

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is a question of law that is also considered de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

Under the no-fault act, benefits are owing only when an accident involves a motor vehicle. MCL 500.3105(1). The act's definition of "motor vehicle" requires that the vehicle either be designed for operation on a public highway or be operated on a public highway. MCL 500.3101(2)(e). The Rhino was not designed for safe operation on a public highway; it lacked taillights, a registration plate, and brake lights, among other required equipment. Plaintiff agrees, stating that the central issue, therefore, is whether Lakepointe Drive is considered a "highway." There is no definition of "public highway" in the no-fault act, but MCL 500.3101(2)(b) states that the definition of "highway" to be applied is that provided in the Michigan Vehicle Code at MCL 257.20. That statute requires a road to be both open to use by the public and publicly maintained.

There is no evidence that Lakepointe Drive has ever been maintained by a public entity. The Township has no jurisdiction over private roads. Instead, the property owners decide whether to request a SAD, the property owners pay for the maintenance of the road, and a private contractor does the work. Defendant provided depositions of the former Township clerk and the current Township supervisor, both of whom explained that maintenance of private roads is up to the individual property holders of land adjacent to the roads. The funds collected from those property owners are used to pay for the private maintenance of the road; no other funds are used, and the taxes collected under the SAD are not used for any other purpose. The maintenance is not publicly funded, public equipment is not used, and public employees do not do the work. In addition, under the express terms of the maintenance contract, the contractor is not an agent or employee of the Township, but an independent contractor.

Moreover, the cases plaintiff relied on below are distinguishable and thus do not support his argument. In one, *Allstate Ins Co v Dep't of Management & Budget*, 259 Mich App 705, 709 n 3; 675 NW2d 857 (2003), the parties stipulated that the road was a public highway. In the other, *Morris v Allstate Ins Co*, 230 Mich App 361, 366; 584 NW2d 340 (1998), the county road commission did occasional maintenance and repair of the road.

In this case, while there is public *involvement* in the process, there is no public money, personnel, or equipment involved in maintaining Lakepointe Drive. Accordingly, the road is not publicly maintained, and the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Donald S. Owens