

STATE OF MICHIGAN
COURT OF APPEALS

COMMUNITY ASSOCIATION
UNDERWRITERS OF AMERICA, INC. and
WINDMILL POINTE CONDOMINIUM
ASSOCIATION,

UNPUBLISHED
June 28, 2012

Plaintiffs,

and

SAFECO INSURANCE COMPANY OF
ILLINOIS,

Plaintiff-Appellant,

v

No. 303544
Macomb Circuit Court
LC No. 2009-004988-NF

SAFECO INSURANCE COMPANY OF
AMERICA, STERLING HEIGHTS POLICE
DEPARTMENT, SUBURBAN MOBILITY
AUTHORITY FOR REGIONAL TRANSPORT,
CLECCHAY C. ALTALET, and RONNIE C.
LOCKETT,

Defendants,

and

CITY OF STERLING HEIGHTS and ST. PAUL
FIRE AND MARINE INSURANCE COMPANY,

Defendants-Appellees.

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

GLEICHER, P.J. (*concurring in part and dissenting in part*).

The question presented is whether a SMART bus and two Sterling Heights police vehicles were “involved in the accident” that destroyed two condominiums. The answer to the question is found in *Turner v Auto Club Ins Ass’n*, 448 Mich 22; 528 NW2d 681 (1995), a case presenting strikingly similar facts. *Turner* instructs that no-fault liability attaches to any vehicle that makes an “active contribution” to a property loss. *Id.* at 41. The majority’s analysis centers

on causation rather than “active contribution,” concluding that the car fleeing from the police “broke the causal link” with the police vehicles and the SMART bus when it resumed traveling after crashing into the bus. *Ante* at 8-9. But *Turner* teaches that the “active use” of a vehicle determines its involvement in an accident, not whether the vehicle directly or proximately caused the loss. Here, the police vehicles played an active role throughout the sequence of mishaps that led to the condominium fire. Consequently, I respectfully dissent from the majority’s holding that Sterling Heights bears no liability for the fire loss.

The events leading to the property loss at the Windmill Pointe Condominium complex began with Ronnie Lockett’s unsuccessful effort to negotiate a fraudulent check. An employee of a Sterling Heights furniture store reported to police that “a suspicious person [was] attempting to pass a bad check.” Sterling Heights police officer Kevin Deroy drove to the store and approached Lockett. Lockett spotted Deroy, ignored Deroy’s command to stop, and ran outside. Lockett then jumped into his red Dodge Magnum and hurriedly drove away, with Deroy in hot pursuit. Lockett fled northbound on Schoenherr, then quickly changed direction. Deroy followed. Another officer, Dennis Duncan, joined in the chase. Both police vehicles drove at high rates of speed with lights flashing and sirens blaring.

Lockett made another elusive maneuver by using a turn-around to abruptly change direction, driving the wrong-way on Schoenherr before suddenly ducking down a subdivision side-street. The pursuing police officers lost sight of Lockett’s vehicle in the subdivision, and a dispatcher instructed them to discontinue the chase. Both officers slowed their vehicles and turned off their lights and sirens, but continued to hunt for Lockett. Duncan emerged from the subdivision’s warren of streets at Hayes Road in Clinton Township. Approximately 100 feet from his vantage point, Duncan spotted a SMART bus “still smoking with debris on the ground, flashers on,” and concluded that “our suspect cracked it up[.]” Deroy arrived at the bus accident scene seconds behind Duncan, and paused for less than a minute, without exiting his vehicle, before resuming the search for Lockett. Duncan recalled that when he came upon the bus accident, he “could see the red Dodge now smoking turn[] left, east, onto Seventeen Mile Road.” The Dodge was “smoking profusely” from its front end.

Within moments of encountering the bus crash, both officers determined that Lockett likely had fled to an area near Seventeen Mile Road and Hayes. Deroy recalled seeing a “big plume of smoke” in that direction and “figured there might be another accident there.” Deroy followed the smoke to the Windmill Pointe complex, where Lockett had parked his Dodge in a garage. The officers found Lockett cowering in the garage, which was rapidly filling with smoke. After Lockett’s uneventful arrest, fire consumed the garage and two nearby condominium units.

In my view, Sterling Heights bears liability pursuant to MCL 500.3125 for the Windmill Pointe condominium fire because the police vehicles actively contributed to the conflagration. I find *Turner* not only instructive, but dispositive.

Like this case, *Turner* stemmed from a police chase that culminated in a building fire. In *Turner*, a Ferndale police officer attempted to pull over a stolen car. The car’s driver ignored the officer’s direction and sped away. *Id.* at 25. When the thief reached the intersection of Woodward and Nine Mile Road, the police officer slowed down, “hoping to deter the stolen

vehicle from disregarding the red light.” *Id.* Yet, the driver ignored the traffic signal and collided with a pickup truck. The stolen car then hit a truck that split in two on impact. *Id.* at 25-26. “The rear portion of the truck smashed into a nearby building,” the truck’s gas tank exploded, and the resulting fire destroyed the building. *Id.* at 26. “The police vehicle did not collide with any of the other vehicles, nor did it incur any damage.” *Id.*

The Supreme Court held in *Turner* that both the police vehicle and the stolen car were “involved in the accident.” As defined by the Supreme Court, the pivotal inquiry is whether a vehicle “actively, as opposed to passively, contribute[s] to the accident.” *Id.* at 39. In *Turner*, both the police vehicle and the thief’s car qualified as active participants in the property loss. The Supreme Court explained: “The thief was using the stolen vehicle as a motor vehicle at the time of the accident, and this use directly led to the collision with the truck, and caused it to crash into and damage the building. Hence, the use of the stolen vehicle made an ‘active contribution’ to the accident.” *Id.* at 42. More pertinent is the Supreme Court’s analysis of the police vehicle’s liability:

Likewise, the police officer was using his vehicle as a motor vehicle while he pursued the stolen vehicle. This active use perpetuated the stolen vehicle’s flight, which, in turn, resulted in the collision with the other cars and the damage to the nearby property. We consider it to be unimportant that seconds before the multivehicle collision, the police vehicle “backed off and allowed more room between the patrol car and the susp[ect] veh[icle]” in an effort to deter the stolen vehicle from running the red light. Before slowing down, the police vehicle had actively pursued the stolen vehicle, and this pursuit, in part, obviously prompted the stolen vehicle to ignore the red light and collide with the other vehicles. Those collisions directly resulted in the damage to the property. Thus, the use of the police vehicle as a motor vehicle had an active link with the damage, making it “involved in the accident” for purposes of [MCL 500.3125], and notwithstanding the fact that the same use could not be said to have given rise to the damage for purposes of [MCL 500.3121(1)]. [*Id.* (first two alterations in original).]

Here, the Sterling Heights police officers actively used their vehicles to pursue Lockett. As in *Turner*, “this active use perpetuated . . . [Lockett’s flight] . . . which in turn, resulted in the collision” with the SMART bus. The impact with the bus damaged Lockett’s car, creating a time bomb that could ignite at any moment. In *Turner*, the bisected truck played the same role.¹ Here, the time bomb came to rest in the garage where Lockett sought shelter from the pursuing police. Lockett fled to the condominium garage not because he intended to repair his car there, but to avoid capture. In this case as in *Turner*, police pursuit of a fleeing vehicle triggered a series of collisions that culminated in disaster. “Thus, the use of the police vehicle as a motor vehicle had an active link with the damage, making it ‘involved in the accident’ for purposes of [MCL 500.3125.]” *Id.* at 43.

¹ The no-fault insurer for the truck conceded liability. *Id.* at 26.

I respectfully reject the majority's conclusion that because Lockett's car "came to a complete halt after the collision with the SMART bus," Lockett "broke the causal link between . . . the involvement of the police vehicles up to that point." *Ante* at 8-9.² That tort law might regard Lockett's decision to hole up in the garage an intervening cause of the fire is of no consequence under *Turner*. Indeed, *Turner* emphasizes that fault, the core concept of tort law, is not "a relevant consideration in the determination whether a vehicle is 'involved in an accident.'" *Turner*, 448 Mich at 39. The Supreme Court could have defined "involved in the accident" simply by referencing proximate causation principles. Notably, it elected not to do so. The relevant inquiry is whether the police cars actively contributed to the fire, not whether they proximately caused it. The police pursuit of Lockett, either at high speeds or low, with or without a brief intervening stop to view the bus crash, establishes active contribution under *Turner*.

I also respectfully disagree with the majority's conclusion that the police vehicles' involvement in the events leading to the fire qualifies as "remote" or "tenuous." *Ante* at 9. Guided by *Turner*, I consider it "unimportant" that seconds or minutes before Lockett's car reached the garage the police vehicles had "'backed off and allowed more room between the patrol car and the susp[ect] veh[icle]' in an effort to deter the stolen vehicle[.]" *Turner*, 448 Mich at 42. Before slowing down in the subdivision and at the bus crash site, the police cars had actively pursued Lockett. This pursuit prompted Lockett to continue his flight. Regardless whether some brief time or short distance separated Lockett's vehicle from the police cars when Lockett drove into the garage, the police cars "perpetuated" his flight both before and after the bus crash. And the vehicle damage that ignited the fire occurred when Lockett hit the bus while trying to evade the police. See *id.* Accordingly, I would hold that Sterling Heights must share in payment of the property protection benefits.

Employing the same analysis, I concur with the majority that the SMART bus played only a passive role in the condominium fire. Indeed, the SMART bus is linked to the events in this case only through the application of a "but for" causation analysis. "[A] passive role is not enough to constitute involvement under *Turner*." *Auto Club Ins Ass'n v State Auto Mut Ins Co*, 258 Mich App 328, 332; 671 NW2d 132 (2003). In contrast, the police cars engaged in activity

² In support of this proposition, the majority cites *Wright v League Gen Ins Co*, 167 Mich App 238, 246; 421 NW2d 647 (1988). *Wright* was decided before *Turner* and involved personal protection injury benefits rather than property protection benefits. Nevertheless, this Court held in *Wright* that an uninsured, stalled car constituted an "active link" in a chain of events that began when the stalled car's driver began pushing the car. *Id.* at 246. An oil tanker hit the rear of the car, knocking the driver to the ground. The oil tanker then ran over the driver's leg. *Id.* This Court found the stalled vehicle to have been involved in the accident. Nothing in *Wright* supports that the Sterling Heights police vehicles were merely passive participants in the events leading up to the fire.

that propelled Lockett's desperate flight. Consequently I would affirm the trial court's grant of summary disposition in favor of St. Paul, but would reverse as to Sterling Heights.

/s/ Elizabeth L. Gleicher