

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL LAWRENCE,

Plaintiff-Appellant,

v

MEEMIC INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

August 2, 2012

No. 305385

Wayne Circuit Court

LC No. 10-010372-NF

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this action for no-fault benefits sought where plaintiff was injured when he tripped on an uneven slab of concrete as he approached his parked car. Because no exception to the exclusion of no-fault benefits for injuries arising out of the ownership, operation, maintenance, or use of a parked vehicle applied, we affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court's task in reviewing a motion brought pursuant to MCR 2.116(C)(10) is to consider the pleadings, affidavits, and other documentary evidence, in a light most favorable to the nonmovant. *Cedroni Assoc v Tomblinson, Harburn Assoc*, 290 Mich App 577, 584; 802 NW2d 682 (2010). Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."

No-fault personal protection insurance benefits for injuries arising out of the ownership, operation, maintenance, or use of a motor vehicle are not available for injuries involving a parked vehicle unless one of the exceptions set forth in MCL 500.3106(1) applies. *Frazier v Allstate Ins Co*, 490 Mich 381, 384-385; 808 NW2d 450 (2011). Plaintiff relies on the exceptions in § 3106(1)(b) and (c), which provide, in pertinent part:

(b) . . . the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.

(c) . . . the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

In this matter, section 3106(1)(b) does not apply because the undisputed evidence demonstrates that plaintiff did not come into contact “with equipment permanently mounted on the vehicle.” Plaintiff’s deposition testimony indicates that he tripped on an uneven slab of concrete and fell against the back of his car, near the taillight. “[T]he constituent parts of ‘the vehicle’ itself are not ‘equipment.’” *Frazier*, 490 Mich at 385. Plaintiff’s injury was also not the “direct result of physical contact with . . . property being lifted onto or lowered from the vehicle in the loading . . . process.” See *Perez v Farmers Ins Exch*, 225 Mich App 731, 736; 571 NW2d 770 (1997), and *Arnold v Auto-Owners Ins Co*, 84 Mich App 75; 269 NW2d 311 (1978). An injury that occurs while carrying a box to a vehicle is not a loading accident within the ambit of § 3106(1)(b). *Block v Citizens Ins Co of America*, 111 Mich App 106, 109; 314 NW2d 536 (1981).

Section 3106(1)(c) also does not apply. Plaintiff did not sustain injuries while entering into the vehicle. He tripped as he was walking toward the vehicle, lunged forward, hit his shoulder on the rear of the vehicle, and fell to the concrete. The deposition testimony on which plaintiff relies in support of his argument improperly combines testimony describing distinct events to inaccurately describe what is presented as a single event. Properly viewed, plaintiff’s deposition testimony clearly indicates that his injury was not sustained while occupying, entering into, or alighting from the vehicle. His injury occurred as he was approaching the car.

Accordingly, the trial court did not err in finding that there was no genuine issue of material fact regarding the applicability of an exception to the exclusion of no-fault benefits for injuries arising out of the ownership, operation, maintenance, or use of a parked vehicle.

Affirmed.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly