STATE OF MICHIGAN

COURT OF APPEALS

THE DETROIT MEDICAL CENTER,

Plaintiff-Appellee,

and

SHAHEERAH ENGLISH,

Intervening Plaintiff-Appellee,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee,

and

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

UNPUBLISHED
December 18, 2012

No. 306036
Wayne Circuit Court
LC No. 09-028355-NF

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Defendant, Citizens Insurance Company of America (defendant Citizens), appeals by right an order dismissing plaintiff, Shaheerah English's, and plaintiff, Detroit Medical Center's, claims in this no-fault insurance action. Specifically, defendant Citizens appeals the trial court's grant of English's motion for partial summary disposition; the trial court concluded that defendant Citizens was responsible for payment of English's insurance benefits. Additionally, defendant Citizens appeals the trial court's order denying its motion for leave to file a cross-claim against defendant, Titan Insurance Company (defendant Titan) on May 18, 2011. For the reasons set forth below, we affirm.

I. BASIC FACTS

On August 18, 2009, English borrowed a Ford Windstar that belonged to her sons' grandfather. Neither English nor the owner of the Windstar was insured. After picking her children up from daycare, she parked the Windstar on the street. English entered the Windstar to retrieve her infant son, who was seated inside of the car. She "was in the process of stepping [backward] out of the [Windstar]," leading with her left leg while holding her son in her arms when the accident occurred. She "stepped [her left] foot out" of the Windstar and remembered "the impact" of the sliding door hitting her back. A car struck the Windstar and threw her from the Windstar. After she was thrown from her vehicle, English landed on her back, and the vehicle that hit the Windstar landed on her body. Witnesses freed English by lifting the vehicle. English suffered significant injuries as a result of the accident.

II. SUMMARY DISPOSITION

Defendant Citizens first argues that the trial court erred when it granted English's partial summary disposition motion and determined, as a matter of law, that English was not an "occupant" of a motor vehicle, and that defendant Citizens was therefore responsible for payment of English's insurance benefits. We disagree.

Appellate courts review "the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Id*. at 120 (citations omitted).]

A genuine issue of material fact "exists when the record leaves open an issue on which reasonable minds might differ." *Jimkoski v Shupe*, 282 Mich App 1, 4-5; 763 NW2d 1 (2008) (citations omitted). "This Court is liberal in finding genuine issues of material fact." *Id.* at 5 (citations omitted).

Additionally:

> The primary goal when construing a statute is to ascertain and give effect to the intent of the Legislature. When determining the Legislature's intent, this Court must first look to the statute's specific language. Judicial construction is unnecessary if the meaning of the language is clear. However, judicial construction is appropriate when reasonable minds can differ regarding the statute's meaning. Terms contained in the no-fault act are read in the light of its legislative history and in the context of the no-fault act as a whole. Further, courts should not abandon common sense when construing a statute. Given the remedial nature of the no-fault act, courts must liberally construe its provisions in

> favor of the persons who are its intended beneficiaries. [*Frierson v West American Ins, Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004) (citations and quotations omitted).]

The dispositive issue in this case is whether MCL 500.3114 or 500.3115 applies. The provisions of MCL 500.3114 are triggered by suffering an accidental bodily injury while an "occupant" of a vehicle. The provisions of MCL 500.3115 are triggered by suffering an accidental bodily injury while a non-occupant of a vehicle. If English was a non-occupant, then defendant Citizens is responsible for paying English's insurance benefits. Conversely, if English was an occupant of the vehicle, the owner of the Windstar's insurance will be responsible for payment of English's insurance benefits pursuant to MCL 500.3114. However, because it is undisputed that the neither the owner of the Windstar nor English insured the vehicle, if MCL 500.3114 applies, defendant Titan (the assigned insurer by the Assigned Claims Facility) is responsible for English's injuries because "no personal protection insurance is applicable to the injury." MCL 500.3172.

In relevant part, MCL 500.3114 addresses priority issues for "occupants" of vehicles and states:

> . . . a person suffering accidental bodily injury arising from a motor vehicle accident while an *occupant* of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied [MCL 500.3114(4) (emphasis added).]

Additionally, MCL 500.3115 addresses priority issues for non-occupants of vehicles and states, in relevant part:

> . . . a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.
>
> (b) Insurers of operators of motor vehicles involved in the accident [MCL 500.3115(1)].

Defendant Citizens argues that the trial court erred when it determined that English was a non-occupant of the Windstar at the time of her "accidental bodily injuries." The no-fault act does not define the word "occupant." However, in discussing the meaning of "occupant," the Supreme Court has explained that "the ordinary definition of 'occupant'" should be applied in no-fault cases. *Rednour v Hastings Mut Ins Co*, 468 Mich 241, 255; 661 NW2d 562 (2003). In *Rednour*, the Court cited *Rohlman v Hawkeye-Security Ins Co (Rohlman I)*, 442 Mich 520, 531-532; 502 NW2d 310 (1993), and discussed the meaning of "occupant" as the term is used in other sections of the no-fault act. *Rednour*, 468 Mich at 254-255. Specifically, the Supreme

Court cited *Rohlman I*'s discussion of MCL 500.3111, which governs accidents that occur outside of Michigan. *Id.* at 254. The *Rohlman I* Court explained that "'[t]he Legislature expressly recognized that 'entering into' and 'alighting from' [a vehicle] are acts separate from 'occupying' a vehicle . . . . Section 3111 does not include 'entering into' or 'alighting from' the vehicle as acts that would trigger personal protection benefits for an out-of-state accident.'" *Rohlman I*, 442 Mich at 531. Specifically, the *Rohlman I* Court referred to MCL 500.3106 which provides protection to persons who are injured in parked vehicles involved in auto accidents. In order to qualify for personal protection benefits under MCL 500.3106, a person must be injured while "occupying, entering into, or alighting from the vehicle." Ultimately, the Supreme Court in *Rohlman I* concluded that "'[b]y giving the term occupant its primary and generally understood meaning coupled with the above statutory reference [in MCL 500.3106], we conclude that the plaintiff was not an occupant . . . because he was not physically inside the [vehicle] when the accident occurred . . . .'" *Rohlman I*, 442 Mich at 520, 531-532. In *Rednour*, the Supreme Court specifically stated that "[p]hysical contact by itself does not, however, establish that a person is 'upon' a vehicle such that the person is 'occupying' the vehicle." *Id.* at 249.

This Court has also discussed the term "occupant" in the no-fault act. *Farm Bureau Mut Ins Co v MIC General Ins Corp*, 193 Mich App 317, 324; 483 NW2d 466 (1992).[1] This Court, in *Farm Bureau*, explained that "[t]he primary and generally understood meaning of the term 'occupant' is best summarized by the commonly used policy definition of 'in or upon' the vehicle. We therefore apply the 'in or upon' definition to the no-fault statutory term 'occupant.'" *Id.* This Court concluded that a person who was "transported on [the] hood [of a vehicle] for several blocks" was an "occupant" under the no-fault act because he was "upon" the vehicle. *Id.*

Collectively, these cases stand for the proposition that an "occupant" is a person inside or upon a vehicle. Additionally, these cases, and MCL 500.3106, establish that an "occupant" of a vehicle is different from a person who is "entering into" or "alighting from" a vehicle.

Here, the following facts are not in dispute: English went to the Ford Windstar to retrieve her infant son. She "was in the process of stepping out of the [Windstar]," her left leg out of the vehicle, her right leg inside of the vehicle, and her son in her hands. English stepped out of the Windstar with her left leg, and she remembered pivoting. In fact, she "stepped [her] foot out" of the Windstar and remembered "the impact" of the sliding door hitting her back. After she was thrown from the vehicle, English landed on her back, took a deep breath, and then the vehicle that hit the Windstar landed on her body.

Defendant Citizens urges that we analyze the accident narrowly and focus on the moment when English's right foot was still in the Windstar as she exited the vehicle. Defendant Citizens focuses on the exact moment when the vehicle hit the Windstar and the sliding van door hit

[1] In another case, this Court examined MCL 500.3114 and determined that "[a] person is not an occupant of a vehicle . . . when he is standing outside it." *Auto Club Ins Ass'n v Michigan Mut Ins Co*, 197 Mich App 275; 494 NW2d 822 (1992).

English. English had her right foot still in the Windstar and she was struck by the sliding van door upon impact; therefore, defendant Citizens argues that English was an "occupant" of the vehicle, and accordingly that defendant Titan is responsible for her injuries under MCL 500.3114 and 500.3172. Conversely, defendant Titan argues that the "accidental bodily injuries" English suffered arose when she was on the ground outside of the Windstar, and the vehicle that hit the Windstar landed on her body. Defendant Titan claims that English suffered no injuries at the moment the sliding door hit her and ejected her from the Windstar; instead, English's injuries arose from being crushed by the vehicle that hit the Windstar. Defendant Titan thus argues that because English was not injured until she was completely outside of the Windstar, she was a non-occupant.

We agree with defendant Titan. We are persuaded by the fact that English was alighting from the vehicle and that at the time of the impact between the Windstar and the vehicle that crashed into it, English was hit in the back by the sliding van door. If English had actually been an "occupant" of the Windstar, the door would not have hit her in the back; rather, the door would have closed her inside the vehicle. Based on these undisputed facts, we conclude that English was not an "occupant" as a matter of law. Thus, MCL 300.115 applies, and defendant Citizens is responsible for paying English's benefits. Accordingly, the trial court was correct in concluding that Citizens was responsible for English's benefits because English was not an "occupant" of the Windstar at the time of the accident.

II. CROSS-CLAIM

Defendant Citizens next argues that the trial court erred when it denied defendant Citizens' motion for leave to file a cross-claim against defendant Titan. Specifically, defendant Citizens argues that it was improper for the trial court, when denying defendant Citizens' motion, to rely on the fact that that it previously ruled defendant Citizens was liable for the payment of benefits to English. In particular, defendant Citizens argues that the trial court abused its discretion when it determined that granting defendant Citizens's motion would be futile. We disagree.

MCR 2.203(E) provides that a cross-claim must be filed with the answer or as an amendment. Decisions regarding a motion to amend pleadings are reviewed on appeal for an abuse of discretion. *Doyle v Hutzel Hospital*, 241 Mich App 206, 212; 615 NW2d 759 (2000) (citations omitted). A trial court abuses its discretion when a motion to amend is denied on the basis of futility when the basis for the court's decision that the motion was futile is reversed by this Court. *Id.* at 220-221. "An abuse of discretion occurs when the decision [of the trial court] results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006) (citations omitted). "[M]ore than one reasonable and principled outcome" may exist in a case. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006) (citations and quotations omitted). Thus, "[w]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment." *Id.* (citations and quotations omitted).

The trial court did not abuse its discretion when it denied defendant Citizens's motion for leave to file a cross-claim against defendant Titan. Under MCR 2.118(A)(2), leave to amend pleadings should be "freely given when justice so requires."

Here, however, because the trial court had already concluded that defendant Citizens was the insurer responsible for paying English's insurance benefits, any motion to bring a claim against defendant Titan for payment of insurance benefits was futile. The trial court selected a principled outcome when it decided defendant Citizens's motion. Thus, the trial court did not abuse its discretion.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Donald S. Owens
/s/ Christopher M. Murray