

STATE OF MICHIGAN
COURT OF APPEALS

LINDSEY R. GRAY,
Plaintiff-Appellant,

FOR PUBLICATION
December 6, 2012
9:05 a.m.

v

GARY A. CHROSTOWSKI,
Defendant-Appellee.

No. 303536
Genesee Circuit Court
LC No. 10-094302-NO

Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting defendant’s motion for partial summary disposition pursuant to MCR 2.116(C)(10). The trial court granted defendant’s motion after concluding that plaintiff’s cause of action was barred under MCL 500.3135(2)(c), a subsection of the no-fault act, because plaintiff’s vehicle was uninsured when defendant is alleged to have intentionally driven his vehicle into plaintiff’s vehicle causing an accident and damages. For the reasons set forth in this opinion, we reverse the trial court’s order and remand for further proceedings consistent with this opinion.

I. FACTS & PROCEDURAL HISTORY

On August 19, 2010, plaintiff filed a complaint seeking to recover non-economic damages¹ arising from an alleged incident of “road rage.” Specifically, plaintiff alleged that on January 2, 2009, she was driving a Honda Civic northbound on the inside lane of US-23, a two-lane highway located in Livingston County, when defendant quickly approached her vehicle and began to tailgate her. Plaintiff claimed that defendant drove his vehicle into the outside lane and drove parallel to her vehicle and glared angrily at her. Plaintiff alleged that defendant then, “intentionally turned his vehicle directly into the path of plaintiff’s vehicle,” and “purposefully” collided with plaintiff’s vehicle causing her to lose control of the vehicle and violently crash into the median. Plaintiff claimed that defendant “intentionally and purposefully” caused her harm. In an affidavit, plaintiff claimed that at the time of the accident, defendant “appeared to be extremely angry and highly agitated” and he made an “aggressive, threatening gesture” at

¹ The parties stipulated to dismiss plaintiff’s claims for economic damages.

plaintiff. According to plaintiff, defendant then “purposefully turned his vehicle into my lane, as if to bump me out of his way” and defendant’s vehicle struck the right side of plaintiff’s vehicle.

Michael Fontaine, an eyewitness, averred in an affidavit that he was driving on US-23 on the day of the incident when he saw the driver of a black Kia Spectra operating his vehicle at a high rate of speed in an “extremely hazardous manner.” Fontaine stated that the Kia swerved in front of his vehicle and “over-compensated by turning sharply to the left.” According to Fontaine, the Kia then collided with a Honda Civic causing the Civic to violently crash into the median. After the accident, Fontaine observed the driver of the Kia stop his vehicle and look in the direction of the Civic before fleeing the scene. Another witness, Ty Hovey, averred in an affidavit that he observed the driver of a black Kia Spectra pull into a Mobil gas station at or about the time of the accident on January 2, 2009. Hovey averred that the Kia had a flat tire and the driver of the vehicle asked him for a ride to Fenton. Hovey agreed, and stated that during the ride to Fenton, he noticed the man smelled of alcohol, had glassy eyes and slurred speech, and was not fully coherent.

After plaintiff admitted in a response to an interrogatory that her vehicle was uninsured at the time of the incident, defendant moved for partial summary disposition. Resolution of defendant’s motion turned on the trial court’s application of MCL 500.3101(1) and MCL 500.3135, subsections of the no-fault act, MCL 500.3101 *et seq.* Specifically, MCL 500.3101(1) requires motorists to maintain no-fault insurance coverage on their vehicles whenever the vehicle is “driven or moved upon a highway.” MCL 500.3135 provides motorists a cause of action in tort for the recovery of non-economic damages arising from an automobile accident as follows:

(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after July 26, 1996, all of the following apply:

* * *

(c) Damages shall not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred *and did not have in effect for that motor vehicle the security required by section [MCL 500.3101] at the time the injury occurred.*

(3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by [MCL 500.3101] was in effect is abolished *except as to:*

(a) Intentionally caused harm to persons or property . . .

(b) Damages for noneconomic loss as provided and limited in subsections (1) and (2). [Emphasis added.]

Defendant argued that because plaintiff did not maintain insurance on her vehicle at the time of the accident as required under MCL 500.3101, plaintiff was precluded from recovering non-economic damages pursuant to MCL 500.3135(2)(c). Plaintiff responded, arguing that defendant did not have any tort immunity under the no-fault act because defendant intentionally caused her harm. Plaintiff argued that, although the no-fault act abolished tort liability in general, pursuant to MCL 500.3135(3)(a), the no-fault act did not abolish tort liability for damages arising from “intentionally caused harm to persons or property.” Plaintiff claimed that her cause of action did not arise under the no-fault act, but rather involved an intentional tort—assault and battery; therefore, MCL 500.3135(2)(c) did not apply to preclude her recovery.

Following a hearing where both parties reasserted their arguments, the trial court granted defendant’s motion for partial summary disposition. The trial court held that plaintiff’s failure to maintain insurance coverage for her vehicle precluded her recovery of non-economic damages under MCL 500.3135(2)(c). The court concluded, “you can’t bring an action - - any type of action on a motor vehicle . . . without having a security in place.” This appeal ensued.

II. STANDARD OF REVIEW

On appeal, plaintiff contends that the trial court erred in holding that her cause of action was barred under MCL 500.3135(2)(c) and erred in granting defendant’s motion for partial summary disposition on that basis.

We review de novo a trial court’s ruling on a motion for summary disposition 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). In reviewing a motion under MCR 2.116(C)(10), we review the evidence submitted by the parties in a light most favorable to the non-moving party to determine whether there is a genuine issue of material fact. *Id.* at 120. “A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ.” *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006). Summary disposition is appropriate “where the proffered evidence fails to establish a genuine issue regarding any material fact, [and] the moving party is entitled to judgment as a matter of law.” *Maiden*, 461 Mich at 119-120.

This case requires that we interpret and apply the applicable provisions of the no-fault act. The construction and application of a statute involves questions of law that we review de novo. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011). “The primary goal of statutory interpretation is to give effect to the Legislature’s intent, focusing first on the statute’s plain language.” *Id.* at 296. “Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning.” *Driver v Naini*, 490 Mich 239, 247; 802 NW2d 311 (2011). “When the language is clear and unambiguous, we will apply the statute as written and judicial construction is not permitted.” *Id.*

III. ANALYSIS

Apart from certain enumerated exceptions, the no-fault act “abolished tort liability for harm caused while owning, maintaining, or using a motor vehicle in Michigan.” *American Alternative Ins Co v York*, 470 Mich 28, 30; 679 NW2d 306 (2004). However, relevant to this

case, the Legislature included two exceptions to the broad grant of immunity that allow an injured motorist to recover non-economic damages arising from the use, operation, or maintenance of an automobile. See *id.* at 30-32. In particular MCL 500.3135(1) provides a “threshold exception” to tort immunity in relevant part as follows:

(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

In addition to the threshold exception, MCL 500.3135(3) provides in relevant part as follows:

(3) *Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by . . . [MCL 500.3101] was in effect is abolished except as to:*

(a) *Intentionally caused harm to persons or property*

(b) Damages for noneconomic loss as provided and limited in subsections (1) and (2). [Emphasis added.]

Although the Legislature included both the threshold exception and the intentional-act exception to general tort immunity in MCL 500.3135, subsection (2) of that statute precludes an uninsured motorist from recovering non-economic damages in relevant part as follows:

(2) For a cause of action for damages pursuant to subsection (1) filed on or after July 26, 1996, all of the following apply:

* * *

(c) Damages shall not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by [MCL 500.3101] at the time the injury occurred.

The scope of this restriction is at issue in the present case. Specifically, defendant contends that MCL 500.3135(2)(c) precludes an uninsured motorist from recovering non-economic damages arising from an automobile accident irrespective of whether the plaintiff’s action arises under the threshold exception, i.e. subsection § 3135(1), or the intentional act exception under subsection § 3135(3)(a). Plaintiff, in contrast, argues that the uninsured motorist restriction in § 3135(2)(c) is limited to claims that arise under the threshold exception whereas claims to recover damages for intentionally-caused harm involve tort claims that arise outside the no-fault act and are not limited by the uninsured motorist restriction. Given these conflicting arguments, we proceed with a closer examination of the language of the applicable statutory provisions.

A plain reading of the language in MCL 500.3135(2) indicates that the uninsured motorist restriction is limited to claims arising under MCL 500.3135(1), i.e. the threshold exception. In particular, the first sentence of subsection (2) states, “[f]or a cause of action for damages pursuant to subsection (1) . . . all of the following apply.” This language clearly limits the scope of subsection (2) to threshold claims arising under subsection (1). Specifically, the phrase “pursuant to” is defined in relevant part as “[i]n compliance with; in accordance with; under . . . [a]s authorized by. . .” Black’s Law Dictionary (9th ed). See *Risko v Grand Haven Charter Twp Zoning Bd of Appeals*, 284 Mich App 453, 460; 773 NW2d 730 (2009) (“[b]ecause undefined terms must be given their plain and ordinary meanings, it is proper to consult a dictionary to define terms”). Thus, the statutory language in § 3135(2) clearly indicates that the uninsured motorist restriction set forth in subsection (2)(c) is exclusive to actions that arise under § 3135(1). The restriction has no bearing on a cause of action to recover for intentionally-caused harm. See *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002) (“[t]he Legislature is presumed to have intended the meaning it plainly expressed”). Indeed, had the Legislature intended to limit an uninsured motorist’s ability to recover damages arising from intentionally-caused harm, it could have included language in subsection (2) indicating as much. Instead, subsection (2)’s exclusive reference to subsection (1) is indicative of the Legislature’s intent that (2)(c) apply solely to threshold claims arising under subsection (1). See *Hoerstman Gen Contractors, Inc, v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006) (under the maxim “*expression unius est exclusion alterius*,” the express reference of one thing in a statutory provision implies the exclusion of other similar things).

Moreover, the language in § 3135(3) indicates that the uninsured motorist restriction in § 3135(2)(c) is inapplicable in instances where a plaintiff files a claim to recover damages arising from intentionally-caused harm. Specifically, subsection (3) provides: “[n]otwithstanding any other provision of law, tort liability . . . is abolished except as to . . . [intentionally caused harm] . . .” (emphasis added). This language is broad and unequivocal. “Notwithstanding” means “in spite of; without being opposed or prevented by. . .” *Random House Webster’s College Dictionary* (1992). Accordingly, pursuant to the explicit language of subsection (3), irrespective of or in spite of any other provision of law, including § 3135(2)(c) and other provisions of the no-fault act, tort liability remains in effect for intentionally-caused harm. The no-fault act’s grant of immunity does not extend to tort liability arising from a defendant’s intentional conduct. As noted by our Supreme Court, “[t]he Legislature, in speaking so clearly in § 3135(3), made unmistakable its intent to define where immunity was lost. As set out in the statute, the test is: was the harm intentionally caused.” *American Alternative Ins Co*, 470 Mich at 32; see also, *Hicks v Vaught*, 162 Mich App 438, 439-440; 413 NW2d 28 (1987).

Further, while § 3135(3)(b) provides that tort liability is abolished except as to “damages for noneconomic loss as provided and limited in subsections (1) and (2),” (emphasis added), that paragraph does not limit recovery of non-economic damages that arise from intentionally-caused harm. As noted, § 3135(3)(a) strips a defendant of tort immunity for intentionally-caused harm “notwithstanding any other provision of law.” There is no limiting language placed in this provision and there is no other language that indicates the Legislature intended the provision to be contingent on the uninsured motorist restriction set forth in § 3135(2)(c). In addition, as previously discussed, the plain language of § 3135(2) indicates that the uninsured motorist restriction is limited to claims arising under the threshold exception in § 3135(1). Accordingly, we decline to read a restriction into § 3135(3)(a) because it is not contained in the plain language

of that portion of the statute. See *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) (“a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the language of the statute itself”).

In sum, pursuant to the plain language of the statutory provisions at issue, we conclude that MCL 500.3135(2)(c) bars an uninsured motorist from recovering non-economic damages for claims that arise under the threshold exception to tort immunity set forth in MCL 500.3135(1). In contrast, MCL 500.3135(2)(c) does not preclude an uninsured motorist from recovering non-economic damages arising from intentionally-caused harm under MCL 500.3135(3)(a). Accordingly, in this case, the trial court erred when it concluded plaintiff’s claim was barred pursuant to MCL 500.3135(2)(c), and erred in granting defendant’s motion for partial summary disposition on that basis. Therefore, reversal and remand for further proceedings is appropriate.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff having prevailed, may tax costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher