STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM LAMBERT,

Plaintiff-Appellee,

v

KIMBERLY MADEJ, DAVID SHERMAN, and FARMERS INSURANCE EXCHANGE,

Defendants-Appellants,

and

STATE FARM MUTUAL INSURANCE CO.,

Defendant-Appellee.

UNPUBLISHED
October 23, 1998

No. 195982
Macomb Circuit Court
LC No. 95-001204 NI

Before: Holbrook, Jr., P.J., and Markey and Whitbeck, JJ.

PER CURIAM.

In this personal injury action, defendant Farmers Insurance Exchange ("FIE") appeals by leave granted from the trial court's order denying its motion for summary disposition. We reverse.

I. Basic Facts and Procedural History

Plaintiff William Lambert was driving his uninsured 1986 Escort when it stalled in the right-hand curb lane of Mound Road. He telephoned his girlfriend, who drove Lambert's also uninsured 1985 Tempo to the scene and parked behind the Escort. Both vehicles had their emergency flashers activated. Lambert managed to get the Escort's engine started and began to walk back to the Tempo to talk to his girlfriend when he saw another automobile approaching. He tried to run between the Escort and Tempo to the safety of the curb, but the approaching automobile hit the Tempo, which then hit Lambert. This resulted in serious injury to Lambert. Thereafter, Lambert sought to recover personal injury protection ("PIP") benefits under the no-fault act. In pertinent part, Lambert sought to recover PIP benefits from FIE, the insurer of the approaching automobile that hit the Tempo.

FIE, the insurer of the approaching automobile that hit the Tempo, moved for summary disposition, arguing that Lambert was barred from recovering PIP benefits under MCL 500.3113(b); MSA 24.13113(b), because Lambert's vehicles were uninsured and both were involved in the accident. Alternatively, FIE argued that the Escort was involved in the accident under MCL 500.3106(1)(a); MSA 24.13106(1)(a), because the vehicle was "parked in such a way as to cause unreasonable risk of the bodily injury which occurred." The trial court found that it was possible for Lambert to demonstrate at trial that the two automobiles were safely parked and not involved in the accident and, therefore, Lambert was not precluded from recovering PIP benefits. The court therefore denied FIE's motion for summary disposition. This Court granted FIE's application for leave to appeal.

II. Standard of Review

We review a trial court's denial of a motion for summary disposition de novo. *Glancy v Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998).

III. Analysis

MCL 500.3113(b); MSA 24.13113(b) provides:

> A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:
>
> * * *
>
> (b) The person was the owner or registrant of a *motor vehicle or motorcycle involved in the accident* with respect to which the security required by section 3101 or 3103 was not in effect. [Emphasis supplied.]

Whether a vehicle was "involved in the accident" within the meaning of § 3113(b) is a question of law. *Witt v American Family Mutual Insurance Co*, 219 Mich App 602, 606; 557 NW2d 163 (1996). Lambert acknowledged in his deposition that both the Escort and Tempo were registered to him and, at the time of the accident, were not covered by insurance. Thus, under § 3113(b), Lambert is not entitled to receive PIP benefits if either of the two vehicles were "involved in the accident" that caused his injuries. *Witt*, *supra* at 606.

The phrase "involved in the accident," appears in several provisions of the no-fault act but is not defined in the act. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 37; 528 NW2d 681 (1995). For a vehicle to be "involved in the accident," the vehicle must "be used as a motor vehicle at the time of the accident." *Id.* at 38. A vehicle is not "involved in the accident" merely because a party can establish a "but for" relationship "between the functional use of the motor vehicle and the injury." *Id.* Rather, "there must be an 'active link' between the injury and the use of the motor vehicle." *Witt*, *supra* at 607. A "parked automobile" is not "involved in the accident" unless one of the exceptions listed in MCL 500.3106; MSA 24.13106 applies. *Heard v State Farm Mutual Automobile Insurance Co*, 414 Mich 139, 144; 324 NW2d 1 (1982). "When a vehicle is parked, it is deemed not to be in use as

a motor vehicle, and, for purposes of the act, it is like a gasoline pump, the wall of a service station, or a tree." *Id.* at 148.

However, we hold that as a matter of law, the Tempo was not parked for purposes of the no-fault act and was "involved in the accident." Lambert's girlfriend had just driven the Tempo to the location with the intention of pushing the Escort to a safer place. She pulled the Tempo into the right hand lane behind the disabled Escort and left the engine idling. She was seated behind the steering wheel waiting for Lambert when the Tempo was struck by the approaching vehicle, which, in turn, struck Lambert apparently causing his injuries. The Tempo, which was being operated on a public road at the time of the accident, was being used as a motor vehicle at the time of the accident. *Turner, supra* at 38. There was an "active link," *Witt, supra* at 607, between plaintiff's injury and the use of the Tempo as a motor vehicle.[1]

Lambert's argument that he is not barred by the no-fault act from recovering PIP benefits since his girlfriend was an owner of the Tempo because she had exclusive use of the vehicle for eighty-seven days before the accident and should have purchased the necessary insurance is without merit. As the trial court noted, Lambert admitted in his deposition that both vehicles were registered to him. Under MCL 500.3113(b); MSA 24.13113(b), Lambert is not entitled to PIP benefits as the owner or *registrant* of an uninsured vehicle that was involved in the accident that caused his injuries.

Lambert's position that his status as a non-occupant of any vehicle involved in the accident renders him eligible for PIP benefits despite his status as owner or registrant of the uninsured vehicles is also without merit. As set forth above, Lambert was barred by the no-fault act from receiving PIP benefits because he was the owner and/or registrant of the uninsured Tempo that was "involved in the accident" within the meaning of the no-fault act. That Lambert was not an occupant of the Tempo at the time of the accident is immaterial.[2]

For the foregoing reasons, we hold that the trial court erred in denying FIE's motion for summary disposition. *Glancy, supra.*

Reversed and remanded for entry of a judgment of no cause of action in favor of FIE. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Jane E. Markey
/s/ William C. Whitbeck

[1] We note that the facts of this case differ greatly from *Heard, supra,* in which the Michigan Supreme Court held that the owner of an uninsured motor vehicle was not precluded from obtaining PIP benefits because his motor vehicle was not "involved in the accident" for purposes of the no-fault act. In *Heard*, the owner of the uninsured vehicle was struck by another automobile while pumping gasoline into his uninsured vehicle at a gas station and pinned between his vehicle and the vehicle that hit him. *Id.* at 143. The *Heard* Court noted that the uninsured vehicle was "not in use as a motor vehicle" at the time of the accident. *Id.* at 145. In that case, the uninsured vehicle was obviously parked off of a

public highway and not being operated. In contrast, the uninsured vehicle in this case, although apparently stationary at the time of the accident, was being operated on a public road as part of a course of conduct in which it was plainly being used as a motor vehicle.

[2] Because the Tempo was "involved in the accident," it is unnecessary to determine whether the Escort was also "involved in the accident."