

STATE OF MICHIGAN
COURT OF APPEALS

VIRGIL TAYLOR,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 4, 1998

No. 206204

Wayne Circuit Court

LC No. 96-648840 NI

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals from the circuit court order granting the motion for summary disposition filed by defendant State Farm Mutual Automobile Insurance Company. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was driving his motorcycle eastbound on a narrow street when he steered toward the curb and behind a parked car to avoid a car traveling westbound. After the westbound car passed plaintiff moved out from behind the parked car. As he passed the front of the parked car he hit a pothole and was thrown from his motorcycle. Plaintiff sustained serious injuries as a result of the accident.

When defendant declined to pay medical expenses and no-fault benefits, plaintiff filed suit alleging breach of contract. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff was not entitled to benefits because a motor vehicle was not involved in the accident. Neither the westbound car nor the parked car caused plaintiff to hit the pothole. No causal connection existed between plaintiff's injury and the ownership, maintenance, or use of a motor vehicle. *Bradley v DAIIE*, 130 Mich App 34, 41-42; 343 NW2d 506 (1983). The trial court granted defendant's motion, finding that the evidence showed that the westbound car had passed before plaintiff steered his motorcycle out from behind the parked car and hit the pothole. Notwithstanding the fact that the trial court granted defendant's motion for summary disposition, plaintiff did not seek a ruling on his motion for leave to amend his complaint, which was noticed for hearing one week later.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996).

Because a motorcycle is excluded from the definition of motor vehicle, MCL 500.3101(2)(e); MSA 24.13101(2)(e), a person injured while riding a motorcycle is not entitled to benefits unless he is injured in an accident involving a motor vehicle. *Underhill v Safeco Ins Co*, 407 Mich 175, 186; 284 NW2d 463 (1979). To be compensable, an injury must be foreseeably identifiable with the normal ownership, maintenance, or use of a motor vehicle. *Bradley v DAIE*, 130 Mich App 34, 41-42; 343 NW2d 506 (1983).

We affirm the trial court's decision. Plaintiff may have been required to steer behind the parked car to avoid the westbound car, as he testified; however, he was not forced off the road by the westbound car. Cf. *Bromley v Citizens Ins Co*, 113 Mich App 131; 317 NW2d 318 (1982). Plaintiff was not prevented from slowing to avoid striking the parked car, and was not forced by traffic to steer out from behind the parked car at any particular rate of speed. After moving out from behind the parked car, plaintiff's motorcycle traveled at least to the front of that car before hitting the pothole. No causal connection existed between the ownership, maintenance, or use of a motor vehicle and plaintiff's injury. *Bradley, supra*. Plaintiff was not entitled to benefits.

Plaintiff's assertion that the trial court abused its discretion by failing to allow him to argue his motion for leave to amend his complaint is without merit. Plaintiff did not seek a ruling on the motion for leave to amend after the trial court granted the motion for summary disposition. The trial court made no ruling which can be appealed. This Court's review is limited to issues actually decided by the trial court. *Michigan Mutual Ins Co v American Community Mutual Ins Co*, 165 Mich App 269, 277; 418 NW2d 455 (1987).

Affirmed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Joel P. Hoekstra