STATE OF MICHIGAN

COURT OF APPEALS

LEAGUE GENERAL INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED October 8, 1999
v	No. 205701 Oakland Circuit Court
AUTO-OWNERS INSURANCE COMPANY, Defendant-Appellant.	LC No. 95-506896 NI

Before: Zahra, P.J., and Saad and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying defendant's motion for summary disposition, and from the order of final judgment entered on the trial court's ruling. We reverse both orders and remand.

This case involves a priority dispute between two no-fault insurers. The primary issue in dispute is whether the pickup truck insured by defendant was "involved in the accident," within the contemplation of MCL 500.3115(1); MSA 24.13115(1), such that defendant must share responsibility for the provision of personal injury protection (PIP) benefits to the pedestrian struck by plaintiff's insured. The trial court held that the pickup truck was "involved in the accident." On de novo review, we disagree. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

In *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995), our Supreme Court considered the phrase "involved in the accident" and held:

> Combining what we said in *Heard* [*v State Farm Mutual Automobile Ins Co*, 414 Mich 139; 324 NW2d 1 (1982)] with the guidance provided by the Court of Appeals, we hold that for a vehicle to be considered "involved in the accident" under § 3125 [MCL 500.3125; MSA 24.13125], the motor vehicle, being operated or used as a motor vehicle, must actively, as opposed to passively, contribute to the accident. Showing a mere "but for" connection between the operation or use of the motor vehicle and the damage is not enough to establish that the vehicle is "involved in the accident." Moreover, physical contact is not required to establish that the vehicle was "involved in

> the accident," nor is fault a relevant consideration in the determination whether a vehicle is "involved in an accident."

Although the Court specifically referenced MCL 500.3125; MSA 24.13125 with regard to the definition of the phrase "involved in the accident," the phrase should be construed consistently throughout the no-fault act. *Michigan Mutual Ins Co v Farm Bureau*, 183 Mich App 626, 636; 455 NW2d 352 (1990); *Wright v League General Ins*, 167 Mich App 238, 245; 421 NW2d 647 (1988).

Here, the pickup truck insured by defendant was stopped by the side of a rural road, facing northward, with the motor running and the headlights turned on. There was a party taking place at a home located on that road and the pickup truck was one of several vehicles lining, at various points, the east and west sides of the roadway. Defendant's insured was sitting in the pickup truck, conversing with two pedestrians who were standing in the roadway next to the truck. Plaintiff's insured was traveling southbound on the road where the truck was stopped. As she passed the truck, she struck both pedestrians. However, her vehicle did not strike the pickup truck. The trial court found that the pickup truck insured by defendant was "involved in the accident." The court based its decision on three principal grounds. First, the pickup truck was partially in the roadway. Second, plaintiff's insured testified that the truck's headlights affected her vision. Finally, one of the pedestrians was touching the pickup truck when the accident occurred.

On appeal, defendant argues that the trial court erred in finding that the pickup truck was "involved in the accident" because the pickup truck did not actively contribute to the accident. We agree. We rely for guidance on four decisions where this Court considered the issue of whether a vehicle was "involved in the accident."

In *Stonewall Ins v Farmers Ins*, 128 Mich App 307; 340 NW2d 71 (1983), a vehicle was stopped at an intersection, waiting to complete a left-hand turn. A second vehicle approaching from the opposite direction swerved to avoid hitting the first vehicle, striking a bicyclist. This Court upheld the lower court's finding that the first vehicle was not "involved in the accident," because "[the first vehicle] was not moving into [the second vehicle's] lane, blocking his lane, or doing anything other than probably turning her wheels and having her signal on." *Id.* at 310. In *Bachman v Progressive Ins Co*, 135 Mich App 641; 354 NW2d 292 (1984), this Court found that a vehicle that was located in a traffic lane adjacent to a second vehicle that was struck by a motorcycle was not "involved in the accident," although the passenger of the motorcycle landed on the first vehicle. *Id.* at 644. The dispute in *Brasher v Auto Club Ins*, 152 Mich App 544; 393 NW2d 881 (1986), involved a multi-vehicle collision. One vehicle struck a second vehicle which then struck a pedestrian, while the first vehicle struck a third vehicle that was stopped at a red light. Relying on *Stonewall, supra*, and *Bachman, supra*, this Court found that the third vehicle was not "involved in the accident." Finally, in *Michigan Mutual Ins Co*, 183 Mich App 626; 455 NW2d 352 (1990), this Court held that a school bus was not "involved in the accident" which occurred when a child who had been riding on the bus was struck by another vehicle after the child had disembarked from the bus and was crossing the street in front of the bus. *Id.* at 637. We found that the bus's contribution to the accident was simply a "but for" contribution. *Id.*

Here, although the roadway may have been narrowed because of the number of vehicles parked on both sides of the road, deposition testimony, including that of plaintiff's insured, indicated that there was sufficient room on the road for a vehicle to pass by the pickup truck. As in *Stonewall*, the pickup was not blocking or moving into plaintiff's insured's path. With regard to plaintiff's allegations that its insured was blinded by the headlights of the pickup, we decline to construe the lawful and mandatory use of headlights at night as an "active link" contributing to the cause of this accident. See *Turner, supra*. Further, there was nothing unusual about the pickup truck's headlights. Thus, we find that if the shining headlights contributed at all to the accident, such contribution was passive. Although plaintiff claims that the pickup truck insured by defendant was "involved in the accident" because the pedestrians were standing at the driver's side of the pickup truck speaking to defendant's insured when they were struck by plaintiff's insured, showing a "but for" connection between defendant's insured's pickup truck and the accident is insufficient to establish that the pickup truck was "involved in the accident." *Turner, supra; Michigan Mutual, supra* at 636-637. Finally, the fact that the pedestrians were touching or were pushed into the pickup truck when the accident occurred is insufficient to find that the pickup was "involved in the accident." See *Bachman, supra*.

In sum, we conclude that defendant's insured was not "involved in the accident," within the contemplation of MCL 500.3115(1); MSA 24.13115(1), because the pickup truck did nothing, as a motor vehicle, which actively contributed to the happening of the accident. Therefore, we deem it unnecessary to consider defendant's argument that its insured's pickup truck was parked at the time of the accident.

We reverse the trial court's order granting summary disposition to plaintiff and denying summary disposition to defendant, and reverse the order entering final judgment. We remand for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Jeffrey G. Collins