

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT RUCKER,

Plaintiff- Appellant,

v

NORTHLAND INSURANCE COMPANY, STATE
FARM MUTUAL INSURANCE COMPANY, and
LEE'S TRUCKING, INC,

Defendants- Appellees.

UNPUBLISHED

December 28, 1999

No. 212735

Oakland Circuit Court

LC No. 97-548856 NF

Before: Saad, P.J., and McDonald and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right the orders granting summary disposition to defendants in this action for no fault insurance benefits. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff suffered an eye injury while securing a load of lumber to his truck. The lumber was loaded with a forklift, and plaintiff secured the load using straps and ratchets attached to the trailer. To use the ratchets, plaintiff was required to insert a pry bar into the mechanism, and tighten the strap. At the time of the accident, plaintiff was in the process of tightening a ratchet when he was distracted. The pry bar slipped out of the mechanism and struck plaintiff in the eye.

Plaintiff sought no fault benefits under MCL 500.3106(1); MSA 24.13106(1), which provides in part:

(1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

* * *

(b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Giving the benefit to the nonmoving party, the trial court must determine whether a record might be developed that will leave open a material fact upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995). On appeal, a trial court's grant of summary disposition is reviewed de novo. *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81; 514 NW2d 185 (1995).

The trial court properly granted defendants' motions for summary disposition. Plaintiff's injury was caused by direct physical contact with the pry bar, and not the ratchet. The pry bar was not attached to the vehicle or the ratchet at the time of the injury. There was no basis for finding entitlement to no fault insurance benefits under these facts. *Winter v Automobile Club of Michigan*, 433 Mich 446; 446 NW2d 132 (1989); *Perez v Farmers Ins Exchange*, 225 Mich App 731; 571 NW2d 770 (1997).

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage