STATE OF MICHIGAN

COURT OF APPEALS

JAMES SNIDER, SR.,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 5, 2000

No. 219109
Grand Traverse Circuit Court
LC No. 98-017796-NF

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant, his no-fault insurer. We affirm.

Plaintiff, a spectator sitting in a lawn chair at a fireworks display, was struck by shrapnel from an explosion of fireworks launched from an uninsured flatbed trailer. In this lawsuit, plaintiff alleged he was entitled to first-party no-fault benefits and uninsured motorist coverage from defendant. In response to defendant's motion for summary disposition, the trial court ruled as a matter of law that the flatbed trailer that held the fireworks was not a "land motor vehicle," as that term was used in the parties' no-fault insurance policy, and thus the uninsured motorist coverage did not apply. On reconsideration, the court further ruled that plaintiff was not entitled to first-party no-fault benefits because his injuries did not arise out of the use of a motor vehicle as a motor vehicle.[1]

The trial court's decision and order references both MCR 2.116(C)(8) and (10). However, the court did not clarify which subrule formed the basis for its decision. Given that the court's ruling turned on interpretation of the insurance contract between the parties, we analyze this dismissal under the latter provision. This Court reviews de novo a grant of summary disposition pursuant to MCR 2.116(C)(10). *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). We must consider the pleadings, affidavits, depositions, admissions, and any other

[1] The court noted that its summary ruling on this latter issue was consistent with its previous decision on the same issue in a similar case arising out of the same fireworks explosion.

evidence in favor of the party opposing the motion, and grant the benefit of the doubt to the opposing party. *Id.* Our task is to review the lower court record in favor of the nonmoving party and decide whether a genuine issue of material fact exists to warrant a trial. *Id.*

Plaintiff first argues that the trial court erred in holding that he was not entitled to first-party no-fault benefits. Pursuant to the no-fault act, MCL 500.3101 *et seq*.; MSA 24.13101 *et seq*., individuals cannot recover no-fault benefits for bodily injuries arising out of a motor vehicle accident unless their injuries arose out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105(1); MSA 24.13105(1). Generally, injuries that arise out of the use of a parked vehicle are not covered under the no-fault act. MCL 500.3106(1); MSA 24.13106(1); *Yost v League General Ins Co*, 213 Mich App 183, 184; 539 NW2d 568 (1995). The rationale underlying the parking exclusion is that injuries involving parked cars do not typically involve the motor vehicle in its use as a motor vehicle. *Miller v Auto-Owner's Ins Co*, 411 Mich 633, 639; 309 NW2d 544 (1981).

Certain exceptions to the parking exclusion do allow recovery under limited circumstances:

> (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:
>
> (a) The vehicle was parked in such a way as to cause an unreasonable risk of bodily injury which occurred.
>
> (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.
>
> (c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle. [MCL § 500.3106; MSA § 24.13106.][2]

Each of the exceptions relates to an instance where, even though the vehicle is immobile, its involvement in an accident is nonetheless directly related to its character as a motor vehicle. *Miller, supra* at 640-641. On appeal, plaintiff contends that the circumstances surrounding this incident fall within subsection (1)(a), arguing that the trailer was dangerously parked at an improper site and was too close to the crowd of spectators watching the fireworks display. We do not agree that this exception to the parking exclusion is satisfied.

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[2] The exception to subsections 3106(1)(b) and (c), found in subsection (2), concerns certain conditions where an employee is injured during the course of his employment and worker's disability compensation would be available. This exception is not relevant to the instant controversy.

The few cases interpreting this provision logically suggest that a vehicle would be parked in such a way as to cause an unreasonable risk of injury if the vehicle was left in gear or protruding into traffic. *Id.* at 640; See also *Hackley v State Farm Ins Co*, 147 Mich App 115; 383 NW2d 108 (1985); *Williams v Allstate Ins Co,* 144 Mich App 178, 181; 375 NW2d 8 (1985). Though we do not suggest that such situations present the only cases in which the exception could be satisfied, we hold that the instant circumstances are insufficient to avoid the exclusion. Here, the flatbed trailer was one of three parked off-road, either on grass or a sidewalk, near a lake. The trailer had been parked at that location for several hours before spectators arrived and gathered to view the fireworks display, and at the time of the incident the trailer was being used solely to launch fireworks. This use as a stationary launching pad is too attenuated from the trailer's character as a motor vehicle to qualify as an exception to the parked vehicle exclusion.

Plaintiff also argues that he is entitled to recover uninsured motorist benefits from defendant. Section III of the policy, which provides for uninsured motorist coverage, states:

> We will pay for damages for *bodily injury* an *insured* is legally entitled to collected from the owner or driver of an *uninsured motor vehicle.* The *bodily injury* must be sustained by an *insured* and caused by accident arising out of the operation, maintenance or use of an *uninsured motor vehicle*. [Emphasis in original.]

"Uninsured motor vehicle" is defined in Section III as a "land motor vehicle." The term "land motor vehicle" is not defined in the policy. Plaintiff points this Court to the definition of motor vehicle in Section II of the policy, governing no-fault coverage. That definition adheres to the definition of motor vehicle in the no-fault act, MCL 500.3101(2)(e); MSA 24.13101(2)(e). Plaintiff argues that the definition of motor vehicle as used in Section II of the policy should be used to supplement and clarify the meaning of "land motor vehicle." Section II provides:

> *Motor vehicle* means a vehicle, including a trailer;
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> 1. operated or designed to be operated on public highways by power other than muscular power; and
>
> 2. which has more than two wheels. [Emphasis in original.]

Plaintiff asserts that because this definition clearly includes a flatbed trailer, he is entitled to recovery of uninsured motorist benefits. We disagree. It is well settled that where this Court is construing uninsured motorist coverage, the provisions of the no-fault act, and any concomitant definitions, are not to be considered. *Bianchi v Automobile Club of Michigan,* 437 Mich 65, 68; 467 NW2d 17 (1991); *Trierweiler v Frankenmuth Mut Ins Co,* 216 Mich App 653, 657; 550 NW2d 577 (1996). Instead, because uninsured motorist benefits are not required by statute, the language of the insurance policy governing uninsured motorist coverage will delineate under what circumstances benefits are provided. *Auto-Owners Ins Co v Harvey,* 219 Mich App 466, 470; 556 NW2d 517 (1996); *Trierweiler, supra* at 657.

We interpret "land motor vehicle" as used in the insurance policy in accordance with its common and ordinary meaning. *Vanguard Ins Co v Racine*, 224 Mich App 229, 232; 568 NW2d 156 (1997). Our Supreme Court has held that the ordinary meaning of "land motor vehicle" is "a vehicle with a motor that travels on land." *Farm Bureau Mut Ins Co of Michigan v Stark*, 437 Mich 175, 182; 468 NW2d 498 (1991), overruled in part on other grounds *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). Because the parties do not dispute that the flatbed trailer was not motorized, it is clearly outside the scope of the definition of "land motor vehicle." Because plaintiff's insurance policy is clear, unambiguous and not violative of public policy, this Court must give it full effect. *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 568; 596 NW2d 915 (1999).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin