STATE OF MICHIGAN

COURT OF APPEALS

MAJED HASAN and MEHSON HUSAN, Plaintiffs-Appellants, v AUTO CLUB INSURANCE ASSOCIATION, Defendant-Appellee.	UNPUBLISHED December 7, 2001 No. 221815 Wayne Circuit Court LC No. 98-824344-NF

Before: Hoekstra, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition.[1] We affirm.

I. Facts and Proceedings

The parties do not dispute the essential facts of this case. On August 4, 1997, Mehson Husan and Majed Hasan removed the gas tank from Huson's 1991 Mitsubishi Mirage because the recently-replaced fuel pump was not working properly and Husan thought that cleaning the gas tank might improve its performance. Husan emptied the contents of the tank and then took the gas tank into the first-floor laundry room inside Hasan's house in Detroit. Plaintiffs turned on the hot water in the laundry sink to clean the tank and, despite the presence of noticeable gas fumes, closed the door to the laundry room. Husan's deposition indicates that the pilot light or burner of the water heater, also located in the laundry room, caused the gas fumes to ignite and explode.

Plaintiffs filed this action for first-party personal injury protection (PIP) benefits from defendant, Auto Club Insurance Association (ACIA), with whom Husan had a no-fault insurance policy. ACIA filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) and argued that plaintiffs' injuries did not "arise from the maintenance of an automobile." Following oral argument, the trial court agreed with ACIA, granted its motion for summary disposition and dismissed the case in an order entered on August 3, 1999.

II. Analysis

[1] We decide this appeal without oral argument pursuant to MCR 7.214(E).

We review a trial court's ruling on a motion for summary disposition de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997).[2]

The no-fault act, under MCL 500.3105(1), provides:

> Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury *arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle*, subject to the provisions of this chapter.

"This Court has adopted a broad definition of the term 'maintenance of a motor vehicle.'" *Gentry v Allstate Ins Co*, 208 Mich App 109, 116; 527 NW2d 39 (1994). In *Miller v Auto-Owners Ins Co*, 411 Mich 633, 639; 309 NW2d 544 (1981), our Supreme Court stated:

> The meaning of the term "maintenance," in addition to appearing from the common sense of the word, has been established in the case law: "The 'maintenance' aspect of the 'ownership, maintenance, use' clause covers the act of repairing the covered automobile." 12 Couch on Insurance (2d ed), § 45:63, p 152. The policy embodied in the requirement of § 3105(1) that coverage extend to "injury arising out of the * * * maintenance * * * of a motor vehicle as a motor vehicle" thus is to provide compensation for injuries . . . incurred in the course of repairing a vehicle.

Injuries "arise out of" the maintenance of a motor vehicle only if there is a causal connection between the maintenance and the injuries that is "more than incidental, fortuitous, or but for." *Gutierrez v Dairyland Ins Co*, 110 Mich App 126, 135; 312 NW2d 181 (1981), vacated in part on other grounds 414 Mich 956 (1982). "It is not sufficient that the motor vehicle is merely the site of the accident. A sufficient causal connection is established, however, if the injury is foreseeably identifiable with the normal maintenance of a motor vehicle." *Id.* (citations omitted). And, as our Court observed in *Kangas v Aetna Casualty & Surety Co*, 64 Mich App 1, 17; 235 NW2d 42 (1975):

> [W]hile the automobile need not be the proximate cause of the injury, there still must be a causal connection between the injury sustained and the ownership, maintenance or use of the automobile and which causal connection is more than incidental, fortuitous or but for. The injury must be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle.

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[2] Because the trial court considered documents in addition to the pleadings, it appears that the trial court granted defendant's motion under MCR 2.116(C)(10). A motion brought under subrule (C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In *Century Mut Ins Co v League General Ins Co*, 213 Mich App 114; 541 NW2d 272 (1995), this Court considered the "arising out of" language and adopted a causation test to determine an insurer's liability under automobile insurance policies. To establish that damages arose out of the ownership, maintenance, or use of a motor vehicle:

> 1. The accident must have arisen out of the inherent nature of the automobile, as such; 2. The accident must have arisen within the natural territorial limits of an automobile, and the actual use, loading, or unloading must not have terminated; 3. The automobile must not merely contribute to cause the condition which produces the injury, but must, itself, produce the injury. [*Century*, *supra* at 121, quoting 6B Appleman, Insurance Law & Practice (Buckley ed), § 4317, pp 367-369, and citing *Thornton v Allstate Ins Co*, 425 Mich 643, 651; 391 NW2d 320 (1986) and *Kangas, supra* at 17.]

ACIA does not dispute that plaintiffs removed the gas tank to "repair" it or that a repair is within the definition of maintenance. Rather, ACIA argues that plaintiffs failed to establish a causal connection between the injuries and the maintenance of the automobile.

Defendant relies primarily on *Central Mutual Ins Co v Walter*, 143 Mich App 332; 372 NW2d 542 (1985). In *Walter*, the open flame of a hot water heater ignited fuel leaking from a car to the floor of a service station. *Id*. at 334. The plaintiff, CMI, paid for the damages pursuant to a fire insurance policy and then sought to recoup the damages from Detroit Automobile Inter-Insurance Exchange, the no-fault insurer of the leaking car. *Id*. at 334. This Court ruled that the fire did not arise out of the ownership, operation, maintenance or use of a motor vehicle for the purposes of § 3121(1) and distinguished cases in which fuel from a vehicle was ignited by a mechanic's trouble light because, in those cases, there was a "close and direct connection between the vehicle's being maintained and the source of ignition." *Id*. at 336. The Court observed:

> In the case at bar, however, there was no connection; the source of ignition was a water heater pilot light spatially and conceptually removed from the repair work being performed on the automobile. The water heater's sole function was to provide hot water for the gas station bathrooms. It was unrelated to the work of servicing automobiles. We do not believe the Legislature intended the no-fault act to apply in such circumstances. [*Id*.]

Defendant also relies on *Auto-Owners Ins Co v Citizens Ins Co of America*, 189 Mich App 458; 473 NW2d 753 (1991), in which the pilot light of a nearby water heater ignited gasoline fumes when mechanics at Cole's Garage were draining a vehicle's fuel line. *Id*. at 459. The garage recovered damages from Auto-Owners under a property insurance policy and Auto-Owners then sought to recoup the damages from Citizens, which insured the vehicle at the time of the incident. *Id*. Auto-Owners attempted to distinguish *Walter, supra*, because in that case the hot water heater was used only for supplying hot water to the bathrooms, whereas the hot water from the heater in *Auto-Owners* was also used in "some routine maintenance of automobiles to wash and flush automotive parts." *Id*., 460. The Court found that the difference was not decisive because "in this case there was no connection between the hot water heater and the maintenance that this vehicle was undergoing." *Id*. The Court reiterated that "there must be

a close and direct connection between the maintenance the vehicle was undergoing and the source of ignition." *Id*.

Plaintiffs attempt to distinguish these cases because they concern § 3121(1) and property damage, rather than § 3015(1) and personal injury. However, both subsections contain the same critical phrase, "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." Our Supreme Court has stated that analysis of one subsection "equally applies" to the other. *Turner v ACIA*, 448 Mich 22, 31; 528 NW2d 681 (1995).[3] Indeed, the Supreme Court made clear that "[t]he causal nexus prerequisite for PIPs *is almost identical* to the one required for property protection benefits." *Id*. at 31 n 7 (emphasis added). Thus, plaintiffs' attempt to distinguish these cases on this basis is unavailing.

Plaintiffs also differentiate *Walter* and *Auto-Owners* because, here, plaintiffs intended to *use* hot water to rinse out the gas tank, whereas, in the above cases, the water heater was unrelated to the maintenance of the vehicle. Therefore, plaintiffs argue that, here, there was a direct connection between the maintenance of the vehicle and the source of the ignition.

Huson offered limited testimony regarding the events leading up to or causing the explosion. The most likely scenario we can glean from Huson's testimony is that, when plaintiffs turned on the hot water in the laundry sink, this triggered the burner inside the water heater to turn on. Because plaintiffs cut off any cross-ventilation by closing the laundry room door, the water heater drew in gas fumes emanating from the gas tank, thus causing the explosion. Plaintiffs reason that because they used hot water, and thus the water heater, to maintain the vehicle, that the accidental explosion when the burner activated "arose out of" the maintenance of the vehicle.

We hold that the connection between the water heater and the maintenance of the vehicle was not sufficiently "close and direct" to impose liability. *Auto-Owners*, *supra* at 460. Though plaintiffs turned on the hot water, it was the location of the water heater, not the maintenance of the vehicle, that caused the explosion. Further, the fact that the burner of the water heater was triggered and ignited by gas fumes is simply too attenuated from plaintiffs work on the gas tank to establish a sufficiently close connection.

Moreover, the explosion did not arise "within the natural territorial limits of an automobile" as required by the causation test in *Century*, *supra*. Plaintiffs removed the gas tank from the vehicle and brought it into a closed room inside a house. By transporting *parts* of the vehicle to a remote location, plaintiffs destroyed the causal connection between the vehicle and the accident. That connection was further destroyed because it was the presence of the water heater, not the vehicle, that caused the explosion.

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[3] Plaintiffs argue that these cases involve repair facilities, whereas the present case involves repair of a vehicle by the "owner-operator." Plaintiffs do not indicate how this difference should affect our analysis and we decline to address it. *Meagher v Wayne State University*, 222 Mich App 700, 718; 565 NW2d 410 (1997).

In sum, the water heater itself was unrelated to plaintiffs' maintenance of the vehicle. The water heater became incidentally involved only because plaintiffs brought the gas tank into the house, away from the vehicle, and into the room where the water heater was located. The ignition of fumes from a gas tank by a household water heater is simply not, under these circumstances, "foreseeably identifiable with the normal maintenance of a motor vehicle." *Gutierrez, supra*. For that reason, and because the accident clearly did not occur near or around the vehicle and the vehicle itself did not produce the injury, plaintiffs have failed to present an issue of fact for the jury that the accident "arose out of" the maintenance of the vehicle.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ William C. Whitbeck