

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TERRANCE BROWN,

Plaintiff/Counter-Defendant/  
Appellee,

v

MICHIGAN MILLERS MUTUAL INSURANCE  
COMPANY,

Defendant/Counter-Plaintiff,

and

MICHIGAN MILLERS MUTUAL FIRE  
INSURANCE COMPANY,

Defendant/Counter-Plaintiff/Third-  
Party Plaintiff/Appellant,

and

LINDA BROWN,

Third-Party Defendant/Appellee.

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Before: White, P.J., Whitbeck, C.J., and Holbrook, Jr., J.

PER CURIAM.

Defendant Michigan Millers Mutual Fire Insurance Company appeals as of right from the order granting plaintiff Terrance Brown's motion for summary disposition. We affirm.

**I. Basic Facts And Procedural History**

Brown suffered a spinal cord injury in a collision between a stolen van and another vehicle. Although Brown claimed that he was a pedestrian at the time of the accident, Michigan Millers refused to pay no-fault benefits under its policy issued to Brown's mother because, it said, the evidence indicated that Brown actually had participated in a shooting and was fleeing the crime scene in the van at the time the accident occurred. The trial court granted Brown's

motion for summary disposition, holding that he was entitled to personal injury protection (PIP) benefits as a matter of law, regardless of whether he had participated in the shooting and was a passenger in a stolen vehicle.

In its brief on appeal, Michigan Millers first urges us to consider whether a crash involving a stolen van used in a drive-by shooting constitutes using a motor vehicle “as a motor vehicle” within the meaning of MCL 500.3105(1). Second, Michigan Millers contends that its policy with Brown’s mother did not contemplate coverage for bodily injury arising out of these facts. Third, Michigan Millers asks us to reverse the trial court’s decision on “public policy” grounds. Essentially, Michigan Millers contends that the Legislature intended only “victims” of a motor vehicle accident to receive no-fault benefits and Brown, a criminal, cannot be viewed as a “victim.”

## II. Standard Of Review

This Court reviews de novo a trial court’s decision to grant or deny a motion for summary disposition.<sup>1</sup>

## III. Legal Standard For Summary Disposition

The trial court did not specify which subsection of MCR 2.116 permitted summary disposition in this case. However, because the parties presented deposition testimony to establish the underlying dispute concerning Brown’s alleged criminal activities at the time of the accident, we infer that the trial court granted summary disposition pursuant MCR 2.116(C)(10).<sup>2</sup> A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim.<sup>3</sup> When deciding a motion for summary disposition under MCR 2.116(C)(10), “the trial court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of any material fact exists to warrant a trial.”<sup>4</sup> The nonmoving party cannot simply rest on allegations or denials, but must present evidence showing that a material issue of fact is in dispute requiring resolution at trial.<sup>5</sup> However, in examining the evidence to see if there is a dispute, the court may not weigh the evidence’s credibility or make factual findings.<sup>6</sup> In the end analysis, summary disposition is appropriate if the documentary evidence

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<sup>1</sup> *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

<sup>2</sup> See *Travis v Dreis & Krump Mfg Co*, 453 Mich 149, 183-184; 551 NW2d 132 (1996) (Boyle, J.).

<sup>3</sup> *Spiek, supra*.

<sup>4</sup> *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); see also MCR 2.116(G)(5).

<sup>5</sup> *Smith v Globe Life Ins Co*, 460 Mich 446, 455, n 2; 597 NW2d 28 (1999), citing MCR 2.116(G)(4).

<sup>6</sup> *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993).

establishes “that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law.”<sup>7</sup>

#### IV. Analysis

At oral argument, Michigan Millers’ attorney conceded that there was no question of disputed material fact on the record that would make the trial court’s decision erroneous. The only argument Michigan Millers wished to pursue was its contention, essentially, that Brown should not be allowed to recover no-fault benefits in this case because he was not a victim. If this Court affirms, Michigan Millers argues, the Court “would be opening the floodgates for all participants in drive-by-shootings and like crimes to recover damages should they become injured while fleeing the scene,” thus forcing insurers to pay for the risk of crimes they did not intend to insure and increasing costs for law abiding citizens.

This hyperbole is dramatic. It is also directed at the wrong branch of government. Michigan Millers has identified a social problem that should be addressed. However, the Legislature is the proper body to take action, as it did when passing a statutory exception to no-fault benefits for individuals who are injured in an accident while using a motor vehicle or motorcycle which the individual had taken unlawfully.<sup>8</sup>

Affirmed.

/s/ Helene N. White

/s/ William C. Whitbeck

/s/ Donald E. Holbrook, Jr.

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<sup>7</sup> *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

<sup>8</sup> See MCL 500.3113(a).