STATE OF MICHIGAN

COURT OF APPEALS

E & L TRANSPORT COMPANY, L.L.C.,

Plaintiff-Appellant,

v

WARNER ADJUSTMENT COMPANY,[1]

Defendant,

and

YELLOW FREIGHT SYSTEM, INC. and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a division of American International Group,

Defendants-Appellees.

UNPUBLISHED
June 25, 2002

No. 229628
Calhoun Circuit Court
LC No. 99-003901-NF

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition, pursuant to MCR 2.116(C)(10). We affirm.

I. Background Facts and Procedural History

The facts in this case are not in dispute and involve Michigan's no-fault act, MCL 500.3101 *et seq*. On June 16, 1998, an auto-transport vehicle, owned and operated by plaintiff, was in the process of hauling vehicles to a Ford dealership when it was negligently struck from behind by a semi-truck. The driver of the semi-truck was ticketed by the police. The semi-truck was owned and operated by defendant Yellow Freight and was insured by the Insurance Company of the State of Pennsylvania (Pennsylvania Insurance). This collision damaged

[1] On August 4, 1999, plaintiff voluntarily dismissed Warner Adjustment Company from this action. Any references to "defendants" in this opinion refers to defendants Yellow Freight and The Insurance Company of the State of Pennsylvania.

plaintiff's auto-transport vehicle and three of the Ford vehicles it was carrying. After the accident, defendants paid plaintiff $500.00, as required by "mini-tort" provision in MCL 500.3135(3)(d). Thereafter, plaintiff presented a claim to defendant Yellow Freight, through Warner Adjustment Company, for the damage sustained by the Ford vehicles.[2]

On June 14, 1999 plaintiff filed a complaint alleging that Warner Adjustment Company wrongfully failed to reimburse plaintiff for damages sustained to the parked Ford vehicles during the accident. According to plaintiff, the vehicles on its auto-transport "were parked in a manner so as not to cause an unreasonable risk of the damage which occurred." Plaintiff claimed that § 3121 of the no-fault act required defendants to pay property protection benefits for the accidental damage caused by defendant Yellow Freight's truck. However, in defendants' response and affirmative defenses, they alleged that plaintiff's claim was precluded by §§ 3106, 3121 and 3123 of the no-fault act.

Plaintiff filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10) on June 23, 2000. In its motion, plaintiff argued that the Ford vehicles were parked motor vehicles as defined by the no-fault act and not mere "contents." Essentially, plaintiff opined that the no-fault act permitted an action for property damage when the damaged vehicle was parked on a vehicle transport in such a way that it did not contribute to the accident. Furthermore, plaintiff maintained that the damaged Ford vehicles were "motor vehicles" and that they did not lose this status because they were loaded on an auto-transport. Plaintiff claimed that § 3123 of the no-fault act distinguishes between "vehicles" and "contents" and that these categories are mutually exclusive. Plaintiff also suggested that if the Ford vehicles were considered "contents," instead of vehicles, there would be a gap in the no-fault coverage with no available tort remedy. While § 3106 of the no-fault act, which pertains solely to claims resulting in bodily injury, specifically excludes motor vehicles being loaded on an auto-transport, there is no such provision under the applicable property damage statute, § 3123. Indeed, plaintiff noted that § 3106 only excludes such motor vehicles because worker's compensation is available. Whereas, in the instant case, plaintiff alleged it would be denied any remedy without Michigan's no-fault act.

Plaintiff further purported in its motion that the Ford vehicles were parked—as defined by § 3123. According to §§ 3106 and 3123, a "parked vehicle" is one that is parked in such a manner as not to cause an unreasonable risk of the property damage or bodily injury that occurred. Plaintiff claimed that there was no causal link between the operation of the Ford vehicles and the accident and that in this case the Ford vehicles were not even being operated. Because there is never a question about whether a passively injured vehicle, or parked vehicle, is at fault, plaintiff argued that the Legislature preserved tort remedies for such situations.

On July 13, 2000, defendants filed a response to plaintiff's motion and a cross motion for summary disposition under MCR 2.116(C)(10). In their motion, defendants argued that a vehicle is not considered a vehicle when it is loaded, unloaded, or secured to another motor vehicle as cargo. Rather, defendants asserted that the Ford vehicles in this case were "contents" of plaintiff's auto-transport vehicle. Reading the no-fault act as a whole, defendants purported that

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[2] According to plaintiff, it paid Ford Motor Company for the damage to the Ford vehicles it was carrying, and it is therefore entitled to equitable subrogation from defendants.

the Legislature intended to exclude automobiles attached to other motor vehicles as "motor vehicles" within the meaning of the no-fault act.

After a hearing on the cross-motions for summary disposition, the trial court issued an order granting summary disposition in favor of defendants. The trial court noted that the Ford vehicles were loaded and were not being used as vehicles. Finding the language of the no-fault act clear, the trial court held that that the Ford vehicles were cargo and not "vehicles."

II. Standard of Review

This case involves review of a decision on a motion for summary disposition and also presents a question of statutory construction. "Issues of statutory interpretation are questions of law and are therefore reviewed de novo." *Oade v Jackson Nat'l Life Ins Co of Michigan*, 465 Mich 244, 250; 632 NW2d 126 (2001). Likewise, a trial court's decision on a motion for summary disposition is subject to review de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454, 597 NW2d 28 (1999).

A motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999). "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition under MCR 2.116(C)(10) is appropriate only if there no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Auto-Owners Ins Co, supra* at 397.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Hinkle v Wayne Co Clerk*, 245 Mich App 405, 414; 631 NW2d 27 (2001). The Legislature is presumed to intend the meaning it plainly expressed. *Guardian Photo, Inc v Dep't of Treasury*, 243 Mich App 270, 276-277; 621 NW2d 233 (2000). "In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory." *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001).

III. Michigan's No-Fault Act

Plaintiff maintains that the Ford vehicles were "vehicles" according to § 3123 of the no-fault act because they were designed for operation on a public highway. As "vehicles," plaintiff claims they can not also be treated as "contents" of defendant's auto-transport vehicle. We disagree.

It is undisputed that defendant Yellow Freight's truck negligently struck plaintiff's auto-transport hauler causing damage to the auto hauler and three of the Ford vehicles it was carrying. Thus, the accident clearly arose out of defendant Yellow Freight's use of its truck as a motor vehicle within the meaning of the no-fault act. See *Turner v Auto Club Ins Assoc*, 448 Mich 22, 31-32; 528 NW2d 681 (1995). Tort liability arising out of the ownership, maintenance, or use of

a motor vehicle has been effectively abolished in Michigan; consequently, plaintiff's ability to recover damages is limited to Michigan's no-fault act. MCL 500.3135(2).

Michigan's no-fault act requires an insurance company to provide compensation for property damage when the damage is accidental and arises "out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123 . . . ." MCL 500.3121(1); *Pioneer State Mutual Ins Co v Allstate Ins Co*, 417 Mich 590, 593; 339 NW2d 470 (1983). Section 3123(1) specifically excludes the following property from property protection benefits:

> (a) Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred.

A plain reading of the statute shows that plaintiff is not entitled to property protection benefits under the no-fault act for damage to the Ford vehicles. The statutory language unambiguously excludes "[v]ehicles and their contents" from receiving property protection insurance benefits. While § 3123 does not explain the term "contents," the dictionary defines them as "something that is contained: *the contents of a box*." *The Random House Webster's Unabridged Dictionary* (2nd ed, 1998); see also *Maxwell v Citizens Ins Co of America*, 245 Mich App 477, 482; 628 NW2d 95 (2001). The word "contents," as used in § 3123, is synonymous with something that is carried or transported, such as cargo.

In this case, the Ford vehicles were loaded on the auto-transport and tied down with chains. The auto-transport was moving on the highway.[3] It is axiomatic that an object contained in or on a vehicle becomes the contents of that vehicle and at the same time retains its original identity. Thus, we find that the Ford vehicles, while designed for use on the freeway, were contents on plaintiff's auto-transport at the time they were damaged. Because vehicles and their contents are specifically excluded from property protection insurance benefits under § 3123, the trial court properly granted defendant's motion for summary disposition.

Given our conclusion that the Ford vehicles were contents of plaintiff's auto-transport vehicle, we need not address plaintiff's further argument that the Ford vehicles were "parked" pursuant to the no-fault act. It does however appear that plaintiff's claim in this regard lacks merit. Section 3123(1) permits coverage of property damage for parked vehicles that did not create an unreasonable risk of the damage that occurred. We do not find that plaintiff's auto-

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[3] While plaintiff cites several cases and statutes for the proposition that the Ford vehicles remained motor vehicles after they were loaded on a transport, we find them to be distinguishable. For instance, plaintiff cites *Truby v Farm Bureau General Ins of Mi*, 175 Mich App 569; 438 NW2d 249 (1988), where the plaintiff was injured when the pickup truck he was loading onto a trailer unexpectedly rolled back. However, that case concerned personal injury claims involving parked motor vehicles under § 3106, and not property damage under § 3123. By its own language, § 3106 does not apply to property protection claims. See *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997). Moreover, § 3106 is only applicable to parked motor vehicles.

transport vehicle or the Ford vehicles were parked at the time of the accident. See *United Souther Assurance Co v Aetna Life & Casualty Ins Co*, 189 Mich App 485, 488-490; 474 NW2d 131 (1991) (comparing a parked vehicle to a standing or stationary object).

We affirm.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper