STATE OF MICHIGAN

COURT OF APPEALS

PAULA PARCELL,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 10, 2004

No. 246134
Saginaw Circuit Court
LC No. 02-044674-NO

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant. It is undisputed that plaintiff gave a ride to a stranded motorist who, without warning, attacked with a knife and permanently injured plaintiff before taking her car.[1] Plaintiff sought personal injury benefits from defendant no-fault insurer, who denied payment on the ground that plaintiff's injuries did not arise out of her "ownership, operation, maintenance or use of a motor vehicle as a motor vehicle," as required by MCL 500.3105(1). The only issue on appeal is whether the trial court correctly granted summary disposition, pursuant to MCL 2.116(C)(10), on that ground. We affirm.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Under MCR 2.116(C)(10), a court examines all submitted evidence and views it in the light most favorable to the non-moving party to determine if it establishes a genuine issue of material fact. *Id*. at 120. Because the facts in this case are uncontested, the issue is entirely one of statutory interpretation, which this Court also reviews de novo to give effect to the Legislature's intent. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003). Although the trial court did not consider all aspects of plaintiff's argument, they were all raised in plaintiff's brief below. Therefore, review is appropriate. *Peterman v DNR*, 446 Mich 177, 183; 521 NW2d 499 (1994).

[1] The assailant was apparently convicted of carrying a weapon with unlawful intent, MCL 750.226, carjacking, MCL 750.529a, and assault with intent to commit murder, MCL 750.83. She has an appeal pending at this time (Docket No. 247348).

Our Supreme Court has explained that to be compensable under the no-fault-act, the injuries must be caused by the inherent nature of the use of a motor vehicle, *Thornton v Allstate Ins Co*, 425 Mich 643, 659-661; 391 NW2d 320 (1986), that the plaintiff's occupancy of the vehicle is a fortuity unless the vehicle itself is part of the assault and that the intent of the assailant is not the focus, *Marzonie v Auto Club Ins Ass'n*, 441 Mich 522, 528-534; 495 NW2d 788 (1992), and that the injury must be closely associated with the transportational function of a vehicle, *Morosini v Citizens Ins Co of America (After Remand)*, 461 Mich 303, 310-311; 602 NW2d 828 (1999). Significantly, our Supreme Court has directly concluded that injuries inflicted by a carjacker are personal and the presence of the motor vehicle only incidental. *Bourne v Farmers Ins Exchange*, 449 Mich 193, 197-201; 534 NW2d 491 (1995). Therefore, the injuries are not compensable because they are not sufficiently related to the use of the motor vehicle. *Id*.

Although plaintiff argues that our Supreme Court's reasoning is flawed and should be overturned, we are bound to follow our Supreme Court's decisions. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993). Our Supreme Court has explicitly concluded that a plaintiff is not entitled to personal injury benefits from no-fault automobile insurance based on the fact that an assault took place in a vehicle, even if that assault is a carjacking, because the resultant personal injuries "did not arise out of the use of [a] vehicle as a motor vehicle." *Bourne, supra* at 195, 201. Accordingly, the trial court reached the correct conclusion.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio