STATE OF MICHIGAN

COURT OF APPEALS

JAMES K. CLARK,

Plaintiff-Appellee,

v

PACIFIC EMPLOYERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
December 14, 2004

No. 249591
Wayne Circuit Court
LC No. 03-304438-NF

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying its motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a trash hauler, was attempting to place a tarp over a load on his parked truck when he fell and sustained injuries. He received worker's compensation benefits, and also received wage loss and replacement services benefits from his personal no-fault carrier. Subsequently, plaintiff's worker's compensation benefits were terminated.[1]

Plaintiff filed the instant suit seeking no-fault benefits from defendant, his employer's insurer. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff lacked standing because he had received both worker's compensation benefits and no-fault benefits for his injuries, and that in any event he was precluded from receiving no-fault benefits because he was injured while loading a parked vehicle. The trial court denied defendant's motion, finding that plaintiff had standing to pursue his claim because his worker's compensation benefits had been terminated, and that a question of fact existed as to whether plaintiff was loading or unloading a parked vehicle at the time he was injured.

[1] Eventually, plaintiff redeemed his worker's compensation claim. The redemption occurred after the trial court denied defendant's motion for summary disposition.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The term "standing" denotes the existence of a party's interest in the outcome of litigation that will ensure sincere and vigorous advocacy. To have standing, a party must have suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, there must be a causal connection between the injury and the conduct complained of, and it must be likely that the injury will be redressed by a favorable decision. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 734, 739; 629 NW2d 900 (2001).

No-fault insurance benefits are payable for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle. MCL 500.3105. However, accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle if worker's compensation benefits are available to an employee who sustains injury in the course of employment while loading, unloading, or doing mechanical work on the vehicle, unless the injury arose from the use or operation of another vehicle. MCL 500.3106(2)(a). If the facts are undisputed, the applicability of a statutory exception such as MCL 500.3106(2)(a) is a question of law for the court. *Wills v State Farm Ins Co*, 437 Mich 205, 212; 468 NW2d 511 (1991).

We reverse the trial court's decision denying defendant's motion for summary disposition, and remand this case to the trial court for entry of an order granting defendant's motion. We need not resolve the issue of plaintiff's standing or lack thereof, given that even assuming arguendo that plaintiff had standing to pursue this claim, defendant was entitled to summary disposition. The terms "loading" and "unloading" as used in MCL 500.3106(2)(a) have been broadly interpreted to mean the complete operation of loading or unloading, including activities incidental to those operations. *Thompson v TNT Overland Express*, 201 Mich App 336, 338-339; 505 NW2d 918 (1993); *Bell v F J Boutell Driveaway Co*, 141 Mich App 802, 809; 369 NW2d 231 (1985). Securing a load on a truck has been held to constitute an activity incidental to the operation of loading the vehicle. See, e.g., *Lee v National Union Fire Ins Co*, 207 Mich App 323, 329; 523 NW2d 900 (1994); *Raymond v Commercial Carriers, Inc*, 173 Mich App 290, 294; 433 NW2d 342 (1988); *Crawford v Allstate Ins Co*, 160 Mich App 182, 186; 407 NW2d 618 (1987); *Bell*, *supra*. Plaintiff was injured when he fell while attempting to place a tarp over a load on his parked vehicle. He was required to secure the load with a tarp before driving the truck to the dump. Plaintiff's act of placing the tarp over the load was the final step of the loading process, and thus was within MCL 500.3106(2)(a). Plaintiff was not entitled to no-fault benefits under MCL 500.3106(2)(a). Defendant was entitled to summary disposition. *Wills*, *supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens