STATE OF MICHIGAN

COURT OF APPEALS

ADRIAN DAVIDSON,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

UNPUBLISHED
March 25, 2008

No. 275074
Wayne Circuit Court
LC No. 05-534782-NF

Before: Fitzgerald, P.J., and Murphy and Borrello, JJ.

PER CURIAM.

Plaintiff Adrian Davidson appeals as of right the trial court's order granting defendant Auto-Owners Insurance Company's motion for summary disposition. Because we are constrained by MCR 7.215(J)(1) to follow this Court's opinion in *Cooke v Ins Co of the State of Pennsylvania*, 188 Mich App 453; 470 NW2d 432 (1991), and bound by our Supreme Court's adoption of the definition of the phrase "accidental bodily injury" as articulated by *Cooke* in *Nehra v Provident Life & Accident Ins Co*, 454 Mich 110; 559 NW2d 48 (1997), we affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff filed a complaint against defendants seeking to recover personal injury protection benefits under Michigan's no-fault statute, MCL 500.3101 *et seq*. The complaint alleged that plaintiff was injured on February 28, 2005, while riding in a vehicle that was owned by plaintiff's employer and insured by defendant Auto-Owners.[1]

[1] Plaintiff had no-fault insurance on his own vehicle through defendant Progressive. The parties stipulated to dismiss plaintiff's claim against Progressive.

The only evidence submitted by the parties consisted of excerpts from plaintiff's June 8, 2006, deposition. In the deposition, plaintiff testified that on February 28, 2005, he was training a new driver named Joe. The two men made deliveries for about thirteen hours that day, with plaintiff riding in the passenger seat and Joe driving. The truck was a 1996 Volvo truck. Plaintiff noticed that the passenger seat "had no suspension on it[.]" During the time on the road, plaintiff gradually developed worsening pain in his lower back. He attributed his pain to the fact that there were potholes on I-75 that caused the ride to be bumpy and to the fact that the men drove the truck without a trailer, and "[t]ruck suspensions don't work nearly as effective without a trailer on." The following day, plaintiff experienced significant pain in his lower back and right leg.

Defendant Auto-Owners moved for summary disposition pursuant to MCR 2.116(C)(9) and (10), arguing that it was not liable to pay benefits to plaintiff because plaintiff's injury was not attributable to a single identifiable event, and an insurer is only required to pay benefits for injuries sustained in a single accident with an identifiable temporal and spatial location. Auto-Owners contended that plaintiff was not involved in an accident because the injury to his back occurred over the course of a day of riding in the truck and could therefore not be attributed to a single identifiable event.

Plaintiff argued that he was entitled to recover benefits under MCL 500.3105 because the statute, when strictly construed, only requires the injury to be accidental and arise out of the operation of a motor vehicle as a motor vehicle. Plaintiff's injuries occurred over the course of a single day, not months or years. In any event, MCL 500.3105 does not require that plaintiff's injuries were the result of a single identifiable event. Plaintiff was entitled to benefits because his injury occurred while he was a passenger riding in the truck and the injury was accidental, as opposed to intentional.

Relying on this Court's decisions in *Wheeler v Tucker Freight Lines Co, Inc*, 125 Mich App 123; 336 NW2d 14 (1983), and *Cooke*, *supra*, the trial court granted defendant's motion for summary disposition.

II. ANALYSIS

Plaintiff seeks to recover benefits under MCL 500.3105. MCL 500.3105 provides, in relevant part:

> (1) 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.
>
> * * *
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> (4) Bodily injury is accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or

> suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself.

The issue in this case is whether plaintiff's injury constitutes an accidental bodily injury under the no-fault act. In a line of cases starting with *Wheeler*, this Court has required an accidental bodily injury to have an identifiable temporal and spatial proximity and has denied benefits to plaintiffs whose injuries did not result from a single identifiable event or accident. In *Wheeler*, the plaintiff was employed as a truck driver. *Wheeler*, *supra* at 124. "The rigors of truck driving, protracted over 19 years, eventually took their toll on Mr. Wheeler's back, disabling him completely by late 1979." *Id.* This Court held that the progressive degenerative injury was "not attributable to a single accident" and was therefore not an accidental bodily injury compensable under the no-fault act. *Id.* at 128. This Court explained:

> Plaintiffs argue that under [§ 3105(4)] Mr. Wheeler suffered "accidental" bodily injury. A literal reading of the statutory definition does support plaintiffs' position. Mr. Wheeler neither "suffered intentionally" nor "caused intentionally" the injury to his back. Nevertheless, we may depart from a literal construction of a statutory provision where such a construction is inconsistent with the policies and purposes of the act as a whole. . . . We believe that to construe [§ 3105(4)] literally to embrace Mr. Wheeler's injury would conflict with the underlying purpose of the no-fault act. We, therefore, decline to adopt such an interpretation.
>
> We believe that the purpose of the no-fault insurance act is to provide compensation for injuries attributable to a specific event, that is, to an identifiable "accident". . . . Our review of the no-fault act has uncovered numerous provisions using the term "accident" or "accidents". More importantly, many provisions of the act contemplate an "accident" as an event having an identifiable spatial and temporal location. Various provisions of the no-fault act assume that the accident occurred at a particular point in time. . . .
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> * * *
>
> Reading the no-fault act as a whole, we conclude that the Legislature intended to authorize the payment of personal protection insurance benefits only for an injury sustained in a single accident, having a temporal and spatial location. Accordingly, we hold that "accidental bodily injury" as that phrase is used in the no-fault act is an injury resulting from only such an accident. [*Id.* at 126-128 (footnote omitted).]

This Court relied on the holding in *Wheeler* in denying benefits to the plaintiff in *Cooke*. In *Cooke*, the plaintiff, a truck driver, developed leg pain while driving from Grand Rapids to Colorado. *Cooke*, *supra* at 454. He was diagnosed with thrombophlebitis and deep vein thrombosis and sued to recover no-fault benefits. *Id.* The trial court granted the defendant's motion for summary disposition. On appeal, defendant argued that the plaintiff's injury did not "have a temporal and spatial relationship to a single accident." *Id.* Relying on *Wheeler*, this Court affirmed summary disposition in the defendant's favor, affirmed, stating:

> There is [nothing] tying plaintiff's disability to a specific time and place. All the medical evidence in the record indicates that plaintiff's injury arose from the long periods of time he spent sitting.
>
> Under these circumstances, the court did not err in granting defendants' motions on the ground that the injury was not attributable to a single identifiable event or accident. [*Id*. at 455.]

In *Nehra*, the Supreme Court approved *Wheeler*'s definition of the phrase "accidental bodily injury," although not in the context of the no-fault act. The plaintiff, a dentist, developed disabling bilateral carpal tunnel syndrome due to "prolonged repetition of hand movements." *Nehra*, *supra* at 113, 117. He had disability insurance under a policy that afforded coverage for "accidental bodily injuries[.]" *Id.* at 112. Relying on no-fault insurance cases construing the phrase "accidental bodily injury," specifically *Wheeler* and *Mollitor v Associated Truck Lines*, 140 Mich App 431; 364 NW2d 344 (1985), the trial court determined that the plaintiff had not suffered an accidental bodily injury. *Id.* at 114. The Supreme Court affirmed because the plaintiff had not suffered a "discrete injury" and "[n]o single event caused the disability." *Id.* at 117. In so holding, the Court noted that the word "accidental" "is not ambiguous insofar as its ordinary meaning includes the temporal and spatial elements discussed in the no-fault cases. . . . Without the temporal/spatial component, the word 'accidental' adds almost nothing to the phrase 'accidental bodily injuries.'" *Id.* at 117-118.

The crux of plaintiff's argument on appeal is that *Wheeler* and its progeny should not be followed because *Wheeler* is not binding precedent under MCR 7.215(J)(1) and because the *Wheeler* Court utilized a principle of statutory construction that is not favored today. When this Court decided *Wheeler*, it was acceptable to disregard a literal construction of a statute that produced an unreasonable and unjust result that was inconsistent with the purpose of an act. *Rowell v Security Steel Processing Co*, 445 Mich 347, 354; 518 NW2d 409 (1994). However, that rule of construction was abandoned in *People v McIntire*, 461 Mich 147, 155-156 n 2, 156 n 3; 599 NW2d 102 (1999). The law now requires that plain and unambiguous language be enforced as written, *People v Barbee*, 470 Mich 283, 286; 681 NW2d 348 (2004), even if doing so produces an absurd result. *Taylor v Lansing Bd of Water & Light*, 272 Mich App 200, 207; 725 NW2d 84 (2006). "[A]pplication of the absurd result rule is appropriate only when attempting to determine the Legislature's intent regarding an ambiguous statute; it cannot defeat a statute's clear meaning." *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 143; 662 NW2d 758 (2003).[2]

If § 3105 is given its plain meaning, plaintiff's injury qualifies as an "accidental bodily

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[2] Contrary to defendant's assertion, the absurd result rule is not still recognized by the courts. Although the rule was applied in *Dewan v Khoury*, 477 Mich 888, 890; 722 NW2d 215 (2006), it was applied by Justice Kelly in her dissent. Justice Kelly advocates overruling *McIntire* and reinstating the absurd result rule of construction. See, e.g., *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 109-127; 718 NW2d 784 (2006) (Kelly, J., dissenting).

injury" because plaintiff neither "suffered intentionally" nor "caused intentionally" his injuries. See *Wheeler*, *supra* at 126. Pursuant to MCR 7.215(J)(1), however, this Court is required to follow the rule of law announced in a published decision of the Court of Appeals that was issued on or after November 1, 1990. Although *Wheeler* was decided before November 1, 1990, *Cooke* was decided after that date, and we are thus bound to follow its rule interpreting "accidental bodily injury" as being "attributable to a single identifiable event or accident." *Cooke*, *supra* at 455. If not for the Supreme Court's *Nehra* opinion, we would be inclined to rule in favor of plaintiff and declare a conflict with *Cooke* under MCR 7.215(J)(2). However, we are constrained from doing so by the Supreme Court's adoption of the *Wheeler* Court's definition of "accidental bodily injury" in *Nehra*. "[A] decision of the majority of justices of the Michigan Supreme Court is binding on lower courts[,]" including this Court. *People v Beasley*, 239 Mich App 548, 559; 609 NW2d 581 (2000). While we find plaintiff's arguments regarding this issue to be compelling, we are not empowered to reject the Supreme Court's adoption of the *Wheeler* Court's definition of "accidental bodily injury." The Supreme Court alone can revisit this issue if it so chooses. Accordingly, based on *Wheeler* and *Nehra*, we affirm the judgment of the trial court.

Affirmed.

/s/ Stephen L. Borrello

I concur in result only.

/s/ E. Thomas Fitzgerald