

STATE OF MICHIGAN
COURT OF APPEALS

GWENDOLYN NEILL, Personal Representative
of the Estate of WILLIAM NEILL, Deceased,

Plaintiff-Appellant,

v

MEEMIC INSURANCE COMPANY,

Defendant,

and

PROGRESSIVE MICHIGAN INSURANCE
COMPANY,

Defendant-Appellee.

UNPUBLISHED
April 7, 2009

No. 281293
Macomb Circuit Court
LC No. 2007-000535-NF

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

M. J. KELLY, J. (*concurring*).

I agree that the trial court properly granted summary disposition in favor of defendant Progressive Michigan Insurance Company. Plaintiff failed to rebut the record evidence that decedent was loading or unloading the vehicle when the accident occurred. Therefore, plaintiff's claim was barred under MCL 500.3106(2). For that reason, I concur in the result. However, I write separately to express my view that, under the unique facts of this case, I conclude that there is a question of fact as to whether "the vehicle was parked in such a way as to cause unreasonable risk of bodily injury which occurred." See MCL 500.3106(1)(a).

/s/ Michael J. Kelly