STATE OF MICHIGAN

COURT OF APPEALS

BETTY WILLIAMS, Plaintiff-Appellant,	UNPUBLISHED February 6, 2014
v	No. 311008 Genesee Circuit Court
PIONEER STATE MUTUAL INSURANCE COMPANY, Defendant-Appellee.	LC No. 11-096948-NF

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Defendant is plaintiff's no-fault automobile insurer. Plaintiff filed a claim for personal injury protection benefits that defendant denied. Plaintiff filed the instant suit and the trial court granted summary disposition in favor of defendant under MCR 2.116(C)(10).[1] We reverse and remand because plaintiff presented evidence sufficient to establish a genuine issue of material fact that she sustained her injuries while "entering into" her insured vehicle for transportational purposes within the meaning of MCL 500.3106(1)(c).

[1] We review de novo a trial court's grant of summary disposition. *Ernsting v Ave Maria College*, 274 Mich App 506, 509; 736 NW2d 574 (2007). "When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party." *Id*. at 509-510. All reasonable inferences are to be drawn in favor of the nonmoving party. *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010). "Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Ernsting*, 274 Mich App at 509. "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). "A genuine issue of material fact exists when the record, giving the benefit of any reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ." *Ernsting*, 274 Mich App at 510.

The only evidence presented to the trial court was plaintiff's deposition and our review is therefore limited to that evidence. See *Barnard Mfg Co v Gates Performance Engineering, Inc*, 285 Mich App 362, 380; 775 NW2d 618 (2009). Plaintiff testified that she parked her car under a tree in the driveway of her niece's home, briefly visited with her niece, and then left the home and walked back to her car with the intent of driving it to pick up her husband. As she approached the car, several large branches from the tree fell onto the hood, damaging it. Plaintiff removed the branches, unlocked the car door, and "opened the door to get in." She testified that she was "getting into the car" when another branch fell from the tree and struck her in the head, causing physical injury.

"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 . . . ." MCL 500.3105(1). Coverage for injuries that involve a parked vehicle is defined by MCL 500.3106(1), which provides for such coverage where one of the three following circumstances exists:

> (a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.
>
> (b) [Excepting those cases involving worker's compensation[2]], the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.
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> (c) [Excepting those cases involving worker's compensation], the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

Defendant argues that there is no evidence that plaintiff was "entering into" the vehicle at the time she was injured. We disagree because defendant's argument is inconsistent with both plaintiff's testimony and the applicable caselaw. Michigan appellate courts have repeatedly held that once a plaintiff makes physical contact with a vehicle for the purpose of entering it, the process of "entering into" has begun.

In *Teman v Transamerica Ins Co of Mich*, 123 Mich App 262, 265; 333 NW2d 244 (1983), we held that the plaintiff was "entering into" his vehicle where he "alleged that he had his foot on the back ledge of the truck and that he was attempting to open the door with the intention of going in and out of the trailer to unload the cargo therein." Similarly, in *Hunt v Citizens Ins Co*, 183 Mich App 660, 664; 455 NW2d 384 (1990), we held that the plaintiff was "entering into" his vehicle where he "had his car keys in his hand and his left hand on the car door . . . ."

[2] See MCL 500.3106(2).

In *Ansara v State Farm Ins Co*, 207 Mich App 320, 321-322; 523 NW2d 899 (1994), we reversed a grant of summary disposition in favor of the defendant-insurer. We concluded that there was a question of fact whether plaintiff was "entering into" his vehicle when he sat in his car, started the engine and air conditioning, and then exited the car to go around it in order to open the passenger doors for his wife and grandson. *Id*. While he was walking around the vehicle to return to the driver's side door, he slipped on a stone, fell, and was injured. *Id*.

In *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 628; 552 NW2d 671 (1996), the plaintiff slipped and fell on ice as she took a step toward her vehicle after having placed her hand on, and opening, the car door. She had not yet placed her foot on or inside the vehicle. *Id*. We rejected the defendant's argument that the plaintiff's actions did not constitute "entering into" the vehicle and affirmed the trial court's grant of summary disposition in favor of the plaintiff. *Id*. at 634.

Lastly, in *Putkamer v Transamerica Ins Co of America*, 454 Mich 626, 628; 563 NW2d 683 (1997), the plaintiff had opened her car door, but not yet placed her foot inside the car, when she slipped on ice and fell. Our Supreme Court held that the plaintiff's actions constituted "entering into" the vehicle, and because she was doing so with the intention of driving, "as a matter of law, she was using the parked motor vehicle as a motor vehicle[.]" *Id*. at 636.

The cases defendant cites in support of its argument are unpersuasive and distinguishable from the instant facts. In *McCaslin v Hartford Accident & Indemnity*, 182 Mich App 419, 424; 452 NW2d 834 (1990), we held that the plaintiff was not "entering into" his vehicle when he was injured. However, that plaintiff was injured while walking towards his vehicle; he had not initiated physical contact with the vehicle. *Id*. at 420. Similarly, in *King v Aetna Cas & Surety Co*, 118 Mich App 648, 649-652; 325 NW2d 528 (1982), where we found in favor of the defendant-insurer, the plaintiff was merely approaching his car with his keys in hand when injured – he had not yet made physical contact with the vehicle, much less opened the door.

Defendant's reliance on our Supreme Court's recent opinion in *Frazier v Allstate Ins Co*, 490 Mich 381; 808 NW2d 450 (2011) is also misplaced. In that case, the Court held that "alighting" from a vehicle is completed once a person has "successfully transferred full control of one's movement from reliance upon the vehicle to one's body[,]" which is "typically accomplished when both feet are planted firmly on the ground[,]" even if the person is still in the process of closing the car door. *Id*. at 386-387. However, *closing* a car door is not an inherent and necessary action when alighting from a vehicle. Once a plaintiff has opened the door and gotten out, closing the door is an action the plaintiff may choose to do or not do; thus, closing the door is not a necessary part of alighting. By contrast, *opening* a car door is a necessary part of "entering into" a parked vehicle. A plaintiff may not enter without doing so.[3] Indeed, the *Frazier* Court was careful to note this distinction, stating that, "'alighting' is [not] antonymous to 'entering[.]'" *Id*. at 385 n 1. In the instant case, plaintiff was required to open her car door in order to accomplish her transportational purpose.

[3] We presume that the Legislature did not intend that people enter into their cars by climbing through the window.

Defendant next argues that, even if plaintiff was entering her car, her injury was not sufficiently causally connected to that entrance to have a "causal relationship to the parked motor vehicle that is more than incidental, fortuitous, or but for." *Putkamer*, 454 Mich at 635-636. As already noted, we have always found that if a plaintiff is injured while entering into a vehicle for transportational purposes,[4] a sufficient causal relationship exists, regardless of the immediate cause of the injury. Defendant's reliance on *King* is again misplaced. In *King*, we held that an accident caused by a non-automotive factor, in that case, an icy driveway, was not sufficiently linked to entering the vehicle:

> Slipping on ice is simply not foreseeably identifiable with the act of entering a vehicle. It was the ice on the parking lot that caused plaintiff's injuries; the involvement of his parked vehicle was merely incidental. Consequently, even if we were to find that plaintiff was "entering into" his vehicle when the accident occurred, we would nevertheless conclude that plaintiff was not entitled to no-fault benefits. [118 Mich App at 652.]

In *Putkamer*, our Supreme Court explicitly rejected this analysis. Indeed, it quoted the above passage and rejected it, stating:

> *This* [] *analysis is wrong*. There is a sufficient causal connection, as contemplated by this exception (now subsection 3106[1][c]) to the parking exclusion, for the case in which a plaintiff is injured when he has opened the door to enter the parked vehicle, as in this particular case, and slips and falls on ice . . . . [454 Mich at 637 n 10.]

Accordingly, we reject defendant's argument that because the immediate cause of plaintiff's injury was a tree branch, and not the vehicle itself, her injury did not "arise out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle[.]" MCL 500.3105(1).

Lastly, defendant argues that plaintiff was simply in the wrong place at the wrong time. Of course, all accidental injuries are ultimately the result of being in the wrong place at the wrong time and such a characterization does not facilitate our analysis. The question is whether plaintiff was at that location at that time because she was entering her vehicle for transportational

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[4] "[W]hether an injury arises out of the use of a motor vehicle 'as a motor vehicle' turns on whether the injury is closely related to the transportational functions of automobiles." *Drake v Citizens Ins Co of America*, 270 Mich App 22, 34; 715 NW2d 387 (2006) (brackets, quotation marks, and citation omitted). Thus, had plaintiff been entering her vehicle in order to sleep or to set up an advertising display, or some other function not "closely related to [its] transportational function[,]" *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 219-220; 580 NW2d 424 (1998), she would presumably not be entitled to recovery. See, e.g., *Yost v League Gen Ins Co*, 213 Mich App 183; 539 NW2d 568 (1995) (no coverage where plaintiff was injured while using his parked car as a place to sleep).

purposes. Here, plaintiff's testimony requires the conclusion that she was at that location at that time because she was entering her vehicle in order to operate it as a motor vehicle.[5]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro

[5] Defendant points out that, immediately before plaintiff opened the door, she was removing tree branches that had fallen moments earlier and damaged the hood of her car. Assuming that for some reason this action has any effect on whether or not plaintiff was "entering into" her car when she opened the door, it would not vitiate coverage as her action in removing the branches that had just damaged the hood of her car would constitute "maintenance" of the parked vehicle. MCL 500.3106(1)(a); see, e.g., *Miller v Auto-Owners Ins Co*, 411 Mich 633; 309 NW2d 544 (1981); *Hackley v State Farm Mut Auto Ins Co*, 147 Mich App 115; 383 NW2d 108 (1985); *Musall v Golcheff*, 174 Mich App 700; 436 NW2d 451 (1989); *Michigan Bell Tel Co v Short*, 153 Mich App 431; 395 NW2d 70 (1986).