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STATE OF MICHIGAN

COURT OF APPEALS

RACHEL DEWEY, Plaintiff-Appellant,	UNPUBLISHED February 20, 2020
v AUTO CLUB GROUP INSURANCE COMPANY and EDWARD EARL BYRON, Defendants-Appellees.	No. 346556 Wayne Circuit Court LC No. 17-008124-NF

Before: RONAYNE KRAUSE, P.J., and K. F. KELLY and TUKEL, JJ.

PER CURIAM.

In this no-fault case, plaintiff Rachel Dewey appeals as of right the trial court's order granting summary disposition in favor of defendants Auto Club Group Insurance Company (Auto Club) and Edward Earl Byron pursuant to MCR 2.116(C)(10) (no genuine issue of material fact). This case arises out of largely undisputed facts, although the parties disagree whether to characterize the incident as a single accident involving two collisions, or two distinct accidents occurring in sequence. For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

At approximately 10:30 p.m. on April 16, 2017, plaintiff was driving to work on I-75 in her black 2006 Ford Focus. She was driving above the posted speed limit. According to plaintiff, as she was driving, "something on [her] car broke," she lost control of her car, and she crashed into the median wall. The front end of her vehicle was seriously damaged, and the vehicle itself came to rest in the roadway, crossing two travel lanes. That portion of the road was not illuminated. Plaintiff was unable to restart her vehicle. She did not activate her hazard lights despite the rear of her vehicle being intact. A passenger in another vehicle nevertheless noticed plaintiff's vehicle, told his driver to stop, and persuaded plaintiff to get out of her vehicle and walk to the side of the highway for safety.

However, shortly thereafter, plaintiff returned to her vehicle to retrieve her cell phone. While she "was kneeling down and . . . looking under [her] brake pedals" trying to find her phone, a car driven by Byron crashed into her car. Byron was apparently driving below the posted speed

limit. For purposes of this appeal, it is tacitly undisputed that plaintiff was severely injured. Plaintiff and Byron were both transported to a hospital by ambulance. At the hospital, plaintiff consented to a blood draw, which indicated that plaintiff had "0.117 grams alcohol per 100 milliliters blood" several hours after the collisions. Plaintiff was convicted of operating while intoxicated as a result of these events. Critically to this case, plaintiff's no-fault insurance had lapsed "a few weeks before the accident."

Plaintiff commenced the instant suit seeking personal protection insurance (PIP) benefits from Auto Club, Byron's no-fault insurer. Plaintiff also pursued claims for negligence and gross negligence against Byron. Auto Club and Byron both moved for summary disposition, arguing that because plaintiff failed to maintain no-fault insurance at the time of the incident, she was not permitted to recover PIP benefits or third-party damages. Plaintiff contended that her claims arise solely out of the second collision. She argued that when Byron struck her vehicle, she was neither "driving" nor "operating" her vehicle, so she was not obligated to maintain no-fault insurance at that time. The trial court agreed with defendants and dismissed plaintiff's claims. Plaintiff now appeals.

II. STANDARD OF REVIEW AND PRINCIPLES OF LAW

We review a trial court's decision to grant or deny a motion for "summary disposition de novo 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). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id*. at 120. When evaluating such a motion, "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. (citation omitted). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.*

We also review a trial court's interpretation and application of the no-fault act de novo. *Agnone v Home-Owners Ins Co*, 310 Mich App 522, 526; 871 NW2d 732 (2015). When interpreting and applying a statute, a court's primary goal is to ascertain and give effect to the Legislature's intent. *Frierson v W Am Ins Co*, 261 Mich App 732, 734; 683 NW2d 695 (2004). In doing so, courts look first to the language of the statute itself. *Id*. If the statute is clear and unambiguous, it must be enforced as written, and judicial construction is neither necessary nor permissible. *Id*. However, "[t]erms contained in the no-fault act are read in the light of its legislative history and in the context of the no-fault act as a whole." *Id*. (citations and quotation marks omitted). Moreover, "[g]iven the remedial nature of the no-fault act, courts must liberally construe its provisions in favor of the persons who are its intended beneficiaries." *Id*. (citations and quotation marks omitted).

III. OBLIGATION TO MAINTAIN NO-FAULT INSURANCE

"The purpose of the Michigan no-fault [insurance] act[, MCL 500.3101 *et seq*.,] is to broadly provide coverage for those injured in motor vehicle accidents without regard to fault." *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 37; 748 NW2d 574 (2008) (quotation and citation omitted). "[G]iven that these statutory benefits would be available to all Michigan residents, the Legislature believed this could be most effectively achieved through a system of

compulsory insurance, whereby every Michigan motorist would be required to purchase no-fault insurance or be unable to operate a motor vehicle legally in this state." *Dye by Siporin & Assoc, Inc v Esurance Property & Cas Ins Co*, 504 Mich 167, 182; 934 NW2d 674 (2019) (internal quotation and alterations omitted). Pursuant to MCL 500.3101(1), a motor vehicle must be insured, although it does not matter who actually purchases the insurance. *Dye*, 504 Mich at 172-173, 192-193. The owner or registrant of a vehicle involved in an accident is not entitled to PIP benefits if the required insurance is not in effect. MCL 500.3113(b). Likewise, a party may not recover tort damages arising out of an automobile accident if that party "was operating his or her own vehicle at the time" and did not maintain the insurance required by MCL 500.3101(1). MCL 500.3135(2)(c).

There is no dispute that plaintiff's vehicle was not insured on the day of the collisions. However, "[s]ecurity is only required to be in effect during the period the motor vehicle is driven or moved on a highway." MCL 500.3101(1). Plaintiff argues that because her vehicle was not being "driven or moved on a highway" at the specific time of the second collision, she was not required to maintain insurance under MCL 500.3101(1). She therefore concludes that she is not precluded from receiving PIP benefits under MCL 500.3113(b). She also argues that she was not "operating" her vehicle at the time of the second collision within the meaning of MCL 500.3135(2)(c). She therefore likewise concludes that she is not barred from recovering under her tort claims. We disagree.

A. INSURANCE REQUIRED UNDER THE NO-FAULT ACT

In *Shinn v Mich Assigned Claims Facility*, 314 Mich App 765, 767; 887 NW2d 635 (2016), the "[p]laintiff owned a vehicle that at the time of the accident was not insured or operating." The plaintiff's vehicle was not insured because it had been undergoing repairs and had only recently been moved from the repair shop to the street in front of the plaintiff's house. *Id*. at 774-775. The plaintiff was injured when she sat partially inside her vehicle while out walking, at which time another driver drove into the rear of the plaintiff's vehicle. *Id*. at 767. On appeal, the "plaintiff argue[d] that under MCL 500.3101 she was not required to maintain security for payment of PIP benefits because the vehicle was not being 'driven or moved upon a highway.' " *Id*. at 773, quoting MCL 500.3101(1). This Court agreed.

Significantly, " '[s]ecurity is only required to be in effect during the *period* the motor vehicle is driven or moved on a highway.' " *Shinn*, 314 Mich App at 774, quoting MCL 500.3101(1) (emphasis added). "The term 'period' is defined as 'the completion of a cycle, a series of events, or a single action.' " *Id*. at 775, quoting *Merriam-Webster's Collegiate Dictionary* (11th ed). This Court concluded that "[b]ecause any driving or movement on a highway was completed several days before the accident, . . . security was not required at that time." *Id*. We additionally observe that a "period" is further defined as being distinct or bounded. See *Merriam-Webster's Collegiate Dictionary* (11th ed). Thus, a "period" clearly entails a duration with a principled beginning and end.

When construing statutes, we should not "abandon common sense." *Frierson*, 261 Mich App at 734 (quotation omitted). As discussed, the intended beneficiaries, see *id*., of the no-fault act are all Michigan residents injured in automobile accidents. *Iqbal*, 278 Mich App at 37; *Dye*, 504 Mich at 182. However, the Legislature unambiguously intended to tie those benefits to some

degree of reciprocal responsibility on the part of owners, registrants, or drivers of vehicles. *Dye*, 504 Mich at 182. Thus, we think plaintiff's construction of MCL 500.3101(1) would contravene the purpose of the no-fault act and the Legislature's manner of effectuating that purpose. In effect, plaintiff would rewrite the statute to read, "[s]ecurity is only required to be in effect *while* the motor vehicle is *actually being* driven or moved on a highway." We can conceive of no principled way in which insurance could be maintained in such a manner.[1] Merely halting the motion of a vehicle, whether for a traffic light or due to a crash, does not instantly obviate the obligation to maintain insurance.

Rather, we conclude that the "period" in MCL 500.3101(1) refers, at least generally, to any time during which the owner, registrant, or driver of the vehicle expects and intends the vehicle to be driven or moved on a highway on demand. A vehicle is clearly not expected to be driven while undergoing repairs, *Shinn*, 314 Mich App at 774-775, or while placed in storage. See *MEEMIC Ins Co v Michigan Millers Mut Ins*, 313 Mich App 94, 96-103; 880 NW2d 327 (2015). We cannot conclude that crashing a vehicle necessarily brings that period to an immediate close.

We conclude that plaintiff failed to comply with MCL 500.3101(1)'s security requirement, so she was disqualified from receiving PIP benefits pursuant to MCL 500.3113(b).

B. OPERATION OF A VEHICLE

"Michigan's no-fault act generally abolishes tort liability arising from the ownership, maintenance, or use of a motor vehicle." *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013). However, "[a] person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle" where "the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement." MCL 500.3135(1). As noted, "[d]amages must *not* be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by section 3101(1) at the time the injury occurred." MCL 500.3135(2)(c) (emphasis added). We have already concluded that plaintiff did not maintain the required insurance. Plaintiff argues, with no support, that she was not "operating" her vehicle at the time of the second collision. We disagree.

Plaintiff's cursory argument is inadequate to present this issue. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).[2] In any event, her argument is

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[1] The "absurd result rule" forbids any disregard of the plain language of a statute, but we must avoid creating absurdities if construction of a statute is necessary. *Piccalo v Nix*, 466 Mich 861, 861; 643 NW2d 233 (2002); *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). This is consistent with our application of "common sense." *Frierson*, 261 Mich App at 734.

[2] Plaintiff seemingly implies that it simply "stands to reason" that she was not operating her vehicle within the meaning of the no-fault act. We disagree. On the one hand, a parked vehicle is generally not considered to be operating under the no-fault act. See *Woodring v Phoenix Ins Co*, 325 Mich App 108, 117; 923 NW2d 607 (2018); *Kemp v Farm Bureau Gen Ins Co of Mich*, 500 Mich 245,

irrelevant. Presuming, without deciding, that she was not "operating" her vehicle at the time of the second collision, we have already determined that she failed to maintain the required insurance. Critically, the statute requires both preconditions to be met before plaintiff can recover tort damages; and at the most, plaintiff can potentially only satisfy one. We need not consider this issue further.

IV. CONCLUSION

Under Michigan's no-fault act, owner-drivers are disqualified from receiving PIP benefits and prohibited from recovering third-party damages when they fail to maintain no-fault insurance during the "period" of time during which the owner, registrant, or driver of the vehicle expects and intends the vehicle to be driven or moved on a highway on demand. Plaintiff's vehicle was not moving at the specific time of the second collision. However, plaintiff was not instantaneously relieved of her obligation to maintain no-fault insurance merely because the motion of her car had halted. Under the circumstances, she remained obligated to maintain no-fault insurance when the second collision occurred a few minutes later. The trial court correctly followed the applicable legal principles.

Affirmed. Defendants, being the prevailing parties, may tax costs. MCR 7.219(A).

/s/ Amy Ronayne Krause
/s/ Kirsten Frank Kelly
/s/ Jonathan Tukel

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257 n 33; 901 NW2d 534 (2017). However, merely halting the movement of a motor vehicle does not automatically mean it is necessarily not operating. See *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 219 n 6; 580 NW2d 424 (1998); *Strozier v Flint Community Schools*, 295 Mich App 82, 91; 811 NW2d 59 (2011). Consequently, whether she was operating the vehicle within the meaning of the no-fault act is not so obvious that plaintiff may dispense with argument. Nevertheless, as we discuss, her "operation" is, under the circumstances, irrelevant in any event.