

STATE OF MICHIGAN
COURT OF APPEALS

BELINDA MESTER, as Next Friend of JESSICA
MESTER, a minor,

Plaintiff-Appellant,

v

STATE FARM MUTUAL INSURANCE
COMPANY,

Defendant-Appellee.

FOR PUBLICATION
April 9, 1999
9:05 a.m

No. 205442
Tuscola Circuit Court
LC No. 96-014932 NJ

Before: Fitzgerald, P.J., and Holbrook, Jr. and O'Connell, JJ.

FITZGERALD, P.J.

Plaintiff Belinda Mester appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant State Farm Mutual Insurance Company. We affirm.

On March 24, 1995, twelve-year-old Jessica Mester skipped school in Cass City with two other girls, fourteen-year-old Amanda Smith and twelve-year-old Edelfina Nazario. The principal of the school observed the girls leaving the school grounds and chased them. The girls eluded the principal by running away on foot. Later that day, the girls began looking for a vehicle with keys in it that they could use to drive away from the Cass City area. Amanda Smith found a truck parked with keys inside and got into the driver's seat. Jessica got into the passenger seat, Edelfina got into the back seat, and Amanda drove the vehicle away.

The girls used the truck to go to the upper peninsula, stopping occasionally to purchase gas and to take turns driving the truck in a field. After running out of money, the girls used the truck to return to the lower peninsula on I-75 and headed back toward Cass City. At approximately 1:00 a.m. on the morning of March 25, the girls were spotted in the truck by a police officer in the Village of Reese. A chase ensued, and Amanda refused to pull over despite the pleas of Edelfina and Jessica for her to stop. The truck went out of control during the chase, resulting in a roll-over collision that killed Edelfina and injured Jessica and Amanda.

Plaintiff Belinda Mester, Jessica's mother, filed a complaint in May 1996 seeking to recover no-fault personal protection insurance (PIP) benefits from defendant, the insurer of her

164, 165; 193 NW2d 393 (1971). The offense requires the specific intent to take possession of the vehicle unlawfully, *People v Lerma*, 66 Mich App 566, 570; 239 NW2d 424 (1976), and punishes conduct that does not rise to the level of larceny where an intent to permanently deprive the owner of the property is lacking. *Id.* at 568, 570. Had the Legislature intended to exempt from § 3113(a) all joyriding incidents it would have chosen a different term than "unlawful taking," such as "steal" or "permanently deprive." Instead, the Legislature chose a term that encompasses the offense of joyriding. As explained above, the justices of the Supreme Court who recognized a joyriding exception in the *Priesman* case did so not because joyriding does not involve an unlawful taking, but only because of special considerations attendant to the joyriding use of a family vehicle by a family member. Those considerations do not warrant expansion of the exception beyond the family context.

Here, based upon Jessica's deposition testimony, there is no question of fact that Jessica participated in the unlawful taking of the truck, without permission and without any reason to believe that she was entitled to take or use the truck. On these undisputed facts, the clear intent of the Legislature was to deny the payment of no-fault PIP benefits. Hence, summary disposition was properly granted under MCR 2.116(C)(10).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell

¹ The lead opinion in *Priesman* was signed by only three justices.