STATE OF MICHIGAN

COURT OF APPEALS

SALLY WHALTON,

Plaintiff-Appellant,

v No. 88455

COMMERCIAL CARRIERS, INC., OLD REPUBLIC INSURANCE COMPANY, and FARM BUREAU MUTUAL INSURANCE COMPANY,

Defendants-Appellees.

BEFORE: D.F. Walsh, P.J., M.H. Wahls and J.R. Giddings,* JJ.

PER CURIAM

Plaintiff, Sally Whalton, appeals as of right from a grant of summary disposition in favor of defendants in this no-fault insurance survivors' loss benefits case, and we affirm. Plaintiff filed this action in August 1983 to recover benefits under MCL 500.3108; MSA 24.13108, after the accidental death of her husband, Joseph Whalton, during the course of his employment. Defendant Commercial Carriers, Inc., was Mr. Whalton's employer, and defendant Farm Bureau Mutual Insurance Company was his personal no-fault insurer. Defendant Old Republic Insurance Company was his employer's no-fault insurer.

Mr. Whalton was employed as a semi-tractor trailer driver to transport chassis from assembly plants to dealers. The chassis were not fully assembled vehicles but rather metal frames with, essentially, four wheels, tires, an engine, transmission, steering wheel, gear lever, and exhaust system. On March 23, 1983, Mr. Whalton was driving one of these chassis onto the lower level of a semi-tractor trailer when a wheel of the chassis struck a hydraulic line, causing the upper level of the transport vehicle to collapse, resulting in decedent's death. Apparently, the support pins, which were designed to prevent the transport vehicle's ramp from falling in case of a malfunction in the

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*Circuit judge, sitting on the Court of Appeals by assignment.

hydraulic system, had not been engaged. Plaintiff thereafter received worker's compensation survivors' benefits.

Defendants requested and were granted summary disposition pursuant to MCR 2.116(C)(10) in an order dated October 11, 1985, issued by Wayne County Circuit Court Judge William L. Cahalan. In the conclusion section of his well-written opinion, Judge Cahalan stated:

> "Defendants' motion for summary judgment is granted because the subject chassis that decedent was operating is not a motor vehicle pursuant to the No-Fault Act, as it was not operating on a public highway at the time of the accident nor primarily designed for public highway operation. Additionally, Defendants' motion is granted insofar as, with reference to the operation of the semi-trailer, Plaintiff is barred from no-fault recovery by virtue of subsection (2) of the parked vehicle provision. The Court, having concluded that the exception to this subsection requires a finding of involvement with another motor vehicle, rules that since a chassis is not a motor vehicle under the Act, the exception does not vitiate the application of subsection (2) in the instant case."

In deciding a motion under MCR 2.116(C)(10)--no genuine issue as to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law--a trial judge must consider the pleadings, affidavits, and other available evidence and be satisfied that the claim or position asserted cannot be supported by evidence at trial due to some deficiency which cannot be overcome. Hagerl v Auto Club Group Ins Co, ___ Mich App ___; ___ NW2d ___ (No. 87245, rel'd February 17, 1987). The test is whether the record which might be developed, giving the benefit of reasonable doubt to the opposing party, would leave open an issue upon which reasonable minds might differ. Rizzo v Kretschner, 389 Mich 363, 371-373; 207 NW2d 316 (1973). The lower court will be affirmed where no factual development could justify recovery by the non-moving party. League Life Ins Co v White, 136 Mich App 150, 152; 356 NW2d 12 (1984).

On appeal, plaintiff argues that the trial court erroneously determined that a chassis is not a motor vehicle, emphasizing that a chassis is designed for operation on public highways and that the applicable statute does not require a vehicle to be completely assembled.

Regarding 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. MCL 500.3105(1); MSA 24.13105(1). "Bodily injury" includes death resulting from such injury. MCL 500.3105(3); MSA 24.13105(3). As Joseph Whalton's widow, plaintiff sought no-fault personal protection benefits under the survivors' loss provision of the no-fault insurance act. MCL 500.3108; MSA 24.13108.

An exception to liability is provided in the parked vehicle provision of the no-fault act for accidental bodily injury sustained by an employee in the course of loading or unloading a parked vehicle. In 1981, MCL 500.3106; MSA 24.13106, was amended, effective January 1, 1982, to provide:

> "(2) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 428.101 to 418.941 of the Michigan Compiled Laws, are available to an employee who sustains the injury in the course of his or her employment while loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle."

The purpose of this amendment was to eliminate double recovery by injured employees under the worker's compensation and no-fault acts for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Bell v F J Boutell Co, 141 Mich App 802, 810; 369 NW2d 231 (1985).

Joseph Whalton was fatally injured, in the course of his employment, while loading a parked semi-tractor trailer; worker's compensation benefits were paid to plaintiff, who is his surviving spouse. Therefore, section 3106(2) precludes plaintiff's claim for no-fault benefits "unless the injury arose from the use or operation of another vehicle." Plaintiff argues that the chassis which Mr. Whalton drove onto the trailer was a motor vehicle under the statutory definition of that term, whereas defendants argue, and Judge Cahalan ruled, that the

chassis was not a motor vehicle for purposes of the no-fault act because a chassis is not designed for operation on public roads.

The statutory definition of "motor vehicle" provides, in pertinent part:

> "(c) 'Motor vehicle' means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels." MCL 500.3101(2)(c); MSA 24.13101(2)(c).

In the present case, the chassis had four wheels and an engine, thus fulfilling two of the criteria. The gravamen thus becomes whether the chassis was designed for operation upon a public highway. Apperson v Citizens Ins Co, 130 Mich App 799, 801; 344 NW2d 812 (1983). We find persuasive guidance concerning this issue in Logan v Commerical Carriers, 152 Mich App 701; 394 NW2d 470 (1986).

In Logan, plaintiff was employed by Commercial Carriers, Inc., to load cargo onto tractor trailers. While driving the chassis of a motor home onto a tractor trailer for subsequent hauling, plaintiff was injured when the portable seat on which we was sitting became dislodged and caused him to fall and strike his back against the side of the trailer. As a result, plaintiff received worker's compensation benefits from his employer. He also applied, however, to both Commercial Carriers, Inc and Old Republic Insurance Company for no-fault insurance benefits, which were denied. This Court affirmed the trial court's grant of summary judgment in favor of defendants, concluding:

> "[w]e find that the chassis in this case was not a motor vehicle within the statutory definition. While it may have been equipped with a motor, steering wheel, and tires, it was not equipped with a body, hood, windshield, or a permanent seat. In its stripped-down state, the chassis was not designed primarily for operation on a highway. The fact that defendant Commercial Carriers may have operated similar chassis on the highway is of no consequence." 152 Mich App at 705.

Thus, the Logan Court rejected the argument, which plaintiff advances in this case, that because the chassis was capable of being driven on public streets, it was "designed" for

operation on a public highway. In rendering its decision, the Logan Court stressed that:

> "The chassis in this case was the stripped-down frame of a vehicle, consisting of steel rails, a motor, and a steering wheel. Although it did not include the body, hood, windshields, or even the seat of the finished vehicle, there is no dispute that the chassis was powered by an engine and had more than two wheels." 152 Mich App at 704.

Similarly, in rendering his written opinion in this case, Judge Cahalan emphasized that:

> "All of the chassis being driven from the GM plant to the storage field have no lights, turn signals, or windshields affixed to them; the driver sits atop a wooden crate in lieu of a chair. Moreover, the vehicles are not registered."

The Logan Court, in part, relied on Ebernickel v State Farm, 141 Mich App 729; 367 NW2d 444 (1985), lv den 422 Mich 971 (1985), in which this Court held that a forklift was not "primarily" designed for operation on public roads and thus was not a motor vehicle within the statutory definition. The court in that case stated that whether the machine "could be" or "had been previously" operated on a highway was of no consequence in determining whether the vehicle was primarily designed for highway use. We agree with the logic and the outcome of Logan and thus feel no legal or other necessity to deviate from its holding.

Nor do we find the remaining arguments raised by plaintiff on appeal to be persuasive. Plaintiff suggests that the semi-tractor and trailer are two separate vehicles, so that the injury, caused when the hydraulic system failed, occurred during the loading of one vehicle (the trailer) and the operation of another vehicle (the tractor). A trailer alone can be a separate motor vehicle under the no-fault act even when hooked up to a tractor. Kelly v Inter-City Truck Lines, Inc, 121 Mich App 208; 328 NW2d 406 (1984); Citizens Inc v Roadway Exp, 135 Mich App 465; 354 NW2d 385 (1984), lv den 421 Mich 857 (1985). Recognizing the tractor and trailer in this case as separate motor vehicles, however, the accident which caused Mr. Whalton's

death does not fit within the exclusionary language in the last clause of MCL 500.3106(2); MSA 24.13106(2), regarding instances where "the injury arose from the use or operation of another vehicle." The accident which occurred essentially involved the trailer and the chassis, not the trailer and the tractor. As plaintiff herself points out in her brief, "the wheel of the chassis decedent was operating rubbed against the side of the trailer and broke off a hydraulic line fitting, causing the hydraulic line to fail and the top portion of the trailer... to collapse, crushing the decedent. Thus, the injury did not arise from the use or operation of a vehicle other than the parked trailer itself. Accordingly, plaintiff cannot avoid the effect of the parked vehicle, employee loading provision on the basis that another motor vehicle was involved in the accident.

Plaintiff also argues that Mr. Whalton was not engaged in "loading" as that term is used in section 3106(2). Plaintiff seeks, mainly by reference to case law which predates the amendatory language to section 3106, to limit the term "loading" to "the actual picking up and [manual] moving of freight." Loading, plaintiff observes, "has never been defined as the operation or driving of a vehicle." Once again, we look to the opinion in Logan for guidance. In that case, it was emphasized that section 3106(2) was added by amendment for the purpose of precluding individuals eligible for worker's compensation benefits from collecting no-fault benefits for injuries arising from acts of loading or unloading a parked vehicle. After noting that the terms "loading" and "unloading" should be interpreted broadly in order to further the statutory purpose of eliminating the duplication of benefits for work-related injuries which do not relate to the actual driving or operation of a motor vehicle, the Logan Court concluded that "the driving of the chassis onto the trailer for shipment as cargo constituted the loading of a vehicle during the course of employment." 152 Mich App at 703.

See also Bell v F J Boutell Driveaway Co, 141 Mich App 802, 810-811; 369 NW2d 231 (1985); Gray v Liberty Mutual Ins Co, 149 Mich App 446, 449-451; 386 NW2d 210 (1986), lv den 425 Mich 884 (1986); and Gibbs v UPS, 155 Mich App 300, 302, 304; ___ NW2d ___ (1986). We agree that the achievement of the amendatory language's legislative purpose requires a broad interpretation of the words "loading" and "unloading." As a result, we perceive no valid reason to deviate from the reasoned conclusion reached on this issue in Logan.

In light of the above, we find that plaintiff's decedent was fatally injured in the course of his employment while loading a parked vehicle and not from the use or operation of any other motor vehicle. Since plaintiff has already received worker's compensation survivors' loss benefits, she is precluded by MCL 500.3106(2); MSA 24.13106(2), from also receiving no-fault insurance benefits. Because no future development of the evidence will change this conclusion, the trial court correctly granted summary disposition in favor of defendants under MCR 2.116(C)(10).

The lower court's order is therefore affirmed.

/s/ Daniel F. Walsh
/s/ Myron H. Wahls
/s/ James R. Giddings