STATE OF MICHIGAN

COURT OF APPEALS

STATE MUTUAL INSURANCE COMPANY,

Plaintiff-Appellee,

v No. 97753

DEBRA FULTON,

Defendant-Appellant.

BEFORE: M.J. Kelly, P.J., G.R. McDonald and J.D. Payant*, JJ.

PER CURIAM

Defendant was seriously injured in an accident that occurred on November 26, 1984. Subsequently, defendant brought suit against both her father, Wayne Fulton, and her brother, Harold Fulton. Plaintiff, State Mutual Insurance Company, brought the instant action seeking a declaratory judgment that defendant is excluded from coverage under the standard farm policy that was issued to defendant's father, Wayne Fulton. The trial court granted summary disposition in favor of plaintiff, and defendant appeals as of right.

Prior to November 26, 1984, Wayne Fulton agreed to trade a Chevrolet engine he owned to Ron Swain in return for several trusses that would form the roof support for a barn Fulton wanted to build on his own property. Fulton modified a trailer previously used to carry boats to transport the trusses from Swain's property back to Fulton's. On November 26, 1984, Fulton hitched his trailer to a pickup truck owned by his son, Harold Fulton, and drove to Swain's residence. Wayne and Harold carried the four-feet high and twenty-five to thirty-two feet long trusses from the place where Swain had stored them to the trailer, where Wayne's daughters Barbara and defendant aided in loading the trusses onto the trailer. The trusses were loaded onto the trailer with the front of the trusses resting on the pickup truck's tailgate. Defendant's role was to ensure that

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

Wayne and Harold aligned the trusses straight on the trailer, and to facilitate her job defendant stood with one foot on the tongue of the trailer and one foot on the pickup truck's rear bumper.

After placing the eleventh truss onto the trailer, Wayne and Harold turned back to retrieve the next truss when someone yelled "Look out!" Due to some undetermined reason the trusses already on the trailer fell over and knocked defendant off the trailer and onto the ground. The accident fractured defendant's spinal column. As a result, defendant is paralyzed from the waist down and will be confined to a wheelchair for the rest of her life.

Defendant subsequently filed two lawsuits. The first was brought against her father and brother, Wayne and Harold Fulton, for negligence. The second was brought against the insurance companies that insured Harold Fulton's pickup truck and the pickup truck owned by defendant's parents. On May 27, 1986, the court entered an order ruling that defendant's injuries arose out of the ownership, operation, maintenance or use of a motor vehicle. The court further ruled that defendant is entitled to payment from the no-fault insurers of all allowable benefits under the no-fault act, but without determining which of the no-fault insurers would have priority under the statute.

Plaintiff filed the instant action, seeking a declaratory judgment on whether defendant is afforded coverage under a standard farm policy issued to Wayne Fulton and his wife Gertrude. The parties agreed to the facts and the issue was submitted as a question of law via plaintiff's summary disposition motion pursuant to MCR 2.116(C)(10). The trial court granted summary disposition in favor of plaintiff, ruling that defendant was excluded from coverage under the motor vehicle exclusion of the insurance policy. Defendant appeals the decision as of right. We affirm.

Summary disposition pursuant to MCR 2.116(C)(10) is only proper if the party in whose favor judgment is granted is entitled to judgment as a matter of law. The trial court 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 because of some deficiency which cannot be overcome. Hageral v Auto Club Group Insurance, 157 Mich App 684; 403 NW2d 197 (1987). The court must give the benefit of any reasonable doubt to the party opposing the motion and inferences are to be drawn in favor of that party. Hageral.

The policy issued to Wayne and Gertrude Fulton states in the section entitled "Coverage L-Personal Liability" that

"This coverage does not apply:

* * *

"(c) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:

* * *

"(2) any motor, vehicle owned or operated by, or rented or loaned to any insured; but this subdivision (2) does not apply to bodily injury or property damage occurring on the insured premises if the motor vehicle is not subject to motor vehicle registration because it is used exclusively on the insured premises or kept in dead storage on the insured premises" (Appendix A)."

In section VIII of the policy, entitled "Definitions," the term "motor vehicle" is defined as:

"a land motor vehicle, trailer, or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto, but does not include, except while being towed by or carried on a motor vehicle, any of the following: utility, boat, camp or home trailer, recreational motor vehicle, crawler or farm type tractor, farm implement or, if not subject to motor vehicle registration, any equipment is designed for use principally off public roads . . . ." (Appendix A).

We believe the trailer used in the instant case clearly falls within this definition of a "motor vehicle". Although the trailer may not have fallen within the definition had the injury arisen while the trailer was being used on Fulton's premises, this injury arose while the trailer was being used off the premises. Moreover, the trailer was designed for travel on

public roads, being equipped with turn signals and brake lights.

Affirmed.

/s/ Michael J. Kelly
/s/ Gary R. McDonald
/s/ John D. Payant