STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff/Counter-Defendant/
Appellant,

v No. 102421

MELTON MOTORS, INC.,

Defendant/Counter-Plantiff/
Appellee,

and

AUTOMOBILE CLUB OF MICHIGAN,
a/k/a DAIIE,

Defendant.

Before: Weaver, P.J., and Maher and C.W. Simon, Jr.* JJ.

PER CURIAM

The plaintiff insurer, Allstate Insurance Company, appeals as of right from a circuit court order granting the motion of defendant/appellee Melton Motors, Inc. for summary disposition pursuant to MCR 2.116(C)(7) and (8). We reverse.

I

On May 13, 1985, Melton Motors, Inc., installed fuel injector lines in the 1981 Volkswagen Scirocco of Wendall Scott Newby. On May 26, 1985, Wendall drove the car into his parents' garage, opened the hood and left the engine running while he entered the home, which was attached to the garage. When he returned to the car he discovered a fire. The fire eventually destroyed the cars of both Wendall Newby and his parents, as well as a large portion of the home. As a result, Allstate paid $102,187.65 in damages to the parents under their homeowner's insurance policy issued by Allstate.

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

Allstate became subrogated to the rights of the insured parents and sued defendant Melton Motors[1] based on the alleged improper installation, service and repair of Wendall Newby's vehicle. The complaint included claims for negligent and defective workmanship, for breach of implied and expressed warranties, and for products liability and strict liability.

Melton Motors moved for summary disposition (1) pursuant to MCR 2.116(C)(7) on grounds that the Michigan no-fault act barred any tort claim arising out of the maintenance of Newby's car and (2) pursuant to MCR 2.116(C)(8) on grounds that Allstate failed to state a claim upon which relief could be granted. The trial court granted summary disposition as to all claims, ruling (1) that a tort claim was barred by the no-fault act because it arose out of maintenance of the automobile, (2) that a warranty claim was barred due to lack of privity between the parties, and (3) that a products liability claim was barred because a report submitted by Melton Motors' expert concluded that Melton Motors had not designed or manufactured the fuel lines. The parties apparently agreed that a cause of action for strict liability does not exist in Michigan. Allstate appeals as of right.

II

We agree with the plaintiff Allstate that the trial court erred in granting summary disposition on grounds that Allstate's cause of action for negligent installation of the fuel lines was barred by the no-fault act, MCL 500.3101 et seq.; MSA 24.13101 et seq.

The trial court arrived at its decision by reasoning that the damage arose out of the maintenance of a motor vehicle. However, whether the damage arose out of the ownership, operation, maintenance or use of a motor vehicle is irrelevant to the issue here, which is whether the defendant's negligence became a separate and independent cause of damage to the property. Contrary to the assertions of defendant Melton Motors, Section 3135

of the no-fault act has not abolished non-motorist tortfeasor liability for negligent repair of a motor vehicle. See Citizens Ins Co v Tuttle, 411 Mich 536, 544-546, 309 NW2d 174 (1981). Defendant misplaces reliance upon Michigan Mutual Ins Co v Carson City Texaco, Inc, 421 Mich 144; 365 NW2d 89 (1984); Buckeye Union Ins Co v Johnson, 108 Mich App 46; 310 NW2d 249 (1981), lv den 414 Mich 873 (1982); and Liberty Mutual Ins Co v Insurance Co of North America, 117 Mich App 197; 323 NW2d 650 (1982), lv den 417 Mich 922 (1983). None of those cases stand for the proposition that the no-fault act was intended to work a comprehensive abolition of all non-motorist tort liability incident to a motor vehicle accident. The no-fault act abolished tort liability for a motorist only, not a non-motorist. Tuttle, supra at 549-550. Abolition of tort liability for a non-motorist tortfeasor would unfairly shift the financial consequences of the tortfeasor's acts to participants in the no-fault system. Id. at 546-547.

This Court has previously imposed liability on a non-motorist tortfeasor garage owner and mechanic. Coleman v Franzon, 141 Mich App 99; 366 NW2d 86 (1985). It was there noted that because the defendant had not purchased no-fault insurance to cover his conduct as a garage owner and mechanic, those motorists who had contributed premium payments would in effect be paying for his negligence if he were allowed to avoid tort liability for his tortious actions. Id. at 104. The same reasoning applies here. The alleged negligent acts of Melton Motors are separate and distinct from a motorist's maintenance under section 3135 of the no-fault act, which section does not abolish the potential liability of Melton Motors for negligent repairs.

The argument that Melton Motors does maintain a no-fault liability policy for its automobiles is irrelevant to the issue here, since none of the vehicles covered by that policy were involved in this incident and defendant did not have an insurable interest in Wendall Newby's car. Defendant did not

purchase no-fault insurance to cover its conduct as a garage owner and mechanic. Defendant is a non-motorist tortfeasor whose actions and those of its employees may result in tort liability. Therefore the trial court erred in granting defendant's motion for summary disposition on the claim of negligent repair.

III

The trial court also erred in granting summary disposition of the products liability claim on grounds that defendant Melton Motors was not liable because it did not design or manufacture the fuel injector lines. Although Allstate did not properly raise this issue on appeal, see MCR 7.212(C)(4); Williams v City of Cadillac, 148 Mich App 786, 790; 384 NW2d 792 (1985), we address the question to correct any misunderstanding of the law of products liability in Michigan.

In granting summary disposition on the products liability claim, the trial court accepted a report from Melton Motors' expert which concluded that the fire resulted from improper installation rather than from a defective product. This report was inadmissible to support defendant's motion for summary disposition under MCR 2.116(C)(7) because it was not submitted as an affidavit. MCR 2.116(G),(H).

Moreover, the trial court stated that the products liability claim was barred "because there is an affidavit submitted that they did not manufacture or design these fuel lines." Aside from the fact that the report did not constitute an affidavit, we find it necessary to point out that a defendant need not be a product designer or manufacturer in order to be liable under a products liability theory, since such liability may extend to a seller of defective goods. Bronson v J L Hudson Co, 376 Mich 98, 100-102; 135 NW2d 388 (1965). Hence the trial court erred in dismissing the products liability claim against Melton Motors.

Reversed.

/s/ Elizabeth A. Weaver
/s/ Richard M. Maher
/s/ Charles W. Simon, Jr.

[1] Allstate also sued Wendall Newby and the no-fault insurer of his vehicle, Detroit Automobile Inter-Insurance Exchange, who are not parties to this appeal.