

FILE - 8 006

STATE OF MICHIGAN  
COURT OF APPEALS

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RALPH LANHAM, as Personal Representative of the Estate of RICHARD ALLEN LANHAM, Deceased,

Plaintiff-Appellant,

v

No. 114152

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

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Before: Neff, P.J., and Wahls and T.G. Kavanagh,\* JJ.

PER CURIAM.

Plaintiff appeals by right from a Wayne Circuit Court order granting defendant Allstate Insurance Company a lien in the amount of personal injury protection benefits paid or payable to plaintiff by defendant, on a settlement paid to plaintiff by the City of Detroit, and dismissing with prejudice plaintiff's claim against defendant for personal injury protection benefits under the Michigan no-fault act, MCL 500.3101 et seq.; MSA 24.13101 et seq. We reverse.

Plaintiff argues that the circuit court erred in ruling that defendant was entitled to reimbursement and set off of personal injury protection benefits and in granting a lien against the settlement proceeds in the amount of personal injury protection benefits paid or payable. An insurance carrier may obtain reimbursement out of a third-party tort recovery for benefits paid or payable where the insured has recovered elements of damage which have been compensated for by no-fault benefits limited to the following three situations: (1) where the insured is injured by an uninsured motorist, (2) where the insured is injured in another state, or (3) where the insured suffers an intentionally caused injury through the ownership and operation

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\*Former Supreme Court Justice, sitting on the Court of Appeals by assignment.

of a motor vehicle. MCL 500.3116(2) and (4); MSA 24.13116(2) and (4); Citizens Ins Co of America v Tuttle, 411 Mich 536, 552; 309 NW2d 174 (1981); State Farm Mutual Automobile Ins Co v Wyant, 154 Mich App 745, 748-750; 398 NW2d 517 (1986); Ryan v Ford Motor Co, 141 Mich App 762, 766-767; 368 NW2d 266 (1985); Auto Club Ins Ass'n v Henley, 130 Mich App 767, 770; 344 NW2d 363 (1983). On the facts as presented by the parties, we conclude that the instant case does not fall within any of the circumstances enumerated in § 3116(2). The circuit court erred in imposing the lien.

We also conclude that the circuit court erroneously dismissed plaintiff's claim. On the instant record, reasonable minds could differ as to whether Richard Allen Lanham's injuries were the result of the December 30, 1983 automobile accident or the alleged assault and battery inflicted by a Detroit police officer. Dumas v Auto Club Ins Ass'n, 168 Mich App 619, 626; 425 NW2d 480 (1988).

Reversed.

/s/ Janet T. Neff  
/s/ Myron H. Wahls  
/s/ Thomas G. Kavanagh