

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

ERIC KRAUSE, by his Next Friend
JUDITH KRAUSE, WALTER KRAUSE
and JUDITH KRAUSE,

DEC 1 1986

Plaintiffs-Appellants,

v

No. 89835

CITIZENS INSURANCE COMPANY OF
AMERICA, TODD J. BAKER, GERALD
MARVIN BAKER, AUTO-OWNER'S
INSURANCE COMPANY, Jointly and
Severally,

Defendants-Appellees.

BEFORE: Danhof, C.J., S.J. Bronson and T. Gillespie*, JJ

PER CURIAM

Plaintiffs appeal an order of summary disposition in favor of defendant Citizens Insurance Company in which the Ingham County Circuit Court held that plaintiffs Eric Krause and his parents were not entitled to personal injury protection benefits for an injury which Eric sustained.

On September 21, 1983, Eric Krause and his father met other members of a hunting party near the junction of two country roads. Todd Baker, one of the members of the party, placed his gun, a muzzle loader which he had built from a kit, on the top of his vehicle and walked over to talk to Eric's father. Eric got out of the vehicle he was riding in and walked over to the other members of the party. As he approached, the muzzle loader discharged, wounding Eric in the chest. Plaintiff submitted an expert's statement that a screw was missing from the firing mechanism of the muzzle loader and that a slight movement by persons in or on the car could have caused the gun to fire.

Plaintiffs' no-fault insurer, defendant Citizens Insurance Company, refused coverage and plaintiffs filed the instant suit, seeking inter alia, a declaration that coverage

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

existed. The trial court granted the insurer's motion for summary disposition, pursuant to MCR 2.116(C)(10), finding that there was not a sufficient causal nexus between the accidental injury and the use of a motor vehicle as a motor vehicle. After summary disposition as to defendant Citizens Insurance Company was granted, plaintiffs entered into a settlement with defendants Todd Baker and Gerald Baker.

On appeal, plaintiffs argue that summary disposition was erroneously granted because movement of the vehicle caused the gun to discharge and that the injury occurred during the loading process of a parked vehicle.

An insurer is liable to pay personal injury protection benefits if the injury "aris[es] out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle". MCL 500.3105; MSA 24.13105. By this language, the Legislature intended that coverage would be provided only where the causal connection between the injury and the use of a motor vehicle is more than incidental, fortuitous, or "but for" and where the involvement of the vehicle in the injury is directly related to its character as a motor vehicle. Thornton v Allstate Insurance Co, 425 Mich 643; ___ NW2d ___ (1986).

Upon the facts, it is obvious to us that the vehicle's involvement in the injury was incidental and the injury was not directly related to the vehicle's character as a motor vehicle. The trial court properly granted summary disposition.

In light of our resolution of the above issue, we need not decide whether the injury occurred during the loading process.

Affirmed.

/s/ Robert J. Danhof

/s/ Tyrone Gillespie

Judge Bronson not participating.